

Before M. M. Punchhi, J.

RAM SARUP,—Petitioner.

versus

GURDAS RAM AND OTHERS,—Respondents.

Civil Writ Petition No. 2157 of 1983

September 9, 1985.

*Industrial Disputes Act (XIV of 1947)—Sections 17 & 17-A—Ex-parte award rendered by Labour Court in favour of workman—Such award published under section 17 and becoming enforceable under section 17-A—Management subsequently making application for setting aside the award—Labour Court—Whether has the jurisdiction to set aside such award—Said Court—Whether becomes functus officio after the award has become enforceable.*

*Held, that an ex-parte award is never final and can always be set aside on sufficient cause being shown and the labour court or the Tribunal as the case may be retains jurisdiction even after the award becomes enforceable under section 17-A of the Industrial Disputes Act, 1947 and the court or the Tribunal can set aside the ex-parte award. As such the court does not become functus officio after the award becomes enforceable.*

(Para 4)

*Petition under Articles 226/227 of the Constitution of India praying that the records of the case be called for and the petitioner be granted the following reliefs:—*

- (a) *quash the award Annexure P-1 dated 21st August, 1980 as published in the Punjab Government Gazette dated 24th October, 1980 and copy of the order Annexure P-5 dated 20th January, 1983.*
- (b) *grant any other suitable writ, order or direction as it may deem fit in the circumstances of the case and restrain the respondents from enforcing the said award.*
- (c) *filing of the certified copies of Annexure P-1 to P-5 be dispensed with.*
- (d) *issuing of advance notices of motion to the respondents be dispensed with.*
- (e) *grant any other relief to which the petitioner may be entitled to in the facts and circumstances of the case.*

*It is further prayed that pending the decision of the writ petition, operation of the award Annexure P-1 be stayed.*

*Application under section 17-B of the Industrial Disputes Act praying that full wages i.e. from the date of removal to date may kindly be ordered to be paid to the workman and terms of the stay order be modified.*

O. P. Hoshiarpuri, Advocate, for the Petitioner.

Kuldip Singh Kapur, Advocate, for the Respondent.

### JUDGMENT

M. M. Punchhi, J. (oral)

(1) This order will dispose of Civil Writ Petition 2157 of 1983 and Civil Miscellaneous 1934 of 1985, which is a progeny thereof. Gurdas Ram, respondent, claiming himself to be a workman with the petitioner, raised an industrial dispute alleging that his services stood illegally terminated by the petitioner on 12th November, 1979. The State Government, at his instance, referred the matter for adjudication before the Labour Court, Ludhiana. The petitioner-firm was described in the claim submitted as M/s Ram Sarup and Sons, G. T. Road, near Jagraon Bridge, Ludhiana. The Labour Court on that premises on 30th June, 1980 ordered issuance of registered notice to the firm for 21st July, 1980. Then again the order was repeated for 8th August, 1980. In the meantime, registered notice sent for 21st July, 1980 was received back by the Labour Court and the Court functionary at the margin of the order sheet mentioned on 25th July, 1980 that the registered notice had been received back unserved. Despite that, on 8th August, 1980, the Labour Court passed an interlocutory order that none from the respondents was present in spite of registered notice and thus *ex parte* proceedings were ordered to be taken against the firm. After recording the *ex parte* evidence the Court passed the award on 29th August, 1980. It was published in accordance with the provisions of Section 17 of the Industrial Disputes Act (hereinafter called 'the Act') and it became enforceable under section 17-A of the Act. These facts are undisputed as they stand prominently focussed on the Labour Court file summoned under the orders of the Motion Bench.

(2) It appears that in execution of the award, the petitioner M/s Ram Sarup Jiwan Lal became aware of the award as it was sought

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to be executed against them. Sequel to the petitioner filed an application for setting aside the award on the basis that it was a nullity and further that on account of the registered notice having been sent to a wrong person, the award had come to be made on foundational errors. The Labour Court rejected the plea,—*vide* order dated 20th January, 1983, Annexure P-5, which has given rise to Civil Writ 2157 of 1983.

(3) During the pendency of this petition, Civil Misc. 1934 of 1985 was filed by the workman invoking the provisions of Section 17-B requiring this Court to order the employer-petitioner to pay him full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rules. Though notice has been issued to the petitioner for the purpose and no reply has been filed, it is yet obvious that the miscellaneous application is not supported by the affidavit of the workman as envisaged under section 17-B. That affidavit needs to be to the effect that the workman had not been employed in any establishment during the period when the proceedings were pending in this Court against the award. Thus this application need not engage our attention in the absence of the requisite affidavit. The petition is thus rejected.

(4) Learned counsel for the parties both rely on *Grindlays Bank Ltd. v. The Central Government Industrial Tribunal and others*, (1) to support their respective contentions. Whereas the main thrust of the learned counsel for the petitioner is that the award was a nullity, without notice to the petitioner, making it incumbent on the Labour Court to set it aside and direct hearing of the matter afresh, the learned counsel for the respondent on the other hand, urges that the award can only be set aside if an application for the purpose had been made at any time before the award had become final under section 17-A of the Act. Sequel to it is urged that the Labour Court after the expiry of 30 days from the date of the publication of the award under section 17, and on the enforceability of the award, became *functus-officio* unable to entertain any application for setting aside the award on the basis that it was *ex parte* and hence a nullity. Thus the narrow point for consideration is whether the Labour Court retains the jurisdiction to set aside an award which is a nullity after the stage under section 17-A has been crossed.

(1) 1981 Lab. I. C. 155.

(5) A careful reading of *Grindlays Bank's case* (supra) discloses that though in that case the application for setting aside the award was made within 30 days of its publication under section 17-A, the Tribunal had allowed the application after the passing of the 30 days time. That is a circumstance emphatic by itself that the Court or the Tribunal, as the case may be, retains jurisdiction even after the expiry of the statutory 30 days period as conferred by section 17-A, and, in particular, the following observations of the Court are meaningful :—

“The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. There is no finality attached to an *ex parte* award because it is *always* subject to its being set aside on sufficient cause being shown.” (emphasis supplied).

(6) The employment of the word ‘always’ essentially means without any limit of time. These observations of the Supreme Court lead to the irresistible conclusion that an *ex parte* award is never final and can always be set aside on sufficient cause being shown. Thus the emphasis laid is on sufficiency of cause. And in determination thereof the conduct of the parties plays a prominent part as also the circumstances in which the *ex parte* award came to be made.

(7) Now here in the instant case a presumption could be raised that in the common course of natural events and human conduct of public business, the registered A.D. letter sent by the Tribunal should have reached the destination but that presumption by itself stood demolished when the letter was returned with the report that no such firm was in existence at the address supplied. Thus the Labour Court could not have passed the interim order when the firm, which ever it be, had not put in appearance. *Ex parte* proceedings could not have been taken against it. Additionally, there was an obvious mis-description of the firm. There is a world of difference as to what ‘M/s. Ram Sarup Jiwan Lal’, the present petitioner would spell out to be and ‘M/s. Ram Sarup & Sons’, the alleged firm which was sought to be proceeded against. Secondly, the positive averments of the petitioner in the writ petition that it has nothing to do with Ram Sarup and Sons has not been met with any positive reply by the contesting respondent and the matter has

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evasively been put off by contending that there is no legal and justifiable ground to interfere with the process issued by the Presiding Officer and the Labour Conciliation Officer, and that the application for setting aside the award was made beyond the prescribed period. The respondent did not have the courage to equate the present petitioner with the firm which he had impleaded in his claim petition. Thus, though extremely hesitantly, I have come to the conclusion that the award passed by the Labour Court being a nullity, should have been set aside and requires now to be set aside, requiring fresh determination of the main dispute at the end of the Labour Court.

(8) Accordingly, for what has been said above, this petition succeeds, the impugned award Annexure P-1 and order refusing to set aside, Annexure P-5, both are quashed and the matter is remitted back to the Labour Court to decide afresh the claim of the respondent in accordance with law.

(9) Parties through their counsel are directed to put in appearance before the Labour Court on October 3, 1985. The Records of the Labour Court be remitted back.

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H.S.B.

*Before Pritpal Singh, J.*

PADMA VATI AHUJA,—Appellant.

*versus*

DASAUNDHI RAM AND ANOTHER,—Respondents.

Regular Second Appeal No. 1897 of 1976.

September 12, 1986.

*Hindu Succession Act (XXX of 1956)—Section 14(1) & (2)—Husband conferring life estate of property on wife in lieu of maintenance by virtue of gift deed — Gift deed stipulating that the donee would be entitled to alienate the property for necessity—Said deed further stipulating that in case the property is not alienated it*