

**(2015) 05 DEL CK 0346**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 4478 of 2012**

Sher Singh Dagar

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

**Date of Decision : 05-05-2015**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation : (2015) 146 FLR 204**

**Hon'ble Judges : V.P. Vaish, J**

**Bench : Single Bench**

**Advocate : Naresh Kaushik and Manoj Joshi, for the Appellant; Jogendra Samal and S.K. Jenamani, Advocates for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

V.P. Vaish, J—The present petition under Articles 226 and 227 of the Constitution of India lays challenge the award dated 2.6.2009 passed by the learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi in I.D. No. 105/07 wherein the workman, respondent No. 2 was granted the relief of reinstatement with 50% back wages and continuity of service. Briefly stating the facts emerging from the present petition are that Sh. Mohd. Isha, father of Shri Mohd. Guddu, respondent No. 2 had taken the farm/land of the petitioner situated at plot No. 6, Shahpur Club Road, Chandan Hulla, Mehrauli, New-Delhi-110030 on batai in the year 2002 on a consideration of Rs. 30,000/- (Rupees Thirty thousand) per year. Shri Mohd. Isha was liable to pay the batai amount for three years, i.e., for the year 2002-2003, 2003-2004 and 2004-2005. However, he did not pay the amount even on repeated demand and somewhere in the last week of August or first week of September, 2005 he, alongwith his family, silently walked away from the said house without giving any information or notice to the petitioner in order to avoid payment of the said amount.

2. On 3.9.2005, respondent No. 2 also left the farm house and while leaving the farm house he carried/misappropriated property of the petitioner to a tune of Rs.

25,000/- (Rupees twenty five thousand) which consisted of costly wood, pipes, electrical goods and lights etc. Against this act of respondent No. 2, the petitioner's wife made a complaint to the police. Thereafter, the police started investigating the matter and as a counter blast to the police complaint of the petitioner, respondent No. 2 in his illegal designs conceived a fictitious identity with its name and style as "Dagar Udyan Farm House" and initiated proceedings before the Deputy Labour Commissioner (South), Government of Delhi against the said Dagar Udyan Farm House.

3. Somewhere in the month of May, 2012, the petitioner learnt from the office of Assistant Collector, Grade-II, Mehrauli, New Delhi-110030 that respondent No. 2 has obtained an ex-parte award from the Labour Court, Karkardooma Court, Delhi. After receiving information about the aforesaid matter the petitioner arranged for the services of a Counsel and moved an appropriate application dated 17.5.2012 for inspection of the file. Thereafter, the petitioner moved an application for obtaining certified copies of documents from the judicial file which were received on 28.5.2012. From the perusal of these documents the petitioner came to know that respondent No. 2 had approached the office of Deputy Labour Commissioner (South) and had raised an industrial dispute claiming that he was the workman of the Dagar Udyan Farm and alleging that his services were terminated illegally by the Management.

4. During the entire proceedings the petitioner was not served with any legal notice/summons at his residential address. Hence, the petitioner neither himself nor through his representative could participate in the conciliation proceedings nor could he present his case before the Labour-cum-Conciliation Officer, Office of Deputy Labour Commissioner (South), New Delhi.

5. Vide order No. F. 24(938)/06/Lab./2903-2907 dated 9.10.2007, the matter was eventually referred by the appropriate Government through Secretary, Labour, Govt. of NCT of Delhi to the Labour Court under the following terms of reference:--

"Whether there existed an employer employee relationship between the management and Sh. Mohd. Guddu, S/o. Sh. Mohd. Isha, and if so, whether services of said Sh. Mohd. Guddu have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Law/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?"

6. Subsequently, an ex-parte award dated 2.6.2009 was passed which is impugned in the present petition.

7. Learned Counsel for the petitioner contends that the petitioner does not own any factory as defined under the Factories Act, 1948 or shop, establishment or commercial establishment as defined under the Shop and Establishment Act, 1954, therefore, the provisions of Industrial Disputes Act, 1947 (hereinafter

referred to as the "ID Act") are not attracted to the present case. The petitioner only owns an agricultural land on which he carries out cultivation of vegetables, cereals and fruits and, therefore, the provisions of Labour Law are not applicable. There is no employer and employee relationship between the petitioner and respondent No. 2. The respondent No. 2 does not work under the directions, supervision or control of the petitioner. Further, the learned Labour Court committed an error by pronouncing a fictitious identity with its name and style as M/s. Dagar Udyan Farm House as commercial establishment when there is no such establishment in existence.

8. Learned Counsel for the petitioner further submits that the notice/summons of the statement of claim was never served on the petitioner. The petitioner never refused to accept the summons sent by learned Labour Court. He has also pointed out that the respondent No. 2 herein did not mention the correct address of petitioner, which was mentioned in the notice dated 25.11.2005 allegedly sent by respondent.

9. Per contra, learned Counsel for respondent No. 2 urges that the petitioner has approached this Court after several years of the passing of impugned award. The notice was duly served on the petitioner, but despite service of the summons, the petitioner did not appear before the Labour Court.

10. I have heard learned Counsel for the parties and have perused the material on record.

11. At the outset it may be mentioned that the procedure for service of summons, notice, process or order issued by a Labour Court is prescribed under Rule 18 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as the "ID Rules"), which reads as under:--

"18. Service of summons or notice.--Subject to the provisions contained in Rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal, National Tribunal or an Arbitrator empowered to issue such notice, summons, process or order, may be served either personally or by registered post and in the event of refusal by the party concerned to accept the said notice, summons, process or order, the same shall be sent again under certificate of posting."

12. On bare perusal of aforesaid Rule 18 of the ID Rules it is manifestly clear that the notice/summons can be served either personally or by registered post and in the event of refusal by the party concerned, the summons shall be sent against certificate of posting.

13. In the instant case, the statement of claim was filed by respondent No. 2 on 18.2.2008 and on the same date the notice was issued to petitioner Management returnable on 18.3.2008. The report of process server on the summons goes to show that a guard was found present at the address mentioned on the notice who stated that the owner visits off and on and there no definite time for his

arrival. On the basis of the said report of process server the petitioner herein was proceeded ex-parte, vide order dated 18.3.2008, learned Labour Court passed the following order:--

"On the notice sent to management, it is reported that the Security Guard met the process server at the given address but refused to take the notice stating that the owner is not there

A commercial establishment can be served at its given address. It is not required that it should be served only through its owners. I consider it as proper service....."

14. The report of process server does not show that the petitioner herein was found present on the address mentioned on the summons or that he had refused to accept the summons. Moreover, the summons was never sent by registered post or under certificate of posting as required by Rule 18 of the ID Rules.

15. It is pertinent to mention here that respondent No. 2 sent a notice dated 25.11.2005 (Ex. WW-1/1) and on the said notice the respondent No. 2 has mentioned the address of the head office of the petitioner as A-47, South Ex. Part-II, New Delhi-110047. But the petitioner has not mentioned the said address on the Statement of claim. No notice was ever issued to the petitioner management at the said address.

16. In these circumstances, it is clear that the notice was never served on the petitioner in accordance with Rule 18 of the ID Rules. Accordingly, the impugned award dated 2.6.2009 passed by learned Presiding Officer, Labour Court-V, Delhi is set aside. The matter is remanded back to the concerned Labour Court to adjudicate and decide the matter after affording reasonable opportunity to both the parties in accordance with law expeditiously and preferably within a period of six months from the next date of hearing.

17. With the aforesaid observations, the petition stands disposed of. Both the parties are directed to appear before the concerned Labour Court on 18.5.2015 at 10:00 a.m. The petitioner is directed to file written statement/reply on the said date. The Trial Court record be sent back forthwith.

C.M. Appeal No. 9288/2012

The application is dismissed as infructuous.