

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 01st OF APRIL, 2022

MISCELLANEOUS PETITION NO.3502 OF 2020

Between:-

**MUNICIPAL CORPORATION, DHAR,
THROUGH ITS COMMISSIONER,
DISTRICT – DHAR (MP)**

.....PETITIONER

(BY SHRI PRATEEK PATWARDHAN, ADVOCATE)

AND

NASREEM

.....RESPONDENT

(BY SHRI SANJEEV RAWAT, ADVOCATE)

This miscellaneous petition coming on for this day, the court passed the following:

ORDER

The petitioner has filed the present petition under Article 227 of the Constitution of India, being aggrieved by impugned orders dated 27.05.2019 (Annexure-P/3), 26.09.2019 (Annexure-P/6) and 31.01.2020 (Annexure-P/7) whereby ex-parte award has been passed against the petitioner. Two different applications under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (*for short 'CPC'*) have been preferred by the petitioner before the Court below and the same were also dismissed.

The facts of the case in brief are that the petitioner/Municipal Corporation has filed the petition challenging the award passed by the Labour Court in Ref. No.ID REF.30/19, wherein the Presiding Officer has proceeded an ex-parte award against the petitioner directing reinstatement of petitioner without backwages. Thereafter the petitioner has filed an application under Order 9 Rule 13 of CPC for setting aside the ex-parte award but the learned Court below has dismissed the aforesaid application. The petitioner has again filed an application under Order 9 Rule 13 CPC and the same was also dismissed by the Court below vide impugned order dated 31.01.2020.

Counsel for the petitioner/Municipal Corporation contends that the learned Court below has erred in law in dismissing the application filed by the petitioner for conducting by party hearing in the case on the ground that permission to publish award was already granted granted to him. The petitioner could not remain present before the Court below for the reason that Court Clerk has received the notice, but he did not informed the higher authorities about the receiving of notice and therefore there was no appearance on behalf of the petitioner. Learned Court below has failed to consider that the petitioner has initiated the disciplinary proceedings against the erring Clerk and the respondent has failed to produce any relevant documents to establish that she was worked more than 240 days in a year. He submits that the respondent has never worked with the petitioner/Municipal Corporation and that there is no master and servant relationship between them. Counsel for the petitioner further contended that

the impugned orders passed by the Court below is bad in law and contrary to the facts in law and evidence. Hence these impugned orders passed by the Court below be set-aside.

Per contra, counsel for the respondent has opposed the prayer made by the petitioner and has filed a written reply by stating that the petitioner has filed an application under Order 9 Rule 13 of CPC after a lapse of three months which was time barred and all the orders passed by the Court below is just and proper and is in accordance with law. He submits that notice has been duly served to the petitioner and he has not appeared before the Court below despite having sufficient time and without any valid reason. Therefore the trial Court has rightly proceeded ex-parte award against the petitioner. Hence the petitioner is not entitled for any relief.

I have heard counsel for both the parties at length and perused all the relevant documents along with the petition.

Upon perusal of the record and after considering the arguments advanced by Counsel for the petitioner, it appears that the trial Court has held vide order dated 28.02.2019 that despite service of notice, the petitioner did not appear before the Court below and therefore the matter should be heard ex-parte against him.

On 27.05.2019, an ex-parte award has been passed against the petitioner by the learned Court below and the copy of award has been sent to Deputy Commissioner, Labour Court for acknowledgment, but before such acknowledgment the petitioner has again filed an application under Section 9 Rule 13 of CPC

before the Court below but the same has been dismissed on the ground that permission for publication of award has already been granted to the petitioner.

The Hon'ble Apex Court in the case of ***Haryana Suraj Malting Limited vs. Phoolchand reported in AIR SC 2670***, it has held that the Labour Court/Tribunal is not *functus officio* after the award has become enforceable as far as setting aside an ex-parte award is concerned.

Therefore, in view of the law laid down by Hon'ble Apex Court in the case of ***Haryana Suraj Malting (supra)***, it is clear that merely because an award had become enforceable, it does not mean that it had become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance could be challenged on the ground of it being nullity. An award which is a nullity could not be and should not be a binding award. In case, if a party was able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal, when it was set ex-parte, the Labour Court was bound to consider such an application and the application cannot be dismissed on the ground that it was filed after the award had become enforceable.

The learned Court below has not considered all these legal aspects of the matter while passing the impugned orders and the petitioner/Municipal Corporation has shown sufficient reason of his non-appearance before the Labour Court. The petitioner is a local autonomous body and due to a fault of erring Clerk, the

whole Department cannot be punished. The senior officials of the Department have been informed regarding service of notice and due action has been taken against the erring Clerk, therefore, the Petitioner/Corporation have a sufficient ground for non-appearance before the Court below. In the aforesaid facts and circumstances of the case, the learned Labour Court ought to have allowed the application filed by the petitioner. Thus, the Court below has committed an error while rejecting both the applications filed by the petitioner under Order 9 Rule 13 of CPC.

In view of the above, the impugned orders dated 27.05.2019 (Annexure-P/3), 26.09.2019 (Annexure-P/6) and 31.01.2020 (Annexure-P/7) passed by the learned Court below cannot be legally sustained and is hereby set-aside. This petition is partly allowed and the matter is remitted back to the learned Labour Court for reconsideration of its earlier order. The Labour Court is directed to give sufficient opportunity of hearing to the petitioner/Municipal Corporation while deciding the matter afresh, in accordance with law.

Arun/-

(ANIL VERMA)
J U D G E