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**(2007) 05 AHC CK 0059**  
**In the Allahabad High Court**

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|------------------------------------|----|------------|
| Vision 23 Garnets Pvt. Ltd.        | Vs | APPELLANT  |
| Smt. Rajesh Devi and State of U.P. |    | RESPONDENT |

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**Date of Decision :** 25-05-2007

**Acts Referred:**

Arbitration Act, 1940 — Section 13  
Industrial Disputes Act, 1947 — Section 23, 29

**Citation :** (2007) 7 AWC 7496 : (2007) 115 FLR 421 : (2007) 3 UPLBEC 98

**Hon'ble Judges :** Sunil Ambwani, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Sunil Ambwani, J.—Heard Shri V.K. Mishra, learned Counsel for petitioner and Ms. Bushra Mariyam for Suit. Rajesh Devi-respondent No. 1.

2. Smt. Rajesh Devi-respondent No. 1 was employed by M/s Vision 23 Garment Private Limited Noida, district Gautam Budh Nagar as an Operator. Her services were terminated on 21.2.1995 giving rise to an industrial dispute, which was referred on 16.9.1998 to the Labour Court (2) U.P. Ghaziabad and was registered as Adjudication Case No. 5 J 4/1998. In the ex-parte Award dated 16.10.2003, the Labour Court found the service of Summons on the employer to be sufficient and observed that inspite of several opportunities the employer did not file their written statement. Thereafter the Labour Court found that the respondent workman was Appointed as an operator on 8.12.1993 on permanent basis and that her Services were terminated by oral order on 21.2.1995. She had completed 240 days and was not paid salary and over time from 1.2.1995 to 20.3.1995. She was not given any notice pay, and retrenchment compensation at the time of termination of her services. The Labour Court relied upon the affidavit of the workman, Which was not controverted and awarded while declaring the termination of her services to be improper and illegal and directed her reinstatement with full back wages.

3. The employer has challenged the ex-parte award on merit in writ petition No.

56064 of 2006. On 10.10.2006 the Court passed following orders and stayed the award:

Argument is that award besides being ex-parte, in view of the details so placed on the record could not have been passed.

In view of the aforesaid, it is provided as an interim measure that till the next date of listing operation of the impugned award dated 16.10.2003 shall remain stayed.

Issue notice to respondent No. 1. Steps will be taken within ten days.

Counter affidavit may be filed by the next date.

List this case in the month of December, 2006.

Sd/- S.K. Singh, J. 10.10.2006

4. The writ petition came up for hearing and that on 15.1.2007 the Court disposed of the writ petition with the directions that the petitioner will file a certified copy of the order within ten days. The presiding officer will decide recall/review application in accordance with law after giving opportunity of hearing to both the sides within one month and that no adjournment will be given to the petitioner on any ground. The court stayed the recovery for a period of six weeks.

5. After hearing both the parties, the labour court, by its order dated 23.2.2007, dismissed the application<sup>^</sup> for recalling ex-parte order giving rise to this writ petition. The labour court found that the summons sent by the labour court were served upon the employer but they did not appear. In order to enforce the award the officer of the Labour Department visited the office of the company on 19.5.2004 and informed them with the award. The summons were again issued in proceeding u/s 6H(1) on 30.1.200 and thereafter by speed post on 15.2.2006 in response to which two directors of the employer appeared. The recall(application, however, was filed with seven months delay for which no sufficient ground is available on record.

6. The Labour Court found that the summons were served personally on the employer on 30.8.2002. The envelope bears the seal and signature of the officers of the employer. On the date fixed on 11.11.2002 no one appeared. Labour Court granted time on several occasions but the employer did not choose to appear and file written statement.

7. Learned Counsel for petitioner contends that after the expiry of a period of one year, the award has become unenforceable. Three months before the application for recall was filed, the company was sold and that at present Ms. Sapna Bharadwaj is the director, who had filed the application on affidavit on 7.8.2006 for setting aside the ex parte order.

8. The labour court found that Ms. Sapna Bharadwaj, the new director, who purchased the company on 7.8.2006, could not be said to have knowledge of

the affairs of the company prior to the date of purchase. She could not deny the service of summons. On 30.8.2002 when the notices were received, Ms. Sapna Bharadwaj has no concern with the company. The recall application was filed on 7.8.2006 for recalling the order dated 1.10.2003 with the considerable delay. There was no good reason; available for condonation of delay. Once it was held that the employer has knowledge of the proceedings, the application to set aside the ex-parte order could be filed under Rule 16(2) of the I.D. Act, 1947 and thus the application is grossly barred by limitation. It was further found that in the proceedings Of execution of award, Neeraj Nayan Srivastava and Gautam Thadani, the directors of the company appeared. These two directors and Shri Rajeev Sharma, director also found to appear in the proceedings u/s 6H(1) of UP I.D. Act, 1947 on 24.2.2006. They had full knowledge of the proceedings and that it cannot be said that the employer was not aware of the proceedings.

9. Shri V.K. Mishra, learned Counsel for petitioner submits that u/s 6C read with Section 6A of the UP I.D. Act 1947, the award is Valid for a period of one year anil that it becomes unenforceable u/s 6H(1), unless there is an order of the State Government extending period for enforcement of the award u/s 6C of the Act. He has relied upon Kesarwani Zurdu Bhandar v. Additional Labour Commissioner 2005 A L. 3005.

10. Ms Bushra Mariyam, appearing for respondent-workman, submits that even if the award has ceased to be operative, or in force it will continue to have its effect as a contract between the parties that has been made by industrial adjudication in place of old contract. In Hemraj Keshavji Vs. Shah Haridas Jethabhai, the Supreme Court held that even if an award has ceased to be inoperative or in force and has ceased to be binding u/s 19C of I.D. Act, 1947, it continues to bind the parties as a contract after industrial adjudication so long as the award is binding on a party. The breach of any of its term will make the party liable to penalty u/s 29 of the I.D. Act, 1947. The supreme Court held:

(8) ...On the contrary, the very purpose for which industrial abjudication has been given the peculiar authority and right of making new contracts between employers and workmen makes it reasonable to think that even though the period of operation of the award and the period for which it remains binding on the parties may I elapse in respect of both of which special provisions have been made under Sections 23 and 29 respectively may expire, the new contract would continue to govern the relations between the parties till it is displaced by another contract. The objection that no such benefit as claimed could accrue to the respondent after March 31, 1959 must therefore be rejected.

11. Further in this case the petitioner-employer had challenged the award in this Court and had obtained an interim order on 10.10.2005."The employer did not raise any ground regarding enforceability of the award and that the writ petition was disposed of with direction to the labour court to decide the application for setting aside ex-parte order. The entire object of the industrial adjudication is to provide special forum for deciding industrial disputes. The establishment of the

industrial courts have taken away the jurisdiction of civil court and for certain purposes Section 11E and 11F the labour court shall be deemed to be civil Court and has powers in relation to contempt. Section 13 provides that nothing in Arbitration Act, 1940 shall apply in any proceeding under any order made under the Act. Every dispute is first referred to for conciliation and then if the State Government thinks fit a reference is made by the State Government to the labour and/or the industrial tribunal as the case may be. The award is published u/s 6(4) of the Act. If the State Government is satisfied with the conditions laid down in the sub-sections, the award commences on the expiry of 30 days from the date of its publication u/s 6 of the Act and can be enforced by application of provisions of Section 6H of the Act by way of recovery of, money due from an employer. In this case the award was made On, 16.10.2003 and was published and the workman requested for enforcement and that the officers of the labour department visited the premises of: the employer on 15.9.2004. u/s 6H(1) summons were issued on 30.1.2006. Thereafter employer filed a writ petition and got the award stayed. The writ petition was disposed on 15.1.2007 and that on 23.2.2007 the application for recall was also dismissed. The award has declared the termination to be bad and directed the employer to reinstate respondent No. 1 with full back wages and continuity in service. This is fresh contract after industrial dispute adjudication which does not require any order of extension for its enforcement by the State Government.

12. The writ petition is dismissed.