

(2011) 04 DEL CK 0222

In the Delhi High Court

Case No : Writ Petition (C) No. 5610 of 2007

Tushar Enterprises

APPELLANT

Vs

Kamlesh Singh and Another

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Citation : (2011) 04 DEL CK 0222

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : D.D. Saigal and Party in Person, for the Appellant; None, for the Respondent

Judgement

Rekha Sharma, J.—The Petitioner is the sole proprietor of M/s Tushar Enterprises. He says that he started his business in the year 1998 on a small scale. The business pertained to supply of mineral water to various parties in Delhi. The manufacturing process was done by a firm which was working under the trading style of "Freedom" and the Petitioner was the supplier of that mineral water for which he used to get commission of Rs. 10/- per bottle. He had employed Respondent No. 1 for a certain period for the delivery of bottles to his customers on a salary of Rs. 2,000/- per month. However, he suffered persistent losses in the business and hence, he closed down the same in the year 1999. Consequently, he dispensed with the services of Respondent No. 1.

2. Consequent upon the termination of service of Respondent No. 1, he raised an industrial dispute which was referred to the Labour Court with the following terms of reference:

Whether the services of Sh. Kamlesh Singh have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?

3. The Labour Court issued summons to the Petitioner which were returned with the remark that the management refused to receive the same. Acting upon the

said report of the process-server, the Labour Court proceeded ex-parte against the Petitioner and proceeded to record the evidence of Respondent No. 1 who examined himself and also filed his affidavit along with documents. Relying upon the affidavit and the documents which owing to the absence of the Petitioner remained unchallenged, the Labour Court passed an award dated April 01, 2003 in favour of Respondent No. 1 holding that he was entitled to reinstatement with full back-wages.

4. The Petitioner has impugned the award on the sole ground that he was never served with the summons and that the Labour Court wrongly relied upon the report of the process-server that the management refused to receive the summons. It is stated that the report of the process-server is cryptic. It does not disclose, to whom in the so-called management, the summons were sought to be served and what was his identity. The report also does not indicate, whether any attempt was made by the process-server to serve the summons before any witness.

5. On a perusal of the report of the process-server, I feel that the submission of the Petitioner, who has appeared before me in person, is not without merit. The report does not inspire confidence. As rightly pointed out by the Petitioner, it does not indicate to whom the summons were sought to be served and who was that person who refused to receive the said summons. It appears from the address on the summons that the so-called management was located in the Industrial Area and, therefore, if the process-server had really gone to serve the Petitioner at the said address, it would not have been difficult for him to find a witness to the refusal but the report does not indicate that any such effort was made by the process-server. In my view, the Labour Court ought not to have believed such a report and should have made another attempt to serve the Petitioner.

6. For what has been noticed above, I set-aside the award dated April 01, 2003 and remand the case back to the Labour Court to proceed with the matter afresh after ensuring that both the Petitioner and Respondent No. 1 are duly served. The parties shall appear before the concerned Labour Court on April 20, 2011.

7. The Petitioner pursuant to an order passed by this Court on August 10, 2007 had deposited 50% of the awarded amount in this Court. The Registrar General is directed to refund the said amount to the Petitioner.

8. The writ-petition is disposed of.