

BEFORE THE ADDITIONAL LABOUR COURT, COIMBATORE.

PRESENT : **Thiru. A.MANIMOZHI, B.A., LL.B.,**
Presiding Officer,
Additional Labour Court, Coimbatore.

Thursday, the 05th Day of December 2019

EXECUTION PETITION No.02/2019

in

INDUSTRIAL DISPUTE NO.76/2011

A.Abdul Mazeeth,
S/o.Asan Mohamed,
Pharmacist,
21/279, Kavarkkal Estate,
M/S. N.E.P.C. Tea Garden Ltd.,
Waterfall Post, Valparai-642 105.

...Petitioner

..Vs..

1) The Management,
N.E.P.C. Tea Garden Ltd.,
Kavarkkal Estate,
Waterfall Post,
Valparai - 642 105.

2) General Manager,
Waterfall Estate Group,
Waterfall Estate Post,
Valparai – 642 105.

... Respondents

This Execution petition coming on for final hearing before me on 08.11.2019 in the presence of Thiru.S.Kesavamurugan, Authorized Representative for the petitioner; and Thiru.S.Muruganandam, Advocate for the 1st respondent; and Ms.K.Rajeswari, Advocate for the 2nd respondent and upon perusing the petition, counter statements, documents and oral evidences and upon hearing the arguments of both sides and having stood over till this day for consideration, this court passed the following:-

O R D E R

This execution petition has been filed by the Petitioner / Workman against the respondent managements under order 21 Rule 11 (2) of Civil Procedure code, for arrest of the Company Secretary of 1st respondent management and the Group Manager of the 2nd respondent, so as to execute the award passed in the above Industrial Dispute on 04.02.2016.

2. The averments of the means affidavit filed by the petitioner, in brief, is as follows :-

a) An award was passed by the Labour Court, Coimbatore on 04.02.2016 in the dispute filed by the petitioner in I.D. No.76/2011, directing the respondents to reinstate the petitioner in service with continuity of service, full back-wages and other attendant benefits. Even after expiry of more than 34 months from the date of the award, the respondents have not come forward to

comply with the award. In the respondent management more than 1500 workmen are employed. The respondent managements are registered under the Plantation Labour Act. There is no difficulty in executing the award since the respondent managements are functioning in good manner.

b) The petitioner already filed an execution petition in E.P. No.50/2017 and an order was passed on 17.07.2018 for arrest of first respondent. After passing of the order, since the second respondent informed that the petitioner would be reinstated as Pharmacist, he has not pressed the E.P. on 29.11.2018 without prejudice to his right to file fresh E.P. in the event of non compliance of the award by the respondents. The respondents informed that Pharmacist job would be given to the petitioner on 01.12.2018, but did not provide the job. When the petitioner enquired they informed that job would be given on 01.01.2019, but even on the said date they did not provide the job. Hence the petitioner has filed the present execution petition.

3. The averments made in the counter statement of the 1st respondent, are in brief as follows:-

a) The petitioner has filed I.D. No.76/2011 seeking relief to set aside the dismissal order dated 12.02.2011 and to reinstate with continuity of service with full back-wages etc. The 1st respondent is a plantation estate engaged in the cultivation and manufacturing of Tea. Due to severe financial strain and due to the fact that there was no parity between the sale

price and cost, the company incurred heavy loss. With the good intention of providing continuous work for the workers the 1st respondent entered into a lease agreement in the year of 2009 with the 2nd respondent, and thereby giving continuous work and payment of salary to the workers.

b) The petitioner was employed as a Pharmacist and salary was paid up to October 2009, by the 1st respondent management. The petitioner drawn his last salary as Rs.8,634/- with the 1st respondent. After that the 1st respondent management estate was taken over on lease by the 2nd respondent management and the petitioner was continuously working with the 2nd respondent management till 2011 and his last drawn pay was Rs.13,132/-. Afterward there is no employer and employee relationship between the 1st respondent and the petitioner.

c) From the workmen of the estate many complaints were received against the petitioner to the 2nd respondent and considering the seriousness of the matter the 2nd respondent was forced to remove the petitioner from the job immediately from 12.02.2011 onwards. Further, the request made by the 2nd respondent to the 1st respondent, the 2nd respondent finds no other way as per lease agreement to signed the dismissal order.

d) The petitioner worked with the 1st respondent management up to October 2009 only. Thereafter, the petitioner did not work with the 1st

petitioner management. The petitioner joined in the 2nd respondent management and he was continuously working with the 2nd respondent till January 2011. Therefore, the petitioner has no any locus standi to the file Industrial Dispute and Execution petition against the 1st respondent.

e) The lease agreement is till now in force. Therefore, the 1st respondent not to exercise / used any power either directly or indirectly against estate workmen, assets, business, etc., If there is any claim, the petitioner should have raised against the 2nd respondent only. The document marked as Ex.W-12 pay slip issued by the 2nd respondent for the month of November 2010 on the side of petitioner in I.D. No.76/2011 clearly shows that the petitioner was working with the 2nd respondent and obtained salary from them. Even though, the Hon'ble Labour Court erroneously passed the award jointly with the 1st and 2nd respondent. Therefore, the said award is not enforceable against the 1st respondent. The award passed by the Hon'ble Court in I.D. No.76/2011 is not legally binding to the 1st respondent. The 1st respondent's all workers, the property and all business activity all are controlled over to the 2nd respondent, as per the lease agreement entered between 1st and 2nd respondents. Therefore, the 1st respondent prays to dismiss the above execution petition against the 1st respondent.

4. The averments made in the counter statement of the 2nd respondent, are in brief as follows:-

a) The petitioner cannot file two applications for the relief's in one Exparte Award by giving two relief's. The petitioner is not the employee of this respondent, and this respondent has not taken any proceedings against the petitioner. This respondent is not terminating the petitioner, and this respondent has no direct knowledge about the termination or the offences or misconduct of the petitioner. This respondent has taken separate steps to set aside the exparte award.

b) The petitioner cannot seek the relief of order of arrest against the said Group Manager of this respondent, for the simple reason that the Group Manager also the employee of the concern and he has taken charge only in the year 2015, and he is not the implementing authority as for as this petitioner is concerned. Unless the written confirmation from the first respondent, this respondent cannot act suo moto by provide him work. This respondent is also ready to provide him work on written confirmation from the first respondent.

c) The petitioner has no right what so ever to seek any relief against this respondent, being the lease holder of the property, this respondent abide terms and conditions with the first respondent. This respondent never

deny the work and this petitioner cannot blame this respondent as stated in the petition. The averments in the petition are untenable and not maintainable against this respondent. It is therefore prayed to dismiss the claim of the petitioner against this respondent.

5. In the enquiry, petitioner examined himself as W.W-1 and marked Exs.W-1 to W-3. M.W-1 was examined on the 1st respondent side and Ex.M-1 to M-3 were marked. M.W-2 was examined on the 2nd respondent side and Ex.M-4 was marked.

6. Written arguments filed on the 1st respondent side. Heard the arguments on both side and carefully perused the records.

7. POINTS:-

- 1) Whether the petitioner is entitled to get an order of arrest against the respondents 1 and 2, to execute the award?
- 2) Whether this petition has to be allowed?

Answer for the Points Nos.1 and 2:-

8. According to the petitioner, the award was passed on 04.02.2016 directing reinstatement of the petitioner into service with continuity of

service, full back-wages and other attendant benefits, but the respondents did not reinstate the petitioner and they did not come forward to comply the award. Therefore, the respondents are to be arrested and detained in civil prison till the compliance of the award. As such, the Authorized Representative of the petitioner prayed to allow this execution petition.

9. The learned counsel for the 1st respondent would contend that the W.P. No.9968/2019 filed by the 1st respondent against the award passed in I.D. No.76/2011 is still pending before the Hon'ble High Court, Madras, that Clause 16 of the lease deed is not applicable since the petitioner was terminated on 12.02.2011 after execution of the lease deed, that the administration of the estate is not vested with the 1st respondent but vested with the 2nd respondent in pursuance of the lease deed and so the 2nd respondent is alone liable to comply with the award, that there is no employer – employee relationship between the 1st respondent and the petitioner after execution of the lease deed and that the execution petition is not maintainable as against the 1st respondent. As such, it was prayed to dismiss the E.P. against the 1st respondent.

10. The learned counsel for the 2nd respondent would contend that the petitioner was terminated from service only by the 1st respondent, that the 2nd respondent neither terminated the petitioner nor issued termination

order, that the 2nd respondent was subsequently impleaded only as a formal party in the main I.D, that the 2nd respondent is liable for the affairs of the estate only from the date of execution of lease deed by the 1st respondent, that the 2nd respondent did not receive any communication regarding the termination of the petitioner, 2nd respondent never requested the 1st respondent to terminate the petitioner from service, that the petitioner not reported for work to 2nd respondent, that the 2nd respondent is ready to reinstate the petitioner into service if the first respondent gives his consent letter as required under clause 16 of the lease deed and that therefore the E.P. is not maintainable as against the 2nd respondent. As such, it was prayed to dismiss the E.P.

Discussion:-

11. Challenging the termination order dated 25.01.2011, the petitioner raised Industrial Dispute No.76/2011, against the 1st respondent. Subsequently, the 2nd respondent was impleaded in the Industrial Dispute as per order in I.A. No.175/2014. Ex.W-1 is the copy of counter statement filed by the (first) respondent. Ex.W-2 is copy of the counter statement filed by the second respondent. After filing of the counter statements, the respondents remained exparte and so based on the evidence of the petitioner and the documents produced by him, the award under Ex.W-3 was passed in above I.D. No.76/2011.

12. Already the petitioner filed E.P. No.50/2017 against the respondents and after enquiry an order for arrest of the 1st respondent was passed on 17.07.2018. Subsequently, the said E.P. was dismissed as not pressed by the petitioner.

13. The main contention by the 1st respondent is that he preferred an appeal against the award and the same is pending and so this E.P. is not maintainable, till the disposal of appeal. The award was passed on 04.02.2016. The 1st respondent is well aware of the award and contested in the previous E.P. No.50/2017. No appeal was preferred by the 1st respondent till the disposal of the said E.P. No.50/2017. The appeal (W.P. No.9968/2019) is said to have been preferred only after commencement of enquiry in the present execution petition. The copy of the writ petition was not filed. Same counsel was engaged by the respondents in the I.D. No.76/2011 and in E.P. No.50/2017. But, in the present E.P. they engaged separate counsels and the appeal was filed by the 1st respondent. So, the contention of the petitioner that the respondents have resorted to this step, only with a mala fide intention to delay and defeat the proceedings, appears to be sound and acceptable. The appeal has been filed with a delay of more than 3 ½ years and it is pertinent to mention that there is no order of stay as against the award. Therefore, this court is

of the view that there is no bar for the petitioner to proceed with the execution proceedings so as to enjoy the fruits of the award, especially when he is put to the hardship of non-employment from the year 2011. As such, this court finds no merits in the above contention of the 1st respondent.

14. The 1st respondent has also taken the defences that the petitioner is not a workman u/s.2 (s) of the I.D. Act, that after execution of lease deed in favour of 2nd respondent there is no employer – employee relationship with the petitioner, that the termination order was issued only at the request of the 2nd respondent and that the 2nd respondent is alone liable to execute the award since the 2nd respondent is the present Administrator of the estate. It is to be noted that the award under Ex.W-3 has been passed against both the respondents and from the award it is clear that their liability is joint and several. The executing court is not entitled to go beyond the decree. Hence, this court does not find any merits in the above contention of the first respondent.

15. The main contention of the second respondent is that for reinstating the petitioner into service, a consent letter has to be necessarily given by the 1st respondent to the 2nd respondent, as required under clause 16 of the lease deed, that the 2nd respondent cannot act suo moto without

the consent letter of the 1st respondent and that the 2nd respondent is not liable to comply with the award as the termination order was issued only by the 1st respondent. There is no dispute the 1st respondent has leased out the estate to the 2nd respondent by the lease deed dated 30.10.2009, which has been marked as Ex.M-3. The said lease deed is still in force. Clause 16 of the lease deed reads as under:-

"The LESSOR shall provide the full details of Former employees / workers, whose services were terminated by the LESSOR and the LESSEE shall reinstate such employees / workers, only on the written instructions / express consent of the LESSOR."

16. It is pertinent to mention that in Exs.W-1 and W-2 counter statements the respondents have not taken specific plea regarding clause 16 of the lease deed. It is admitted that the petitioner was originally appointed by the 1st respondent and that the termination order was also issued only by the 1st respondent, but at the same time it is to be noted that the termination order was issued only when the petitioner was working under the control of 2nd respondent. The 1st respondent claims that the termination order was issued only at the request of the 2nd respondent. Though the 2nd respondent

now disputes about the knowledge of the termination order, no such plea was taken by the 2nd respondent either during the proceedings in I.D. No.76/2011 or in E.P. No.50/2017. As stated supra, the executing court cannot go behind decree. When the award has been passed against the respondents jointly, this court is unable to find any merits in the above contention. Even if it is assumed that the consent letter of the 1st respondent is necessary for the reinstatement of the petitioner, it is only an internal affairs between the respondents, and the petitioner is no way connected to that issue. The petitioner cannot be driven from pillar to post by the respondents by taking advantage of clause 16 of their lease deed. The following evidence adduced on either side, would clearly show that the respondents 1 and 2 are jointly and severally liable for the termination as well as for the reinstatement of the petitioner into service:-

W.W-1 (Petitioner)

...என்னை வேலை நீக்கம் செய்வதற்கு முன்பு நான் இரண்டாம் எதிர்மனுதாரர் கட்டுப்பாட்டில் 1-ம் எதிர்மனுதாரர் எஸ்டேட்டில் வேலை செய்து 2-ம் எதிர்மனுதாரரிடம் ஊதியம் வாங்கியிருக்கிறேன் என்றால் சரிதான். 2-ம் எதிர்மனுதாரருக்கும் எனக்கும் ஏற்பட்ட பிரச்சினை காரணமாகத்தான் 2-ம் எதிர்மனுதாரர் என்னை வேலை நீக்கம்

செய்தார் என்றால் சரியல்ல. 1-ம்
எதிர்மனுதாரர்தான் வேலை நீக்க உத்தரவில்
கையொப்பம் செய்துள்ளார்...

...1-ம் எதிர்மனுதாரர் நிர்வாகம்தான் எனக்கு
பணி நியமன உத்தரவு வழங்கியது என்றால்
ஆமாம். 1-ம் எதிர்மனுதாரர் நிர்வாகம்தான் எனக்கு
வேலை நீக்க உத்தரவு வழங்கியது என்றால்
ஆமாம்...

...1-ம் எதிர்மனுதாரர் அனுமதியுடன் 2-ம்
எதிர்மனுதாரர் எனக்கு வேலை வழங்க தற்போதும்
தயாராக உள்ளார் என்றும் அதனால் நான்
இரண்டாம் எதிர்மனுதாரர் மீது எந்த பரிகாரமும்
கேட்க முடியாது என்றும் சொன்னால் சரியல்ல.
இரண்டாம் எதிர்மனுதாரர் என்னை வேலை நீக்கம்
செய்யவில்லை என்றும் இரண்டாம் எதிர்மனுதாரர்
பணி வழங்க மறுக்கவில்லை என்றும் ஆகவே, நான்
இந்த நிறைவேற்றுமனுவில் இரண்டாம்
எதிர்மனுதாரர் மீது கேட்டுள்ள பரிகாரம் எனக்கு
கிடைக்கத்தக்கதல்ல என்றும் சொன்னால் சரியல்ல...

M.W-1 (1st respondent)

...மனுதாரை 12.02.2011 அன்று வேலை நீக்கம் செய்வதாக அவரது குடியிருப்பு கதவில் உத்தரவு ஒட்டியது 1-ம் எதிர்மனுதாரர் நிர்வாகம் என்றால் ஆமாம். 12.02.2011 தேதியில் குத்தகை நிலுவையில் இருந்தது என்றால் ஆமாம்...

...என்ன ஒழுங்கீனத்திற்காக மனுதாரரை பணிநீக்கம் செய்தோம் என்றால் அது எனக்கு தெரியாது, 2-ம் எதிர்மனுதாரர் கேட்டுக்கொண்டதால் மனுதாரரை பணிநீக்கம் செய்தோம்...

M.W-2 (2nd Respondent)

...பணிநீக்கம் செய்யப்பட்ட பிறகு மனுதாரர் மீண்டும் வேலை கேட்டு 2-ம் எதிர்மனுதாரர் நிர்வாகத்திற்கு 28.02.2011 அன்று கடிதம் அனுப்பியுள்ளார் என்றும் அதனால் அவரை பணிநீக்கம் செய்தது தெரியாது என்று 2-ம்

எதிர்மனுதாரர் நிர்வாகம் கூறுவது தவறு என்றால்
அது பற்றி எனக்கு தெரியாது...

17. From the above discussions, reasons and evidences, it is evident that the termination of the petitioner from service was effected only after execution of lease deed under Ex.M-3, that the termination order was issued by the 1st respondent while the petitioner was working under the control of 2nd respondent, that he has nothing to do with the clause 16 of the lease deed, that the respondents 1 and 2 are jointly liable to comply with the award under Ex.W-3 and that as the company secretary and the Group Manager have filed counter statements for the respondents 1 and 2 respectively, in the I.D. No.76/2011 and looking after the affairs and administration of the respondents management, and they remain within the territorial jurisdiction of this court, the petitioner is entitled to get an order for arrest of them, to execute / enforce the award passed under Ex.W-3 and so this petition has to be allowed as prayed for by the petitioner. Accordingly, this points are answered in his favour.

RESULT:-

18. In the result, this Execution petition is allowed by ordering arrest of the respondents 1 and 2 (the company secretary of the 1st respondent

Mr.Padmanaban, and the Group Manager of the 2nd respondent Mr.Vikram Kusalappa). Arrest the respondents 1 and 2, by 06.01.2020. Batta to be filed in a week. Call on 06.01.2020.

Dictated to Steno Typist directly and typed by her in computer directly, corrected and pronounced by me in open Court, this 5th day of December 2019.

-Sd.A.Manimozhi-
PRESIDING OFFICER,
ADDITIONAL LABOUR COURT,
COIMBATORE.

LIST OF WITNESSES EXAMINED

For Petitioner's Side:-

1. W.W-1 Mr.A.Abdul Mazeeth.

For Respondents Side:-

1. M.W-1 Mr.K.Premkumar.

2. M.W-2 Mr.A.Ashokkumar.

LIST OF EXHIBITS MARKED

For Petitioner's Side:-

Ex.W-1 26.09.2012 Copy of Counter Statement filed by the (first) respondent in I.D. No.76/2011.

Ex.W-2 12.12.2015 Copy of Counter Statement filed by the 2nd respondent in I.D. No.76/2011.

Ex.W-3 04.02.2016 Copy of Award in I.D. No.76/2011

For Respondent's Side:-

Ex.M-1 17.12.2013 Copy of Affidavits filed by the petitioner in I.A.
No.----/2013 in I.D. No.76/2011.

Ex.M-2 - Authorization in favour of M.W-1.

Ex.M-3 30.10.2009 Copy of Lease Deed

Ex.M-4 04.09.2019 Authorization in favour of M.W-2.

-Sd.A.Manimozhi-
PRESIDING OFFICER,
ADDITIONAL LABOUR COURT,
COIMBATORE.

FAIR ORDER

E.P. No.02/2019

DATE:05.12.2019

ADDITIONAL LABOUR COURT,
COIMBATORE.