

(2015) 11 DEL CK 0003

In the Delhi High Court

Case No : W.P. (C) 2618/2014 and CM 5427/2014

Uttam Agencies

APPELLANT

Vs

Asstt. Collector and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 17, 46
Constitution of India, 1950 — Article 226, 227
Employees Compensation Act, 1923 — Section 10, 22, 30

Citation : (2016) 1 ACC 319

Hon'ble Judges : Sunita Gupta, J.

Bench : Single Bench

Advocate : Amit Seth, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Sunita Gupta, J.—The present writ petition under Article 226 and 227 of the Constitution of India has been filed by the petitioner against the recovery/execution proceedings being undertaken by respondent No. 1 seeking to recover Rs. 3,67,416/- along with interest against the petitioner in reference to case No.CWC/SDM/NL/11 (ECC/12/NW/11/1163-64) titled Nand Lal vs. M/s. Tata Tea and Mineral Water Co.".

2. Learned counsel for the petitioner submits that a notice dated 17th February, 2012 was received by the petitioner from the Court of Sh. Sanjeev Kumar, the Assistant Collector for recovery of Rs. 3,67,416/- along with interest from the petitioner. Objections were filed by the petitioner stating therein that Nand Lal was neither the employee of the petitioner nor the petitioner was M/s. Tata Tea and Mineral Water Company. Another notice was received by the petitioner in May, 2012 from the Court of Commissioner under Employees Compensation Act on an application filed by the respondent under Section 46 CPC for issuance of percept against the judgment debtor. Reply/objections were filed by the petitioner, however, the petitioner was threatened by the official from office of

SDM for execution of impugned order and unlawful recovery of the said amount. As such, the petitioner was constrained to file writ petition No. 6232/2012. The writ petition was disposed of by directing respondent No. 2 to decide the objections of respondent and till then, the execution of the order dated 29th November, 2011 was stayed. Respondent No. 2 had passed an order dismissing the objection of the petitioner. Again the officials of respondent No. 1 are threatening and pressurizing the petitioner for execution of the order dated 29th November, 2011 which is not against the petitioner and is totally misdirected at the instance of respondent No. 3. Counsel further submits that the objections have been dismissed without considering the material available on record as there was no evidence before the competent authority to prove either that the respondent No. 3 was ever employee of the petitioner and even no award was passed against the petitioner. As such, the impugned order deserves to be set aside.

3. At the outset, learned counsel for the respondent objects to the maintainability of the writ petition on the ground that the appropriate remedy available to the petitioner was to prefer an appeal under Section 30 of the Employees' Compensation Act. Instead of availing that remedy, the writ petition has been filed which is not maintainable. Even on merits, the counsel submits that the impugned order does not suffer from any infirmity which calls for interference. As such, the writ petition is liable to be dismissed.

4. Rebutting the submissions of learned counsel for the respondent, learned counsel for the petitioner has urged that the provisions of Section 30 of the Employees' Compensation Act are not applicable in the instant case as the petitioner is not challenging the award. He is only aggrieved by the execution of award against the petitioner against whom no award was passed. Therefore, he filed objections which were dismissed.

5. I have given my considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record including the Trial Court record.

6. Perusal of the record reveals that respondent No. 3, i.e., Nand Lal, filed an application for compensation under Section 22 of the Employees' Compensation Act, 1923 (hereinafter referred to as "the act") against:-

(i) Tata Tea & Mineral Water Company, Godown near Devi Mandir Village, Alipur, Delhi-110036

(ii) Madan, Contractor, C/o Tata Tea & Mineral Water Company Godown near Devi Mandir Village, Alipur, Delhi-110036

on the allegations that he was employed as a labourer with respondent No. 2 for Tata Tea & Mineral Water Company (hereinafter referred to as "Company"). On 31st October, 2009 he was assigned the job to go along with the vehicle for supply of goods. During the course of the said job, he fell down from the vehicle

due to breaking of rope and thereby he sustained grievous injury. The contractor (Mr. Madan) i.e. respondent No. 2 took him to his home and said that he was going to inform the company to get his medical treatment done. But he did not turn up in next three days. Finding no other way, his family members and neighbours got him admitted on 3rd November, 2009 in SRHC Hospital, Narela for treatment where he remained admitted till 14th November, 2009 and thereafter he was referred to LNJP Hospital where he remained admitted up to 22nd November, 2009 for operation. Due to injury, he has become a crippled person and his earning capacity is totally reduced. He further alleged that respondent No. 2 is having notice of the accident since the day of its occurrence and he had informed respondent No. 1 immediately after the accident took place. Even otherwise, a notice under Section 10 of the Employees' Compensation Act has been served on the respondent. Respondent No. 2 has been asked to make the payment of compensation. Some amount was paid by respondent No. 2 towards medical expenses. The accident occurred out of and during the course of employment, as such, he was entitled for compensation.

7. A complaint was also made by respondent No. 3 to the concerned SHO, Police Station Ali Pur wherein also he stated that he was working under the Contractor Madan as labourer for supply of goods to the Company whose godown is situated near Devi Mandir, Alipur. Pursuant to the complaint received by the SHO, statement of respondent No. 3 was recorded wherein he reiterated that he was working for contractor Madan Lal as labourer for loading/unloading of goods and that on 31st October, 2009, he sustained injuries. A sum of Rs. 5000/- was paid by the contractor to him but thereafter neither did he visit nor did he get him treated and left the contractorship of the company. He used to take Rs. 4000/- per month as salary from the contractor who used to get work of loading/unloading done for the Company. As such, entire allegations were basically against the contractor Madan who was the employer of respondent No. 3-Nand Lal. However, subsequently on 24th October, 2011, a request was made for deletion of respondent No. 2 from array of parties on the ground that he was impleaded as a party on hearsay. There was no contract inter se respondent No. 1 and respondent No. 2. The request was allowed and amended memo of parties was directed to be filed meaning thereby that although the entire case of the claimant was basically against the contractor but he was deleted from the array of the parties. So far as respondent No. 1 "Company" is concerned, it was proceeded ex-parte. Vide order dated 29th November, 2011, Commissioner, Employees Compensation passed an ex-parte award against the Company directing it to pay a sum of Rs. 3,67,416/- along with interest @ 12% till realization. Recovery certificate was also issued against the Company. However, on the strength of this certificate, the amount was sought to be realized from the petitioner. On receipt of notice dated 17th February, 2012 for recovery of the aforesaid amount from the petitioner, objections were filed before the Assistant Collector submitting therein that the notice was wrongly served upon the petitioner as it has no concern with alleged M/s. Tata Tea and Mineral Water

Company nor had the complainant ever worked with them. Moreover, no proper description of the exact address of M/s. Tata Tea and Mineral Water Company was given as the address mentioned in the notice was Godown near Devi Mandir Village Alipur, Delhi-110036 with which the petitioner has no connection. Thereafter, an application was moved by the claimant under Section 46 of Code of Civil Procedure for issuance of percept against the Company. Again notice of this application was served upon the petitioner. Reply/objections were filed by the petitioner reiterating that it has neither any connection with the Company nor the claimant Nand Lal had ever worked with the applicant. Moreover, the address as mentioned in the notice "godown near Devi Mandir Village Alipur Delhi-110036" is a vague address and applicant has no concern with the said alleged address. The applicant is operating from Khasra 252, Dora Abadi of Village Alipur, Delhi. The process server having not been able to locate the alleged company and alleged address wrongly served the said notice upon the applicant. Under the garb of false claim/execution against some other company having different address, the claimant is trying to harass the applicant and extort undue money from him. Thereafter, the writ petition bearing No. 6232/2012 was filed by the petitioner feeling aggrieved by the action of the Assistant Collector seeking recovery of the awarded amount from the petitioner on the ground that without deciding the objections filed by the petitioner, respondent No. 1 is proceeding with the execution proceedings and is seeking to attach the assets of the petitioner. Vide order dated 5th February, 2013, the writ petition was disposed of with direction to respondent No. 2 to dispose of the petitioner's objections expeditiously by a reasoned order within three months. Thereafter, the impugned order dated 19th June, 2013 was passed by the Commissioner dismissing the objections of the applicant observing as under:-

"3. I have gone through the contents of objection of respondent in question reply filed by the petitioner and documents available on record which petitioner workman relies. During arguments my attention was drawn by Ld. Counsel for petitioner towards summon dated 26.09.2011 and report thereby submitted on affidavit dated 30.10.2011 by Sh.Vikas Nain S/o. Sh. R.K. Nain, Advocate wherein it was reported that in the case titled as Nand Lal vs. M/s. Tata Tea & Mineral Water Company & Others, on 29.09.2011 at about 12.30pm he alongwith Head Constable and the applicant/claimant Sh. Nand Lal had gone to the godown of M/s. Tata Tea & Mineral Water Company. Head Constable Sh.Desh Pal Singh, Police Station Alipur Delhi got the door of the godown opened from the security guard and they entered inside the godown. There they found about 04-05 people working in the premises and there was sufficient stocks of goods were lying. Some people present there also told that Sh.Subhash Arora is the In-Charge of this godown and the claimant was working there. The Head Constable Sh.Desh Pal Singh asked him to receive the summon but he refused to receive the same. Report from S.H.O. Alipur in this regard is also placed on record. Despite having receipt of notice of case, respondent management had not appeared before the then Ld. Commissioner to file his defence. When Ld. Commissioner had passed

award against respondent management and when matter came for recovery of awarded amount only thereafter respondent awoke and thought to file objection stating that claimant was not his employee and at given address in question no Tata Tea and Mineral Water Company was existed. Onus was upon respondent management to appear before the then commissioner and to file his defense but respondent did not do the same. On the other hand as per the police report dated 29.09.2011 by Head Constable-UB P.S Alipur that when he went on address given he found their manager was Sh.Subhash Arora who told him that he does not know any "Nand" nor did he ever work with us whereas contractor Bhim Singh S/o.Ram R/O 6326, Jain Nagar, Begum Pur told him that this person i.e. claimant workman used to work here and at the time manager Subhash Arora was also working there and driver Sh.Nawal Kishor S/o Sh. Bachchhe Gupta, R/o 362, Shakkarpur, JJ Colony told me that he knows Mr. Nand Lal.

4. As per rent agreement of Uttam Agency for a tenancy 30.11.2011 onwards where accident took place on 31.10.2009 shows trading agency business and dealing in sale purchase of tea & water. The premises in question was using for storing tea, water coffee and rice etc.

5. In view of the above made discussion it is proved that notice was served upon respondent management he failed to appear with commissioner and as per report filed by PS Alipur, it is proved that claimant was working with the management and he had received injury during his course of employment. As such, the objection taken by respondent management that petitioner never worked with him and nor received any injury during out of and in the course of his employment is not maintainable at this stage because respondent management had not taken these objection at the appropriate time before passing award by the then Commissioner Workmen Compensation. Hence, I do not find any merits in the application/objection dated 28.05.2012 of respondent management at this stage, as such, same is rejected."

8. Perusal of the aforesaid reasoning given by the Commissioner goes to show that probably the applicant was taken as the respondent Tata Tea and Mineral Water Company. Reference was made to the report submitted by the Advocate on affidavit dated 30th October, 2011 that one Subhash Arora had refused to receive the summons. On refusal of Subhash Arora to receive the summons, respondent/management, i.e., the Company was proceeded ex-parte. The award in question was also passed against the Company. The finding of the learned Commissioner that the respondent/management did not chose to contest the claim and woke up only when recovery of awarded amount was sought to be initiated by filing objections that claimant was not his employee has been given overlooking the fact that the award was not against M/s. Uttam Agencies but it was against the Tata Tea and Mineral Water Company. Despite the fact that the award was passed against the Company and the recovery certificate was also issued against the said company, recovery was sought to be effected from M/s. Uttam Agencies. It is not explained as to how recovery can be affected from the

present petitioner against whom no award was passed. The Commissioner has referred to the police report dated 29th September, 2011 given by the head constable, PS Alipur that when he had gone to the given address, he found manager Subhash Arora who stated that he neither knew "Nand" nor he ever worked with the company. However, contractor Bheem Singh told him that the claimant/workman used to work there and driver Naval Kishore also told him that Nand Lal was known to him. Reliance was also placed on a rent agreement of Uttam Agencies for a tenancy dated 30th November, 2011 showing that it was doing trading agency business and dealing in sale and purchase of Tea and water. Even if that is so, at best, it may be treated that Uttam Agency was an agent of the Company. In order to fasten the liability upon the petitioner, it was required to be proved that there was an award against the petitioner from whom recovery is sought to be affected. After the remand of the case, an application under Order I R.10 and Order VI R.17 CPC was moved by the claimant-Nand Lal for impleading Uttam Agencies as a necessary party. As per the order, copy of the application was supplied to the management to file reply and the matter was adjourned time and again but no reply was filed. Be that as it may, there is nothing to show that this application was disposed of or Uttam Agencies was impleaded as respondent No. 2. Even assuming that M/s. Uttam Agencies would have been impleaded as respondent No. 2, the recovery could not be affected against the petitioner unless there was an award against them. Admittedly, in the main claim petition Uttam Agency was never impleaded as one of the respondent and it was never the case of the claimant that he was an employee of M/s. Uttam Agency. Merely on the basis of a report given by the Head Constable that one contractor Bhim Singh reported that claimant/workman used to work there and one driver Naval Kishore reported that Nand Lal was known to him does not in any manner prove that the claimant was an employee of the petitioner. The fact remains that there was no award against the present petitioner against whom recovery is sought to be affected, as such, without any cogent evidence available on record, the objections filed by the petitioner could not have been dismissed in the manner in which it has been done by the competent authority. The impugned order, under the circumstances, cannot be sustained.

9. As regards the objection taken by the learned counsel for the respondent regarding maintainability of the writ petition in view of Section 30 of the Employees Compensation Act, the same has no substance as the petitioner is not aggrieved by the award passed by the Commissioner under Compensation Act against M/s. Tata Tea and Mineral Water Company. The present writ petition has been filed feeling aggrieved by the rejection of the objection filed by the petitioner against whom no award was passed. Therefore, Section 30 of the Employees' Compensation Act has no application.

10. In the result, the writ petition succeeds. The impugned order dated 19th June, 2013 passed by the Commissioner under Employees' Compensation Act is set aside. It is clarified that nothing stated in this order shall come in the way of execution of the award against the respondent-M/s. Tata Tea and Mineral Water

Company against whom the award was passed.

The petition stands disposed of.

Pending application bearing No. 5427/2014 also stands disposed of.