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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2063/2017 CM APPL. 29575/2025**

KIRORI MAL COLLEGE

.....Petitioner

Through: Ms. Monika Arora, CGSC with Mr.
Prabhat Kumar and Ms. Anamika
Thakur, Advs.

versus

RAMANAND DAHIYA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **15.05.2025**

CM APPL. 29575/2025 in W.P.(C) 2063/2017

1. This application has been filed by petitioner stating that the order dated 22nd March 2017 passed by the Presiding Officer, Industrial Tribunal declaring that the Tribunal was *functus officio* after the expiry of period of one month of publication of the Award, may not be the right position in law anymore, considering the decision of the Supreme Court ***Haryana Suraj Malting Ltd. v Phool Chand*** (2018) 16 SCC 567, of which the relevant extracts are as under:

“1. The question arising for consideration in this case is whether the Industrial Tribunal/Labour Court is functus officio after the award has become enforceable, and is thus, prevented from considering an application for setting aside an ex parte award.



2. In view of the conflict between two decisions of this Court — *Sangham Tape Co. v. Hans Raj* (2005) 9 SCC 331 and *Radhakrishna Mani Tripathi v. L.H. Patel* (2009) 2 SCC 81, by order dated 21-1-2011 in *Haryana Suraj Malting Ltd. v. Phool Chand* (2012) 8 SCC 579, a reference to a larger Bench was made in the following terms:

“1. Whether the Industrial Tribunal/Labour Court becomes functus officio after 30 days of the pronouncement/publication of the award and loses all powers to recall an ex parte award on an application made by the aggrieved party after 30 days from the date of pronouncement/publication of the award is the question that once again arises for consideration in these cases.

2. It may be noted that on this question two Division Bench decisions have taken apparently conflicting views. In *Sangham Tape Co. v. Hans Raj* a two-Judge Bench held and observed that an application for recall of an ex parte award may be entertained by the Industrial Tribunal/Labour Court only in case it is filed before the expiry of 30 days from the date of pronouncement/publication of the award. A contrary view was taken in *Radhakrishna Mani Tripathi v. L.H. Patel* to which one of us (Aftab Alam, J.) was a party.

3. In both cases, that is to say, *Sangham Tape Co.* and *Radhakrishna Mani Tripathi*, the Court referred to and relied upon the earlier decisions in *Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal* 1980 Supp SCC 420 and *Anil Sood v. Labour Court* (2001) 10 SCC 534 but read and interpreted those two decisions completely differently.

4. The conflict which has arisen as a result of the two decisions can only be resolved by a larger Bench. Let these cases be, therefore, listed before a three-Judge Bench.”



37. Merely because an award has become enforceable, does not necessarily mean that it has 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 can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is 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/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. 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. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.

38. We may also add that when an application for setting aside an ex parte award is made at the instance of the management, the Labour Court/Tribunal has to balance equities. The appeals are hence disposed of as follows. The awards are remitted to the Labour Court for consideration as to whether there was sufficient cause for non-appearance of the management. Since the litigation has been pending for a long time, we direct the appellants to pay an amount of Rs 1,00,000 in each case to the workmen by way of provisional payment. However, we make it clear that the payment is subject to the final outcome of the awards and will be adjusted appropriately...”

(emphasis added)



2. In this view of the mater, Notice be issued to respondent and to the counsel who has been appearing for respondent previously, returnable on 31st July 2025.
3. *Ms. Monica Arora, CGSC*, states that the matter can be remitted back to the Industrial Tribunal for this purpose based on the decision of the Supreme Court.
4. List on 31st July, 2025, the date already fixed.
5. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 15, 2025/RK/na

Click here to check corrigendum, if any