

**BEFORE THE ADDITIONAL LABOUR COURT, VELLORE,
VELLORE DISTRICT.**

**PRESENT : Tmt.S.Uma Maheswari, M.L.,
Presiding Officer (FAC)**

Tuesday, the 29th day of April, 2025

**E.A.No.1/2024
IN
E.P. No.3 of 2023**

The Managment,
M.S.Builders,
Mr.Asalam,
S/o. Inayathullah,
Mulla Street,
Khaderpet,
Vaniyambadi.

...

Petitioner / Respondent

Versus

S.Lurthu, age 52,
S/o.Sowridass,
No.14-1, S.Anthoney Street,
Udayanathiram,
Vaniyambadi,
Vellore District – 635 954.

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Respondent / Petitioner

This Execution Application came up for hearing on 28.03.2025 in the presence of Thiru.K.Umar, the Advocate for the petitioner, Thiru.R.C.Appalo Paul, the Authorized Representative appearing for the respondent and upon hearing the arguments of Respondent's A.R. and upon perusing the material case records and having stood over for consideration till this date, this Court delivered the following:-

ORDER

This execution application is filed by the petitioner to determine the various questions exist between the petitioner and respondent viz, the jurisdiction of the court, the non-existence of the Labour – Management relationship and the non-executability of the award in its proper perspective.

1. Petition averments in brief:-

The petitioner states that he is the Judgment Debtor in the above Execution Petition. The respondent / DH filed the E.P based on the order passed in C.P.No.248/2013.

The petitioner / JD further states that he filed a W.P.No.18007/2014 against the order passed in the I.D.No.228/2011. The said writ petition was dismissed, against which the petitioner filed a review petition and the same is not numbered. Hence, he has filed a Writ Appeal before the Hon'ble High Court and the said writ appeal is again yet to be numbered.

The petitioner / JD, also states that the Decree Holder by suppressing many facts has filed the I.D. Petition. The respondent/DH is not at all a workman and hence, he is not entitled to invoke Section 33(C)(2) of the I.D.Act. The award passed by the court is without jurisdiction. The respondent obtained an award by submitting false affidavit and statement before the trial court. Likewise he also submitted false information by suppressing many material facts in the computation petition. Thereby the respondent is intended to abuse the due process of law.

The petitioner further states that now the respondent / Decree Holder has filed this Execution Petition which he is not entitled to file. This petitioner is having oral and documentary evidence to establish that the respondent / DH's claim is not genuine and not sustainable. There was no unit or management as alleged by the respondent / DH and the respondent is not a worker employed under the petitioner / JD. The respondent / DH without submitting proper documents had obtained an order in his favour and on the basis of the same he has filed this execution petition which is not maintainable. Hence, the petitioner requests to determine the various questions exist between the petitioner and respondent, such as, the jurisdiction of the court, the non-existence of the Labour – Management relationship and the non-executability of the award in its proper perspective, by way of this petition.

2. Counter averments in brief:-

The respondent in his elaborate counter stated that this petition is not maintainable either on law or on facts. This respondent states that the petitioner suppressed the facts in order to suit this petition. The petitioner did not show any specific and acceptable reasons to entertain this petition.

The respondent further states that, he has filed I.D.No.228/2010 before this court for reinstatement with back wages and all other attendant benefits. In that I.D. the respondent was not chosen to appear, hence he was set ex-parte and an award was passed in favour of this respondent on 20.09.2010. Thereafter, the petitioner did not take any steps to set aside the award. Later the respondent filed C.P.No.248/2013 claiming

monetary benefits and in that petition also the petitioner / JD remained ex-parte.

The Petitioner / JD later filed I.A.No.25/2014 to condone the delay of 1039 days in filing the Set Aside Application, to set aside the ex-parte order passed in I.D.No.228/2010 and the said petition was dismissed on merits. The Petitioner / JD aggrieved against the dismissal order passed in I.A.No.25/2014 preferred a W.P.No.18007/2014. The said W.P. was dismissed on 21.02.2023 with a direction, directing the petitioner / JD to comply with the directions of the Labour Court passed in C.P.No.248/2013 within a period of 6 weeks from the date of receipt of copy of the order. The Petitioner / JD not filed any appeal challenging the writ petition order. Therefore, the Respondent is entitled to get monetary benefits with interest amounting to Rs.8,43,536/-. To realize the above amount the respondent / DH filed the E.P. and at this stage, the petitioner / JD has filed this application. There are no merits in the application and he requests for the dismissal of the same.

3. On the side of Petitioner, he examined himself as PW1 and through him Ex.P1 and Ex.P2 were marked, during the cross examination of PW1, Ex.R1 was marked. Subsequently one Mr.Thanveer Sidhique examined as PW2 and through him no exhibits were marked. On the side of respondent 'No oral evidence' was endorsed and no documents were marked.

3. Points for consideration:-

1. Whether this petition is liable to be allowed or not?

After hearing the respondent counsel and after perusing the petition, counter and the written arguments filed by the petitioner, this court comes

to know that the petitioner has filed this Execution Application to determine the various questions exist between the Petitioner / JD and the respondent / DH.

On perusal of this petition and counter, this court comes to know that the respondent herein by claiming himself as a worker of the petitioner / JD has raised an I.D.No.228/2010 for reinstatement, continuity of service, backwages and other attendant benefits under Ex.P.1. In that I.D. the present petitioner / J.D. in spite of notice served on him has not chosen to appear. Hence, the petitioner/JD was set ex-parte and an ex-parte award has been passed under Ex.P2.

Based on the I.D. Award the respondent / DH has filed a C.P.No.248/2013 claiming monetary benefits. In that C.P. also the notice was served on the petitioner / JD, but he has failed to appear. Hence, he has been set ex-parte and consequently an ex-parte order was passed on 17.12.2013. In the meantime, the petitioner / JD has filed an I.A.No.25/2014 to condone the delay of 1039 day in filing the Set-Aside Application to set aside the ex-parte award passed in I.No.228/2010. The said condone delay Petition has been dismissed on merits. The petitioner / JD has preferred W.P.No.18007/2014 challenging the said Interlocutory Order. The said writ petition was dismissed under Ex.R1. Further the Hon'ble High Court has directed the petitioner / JD to comply with the directions of labour court within a period of 6 weeks from the date of the receipt of the copy of the order.

The petitioner / JD has failed to comply the directions of the Hon'ble High Court. Hence, to realise the monetary benefits as ordered under C.P.No. 248/2013, the present Execution Petition has been filed by the respondent / DH.

In this E.P the JD has filed the present execution application to determine the various questions exist between him and the respondent / DH under Section 47 of the C.P.C.

The present petitioner in this execution application has insisted this court to determine the various questions exist between him and the respondent / DH. The petitioner states that there is no employer- employee relationship between the DH and the JD. The petitioner has also challenged the jurisdiction of this court and the non-executability of the award. The petitioner to show that there exists no employer-employee relationship between the Petitioner/ JD and the Respondent/DH has chosen to examine himself as PW1 and also examined PW2.

On a perusal of their deposition, this court is of the view that the petitioner / JD ought to have challenged and raised all the above aspects in the industrial dispute petition. The petitioner / JD has failed to appear in the I.D. and simply has ignored the notice of this court. Hence, the petitioner / JD had been set ex-parte and consequently an ex-parte award has been passed. Subsequently based on the award, the respondent / DH has filed the C.P.No.248/2013 and a notice has been sent to the present petitioner / JD but as usual he has ignored the notice, hence, he was set ex-parte and an ex-parte order has also been passed in the C.P.

The Petitioner / JD to deny the service of Notice has not filed proper documents to support it. The address of the petitioner as mentioned in the petition and in the Writ Petition is one and the same. The Respondent/DH has alleged that, he has sent the I.D and C.P notices to the above address only. The Petitioner/JD wantonly has failed to

receive the notices and has remained ex-parte in both the ID and in the C.P. The petitioner / JD has failed to avail the opportunities to contest the I.D. and C.P. petition to raise all his defences. Later belatedly he has chosen to file I.A.No.25/2014 to condone the delay of 1039 days in filing the Set-Aside Petition to set aside the ex-parte award passed in I.D.No.228/2010. The said I.A. has been dismissed on merits. Against which, the petitioner had preferred a W.P. No.18007/2014 challenging the said I.A. order but the W.P. has been dismissed by the Hon'ble High Court.

Further the Hon'ble High Court also has given a direction to the Petitioner/JD to comply the directions of the labour court by fixing a 6 weeks' time. The petitioner / JD instead of complying the order of Hon'ble High Court passed on 21.02.2023 under Ex.R1, has now chosen to file this application under Section 47. This court is of the view that he has filed this application only to evade from complying the order of High Court.

This court at this stage of execution application, cannot determine the above said questions raised by the petitioner / JD. These are all the questions supposed to have agitated during the I.D. petition. The petitioner who has failed to avail the opportunities at a fag end and during the execution proceedings has no locus standi to raise the above questions. Till date the petitioner has also not challenged the writ petition order. Therefore, the petitioner / JD has to comply the directions of the Hon'ble High court as per Ex.R1. This court absolutely finds no merits in this application. Hence, the same is dismissed with costs.

In the result, this application is dismissed with costs.

Dictated to the Steno-Typist, typed directly in the Computer, corrected and pronounced by me in the Open Court, on this the 29th day of April, 2025.

**Sd/- S.Uma Maheswari
Presiding Officer (FAC),
Additional Labour Court,
Vellore.**

Annexure:-

I. List of Witnesses examined on the side of Petitioner :-

PW1 – Mr.Aslam

PW2 – Mr.Thanveer Sidhique

II. List of Exhibits marked on the side of Petitioner :-

Ex.P1 – ---- – Copy of petition filed against Loordhu in
I.D.No.228/2010

Ex.P2 – 08.02.2011 – Copy of Order passed in I.D.No.228/2010

III. List of Witnesses on the side of Respondent:-

NIL

IV. List of Exhibits marked on the side of the Respondent:-

Ex.R1 – 21.02.2023 – Copy of Order passed in W.P.No.18007/2014

**Sd/- S.Uma Maheswari
Presiding Officer (FAC),
Additional Labour Court,
Vellore.**