

In the Court of Labour Court, Kancheepuram

**Present: Tmt.S.Sujatha, M.A., M.L.,
Presiding Officer,
Kanchipuram.**

Monday, the 6th day of January 2025

**I.A.No. 3/2024 & 4/2024
in
C.P.No.79/2019**

The Management of
Suja Shoei Industries Private Limited,
R.S.No.136/4,5,6,43,14 & 15A
NH 45, Pathiri,
Tindivanam - 604 307

--- Petitioner/2nd Respondent

//vs//

1. S.Jagadeesan,
S/o.Sundarajan
No.4, Vaniyar Street,
Mangalam,
Thirukazhukundram,
Kanchipuram.

--- 1st Respondent / Petitioner

2. The Management
Ucal Auto Private Limited,
No.11 & A12, SIDCO Industrial Estate,
Maraimalai Nagar,
Kanchipuram - 603 209

--- 2nd Respondent / 1st Respondent

These petitions came up on 06.12.2024 this day for final hearing before this court in the presence of M/s.D.Abdullah Advocate for Petitioner/2ndRespondent. M/s.D.Ramesh, S.Venkatesan, P.Ganesan and P.Duraivel Advocates for 1st Respondent / Petitioner and M/s.H.Balaji Advocate for the 2nd respondent/1st respondent and upon perusal of records and having stood over for consideration till this day, this court delivered the following:

COMMON ORDER

1. Petitions are filed by the petitioner U/sec.11 and u/r 48(2) of the I.D. Act, praying to reopen the case for Cross examination of WW1 and to set aside the exparte order dated 22.10.2024 passed in C.P.No.79/2019 and to pass such further orders.

2. The common averments in the petitions filed by the Petitioner is as follows:

The 1st respondent has filed C.P.79/2019 based on the exparte order award dated 18.03.2013 on the file of II Additional labour Court, Chennai. The Exparte award is cryptic, non-speaking in order and the same has to be set aside. The 1st respondent was employee of the 2nd respondent and 2nd respondent was wound up by the order of the NCLT dated 22.03.2023 in IBA No.1237/2019 and all the liabilities of the creditors had been duly notified and payable to them in Form D. 1st respondent had not sent any form D within prescribed time and hence the case of the 1st respondent falls outside the scope of the order of the NCLT and the same is not sustainable. Hence C.P.79/2019 has to be dismissed. Earlier the counsel namely Thiru.Anaiyappan was appearing on behalf of the petitioner's herein and due to his old age he was not able to conduct the case and had returned the Vakalath. The petitioners have engaged the present counsel for entering appearance by filing change of Vakalath on 04.10.2024 and application was filed emergently for certified

copies of the entire case papers, as the earlier counsel had not given case papers to cross examine the witness WW1. Thereafter the case was adjourned to 22.10.2024 on payment of cost and the Junior Counsel was visiting office of the court on many days to procure certified copies travelling all the way from Chennai and the same was furnished to him only on 22.10.2024. On 22.10.2024 the fact was brought to the knowledge of the court and the time was sought for to cross examine WW1. But the court without granting the time had set exparte and the case stands posted to 04.11.2024 for further evidence of 1st respondent, instead of closing the cross examination of WW1. Hence the exparte order dated 22.10.2024 is liable to be set aside and he was not remained absent or unrepresented before court. Petitioner was duly represented by counsel. Hence the order to set aside the exparte order. Petitioner has taken bonafide diligent steps to contest the case on merits without causing further delay. By allowing the application no prejudice will be caused to the respondent. On the other hand if application is not allowed, petitioner will be put to prejudice and monetary loss. Hence this petition to set aside the exparte order dated 22.10.2024 passed in C.P.79/2019.

3. The averments in the counter filed by the 1st Respondent is as follows:

The petition is not maintainable either in law or on facts. Award was passed by 2nd Additional Labour Court on 18.03.2015 and petitioner has been granted reinstatement in employment with back wages, continuity of service

and attendant benefits. Averments of petition in strongly denied. Only based on the award passed the respondent has filed the C.P. The petitioner appeared through his counsel and failed to defend that claim petition. Thereafter 1st respondent filed execution petition and again respondent failed to defend the same and was set exparte the management. In the meantime, the case was transferred and petition to be impleaded was filed. Again Respondent conducted the C.P. and EP. In E.P, has not mentioned about the I.B.A.proceedings to the petitioner. The respondent came to know about IBA proceeding and he had immediately filed a claim petition before consent authority and the same is pending for consideration. This claim petition is filed based on the award passed in I.D. and petitioner is legally bound to settle the said claim amount. The second Respondent was wound up and IBA Proceeding initiated and they are legally bound to comply with the order passed by the Labour court. The reasons stated by the petitioner is not acceptable. The change of Vakalath has been filed only to file set aside application and the petitioner created this kind of averment only to file change of vakalath. The request of the petitioner's counsel is not legal and valid one. The court rightly set them exparte on 22.10.2024 for not coming forward to cross examine WW1. I.D. is of the year 2014 and award had been passed in the year 2015. Due to the delay tactics adopted by the management, the respondent is running from pillar to post to past 10 years to get justice. The petition is filed only to drag on the proceedings and it is liable to be dismissed. Since the case is

pending for more than 10 years after considering the fact and circumstances, the court has rightly closed evidence of workmen. Even after sufficient time given to the petitioner to defend the claim petition, he has deliberately failed to defend with intention to drag the case and hence the petition filled to set aside the exparte order and reopen is only to harass the respondent and the same is to be liable to be dismissed.

4. The point for consideration is whether these petitions has to be allowed or not?

5. The Petitioner has stated that the C.P. is filed based on the award passed in the I.D. by the second Additional Labour Court and the respondent cannot file the claim application for the reason the second respondent has initiated IBA proceedings and NCLT has passed award in which the respondent herein has not filed any claim petition and further has stated that the case was posted for cross of WW1. As the earlier counsel had stated that he is not able to conduct the case further, change of Vakalath was presented before court on 4.10.2024, Thereafter certified copies were applied for the entire case records and the same was obtained only on 22.10.2024, the same was brought to the knowledge of the court and inspite of the same, the court has set exparte to the petitioner on 22.10.2024 and hence it has become necessary to set aside the exparte order. These averments are not denied by this court. It is from records known that the petitioner had sought for a adjournment to cross examine WW1 and earlier the same had been adjourned imposing cost Rs.750 and the

petitioner had paid the same. Subsequently, even after granting time by the court, the petitioner had not come forward to cross examine WW1 and hence on 22.10.2024 the court had set exparte the petitioner herein and thereby the petitioner has come forward with these applications to set aside exparte order. The contention of the petitioner is that he was not absent or was not failed to represent before the court, As the earlier counsel was not able to furnish the case papers, only after obtaining the certified copies of the documents, they were able to peruse and examine WW1 and insuch circumstances. Such an exparteorder against the petitioner is not justifiable and the same has to be allowed.

6. The perusal of the records shows that the ID had been filed by the respondent herein in the year 2014 and award had been passed in the year 2015 and the CP had been filed in the year 2019. Earlier for nonfiling of counter by the petitioner herein, he had been set exparte even on 05.10.2021 and an exparte order had been passed even on 12.10.2021 thereafter the petitioner herein had come forward with the application to set aside the exparte order and the same had been allowed and then case was posted for enquiry. The respondent had stated that there is possibility of settlement and hence the case was adjourned for reporting settlement but there was no settlement reported.

7. The respondent herein was examined as WW1 and the case was adjourned for cross of PW1 even during the year 2019. Inspite of sufficient time granted to the petitioner herein, they had not come forward to cross

examine the respondent and hence the court had set them exparte. As the CP's of the year 2019 and already the petitioner herein had filed application to set aside the exparte order and already sufficient time had been granted to the petitioner herein to cross examine WW1 and since they have failed to utilize the same, This court is of opinion that this application to reopen the case and to set aside the exparte order can be allowed only on imposing cost in the interest of justice.

I.A.3/2024

In the result, the petition is allowed on cost of Rs.1000/- to be paid to the respondent herein on or before 10.01.2025 failing which the petition stands dismissed.

I.A.4/2024

In the result, the petition is allowed on cost of Rs.2000/- to be paid to the respondent herein on or before 10.01.2025 failing which the petition stands dismissed.

These orders has been dictated by me to the Steno-Typist, typed by her in the computer, corrected and pronounced by me in the Court on this 6th January 2025.

Presiding Officer,
Labour Court,
Kancheepuram.

List of exhibits: NIL.

P.O.,
LC,KPM.