

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

% W.P. (C) 7976/2003

+ Date of Decision: 6th August, 2012

SUPER HOUSE LEATHERS LTD.Petitioner
! Through: Mr. Rajiv Dewan, Advocate

Versus

\$ RANA PRATAP SINGH & ANR. ...Respondents
Through: Mr. Anuj Aggarwal for Respondent-1

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

By way of this writ petition the petitioner-management has sought to assail the award orders dated 25.8.2003 and 23.09.2003 as also the award dated 10.09.2001 passed by the Labour Court in I.D.Case No. 220/96.

2. The relevant facts are that respondent no.1-workman was employed with a firm by the name of M/s Super Garments on 7th August, 1991 and his services were terminated w.e.f. 5th August, 1994. In respect of the termination of his services he raised an industrial dispute and the same came to be referred to the Labour Court for adjudication in February, 1996. The respondent no.1-workman filed his statement of claim before the Labour Court claiming that his services were terminated illegally and so he was entitled to be reinstated in service with all benefits. Since in the meantime the business of M/s Super Garments had been taken over by one Company by the name of M/s Aminsons Ltd. whose name was also changed in March, 1996 to Super House Leathers Limited, the petitioner herein, the claim of the respondent no.1-workman came to be resisted by the petitioner Company.

3. The petitioner-management's stand was that on 05.08.1994 the respondent no.1-workman had physically assaulted one of its Directors due to which a complaint was lodged in the area police station and there the respondent no.1-workman was let off on 06.08.1994 upon his tendering an

written apology and thereafter he himself had stopped attending his duties without even collecting his dues.

4. On the basis of pleading the Labour Court had framed the following issues-:

- (1) Whether the workman abandoned his job?
- (2) Whether the services have been terminated illegally and unjustifiably?
- (3) Relief.

5. The petitioner-management thereafter never appeared before the Labour Court and so it was proceeded against ex-parte and finally on the basis of unchallenged evidence of the respondent no.1-workman an award was passed on 10.9.2001 in his favour.

6. Thereafter an application was filed by the petitioner-management for setting aside the ex-parte award and the Labour Court vide its order dated 25.08.2003 which was passed with the consent of the authorized representative of respondent no.1-workman, set aside the ex-parte award subject to the condition of deposit of 75% of the amount of the recovery certificate, which had been in meantime got issued by the respondent no.1-workman for recovery of his dues payable under the award, in

the form an FDR by the management and payment of costs of ₹ 10,000/- to respondent no. 1-workman. However, the petitioner-management failed to comply with the said conditions imposed upon it by the Labour Court while setting aside its award and so vide its subsequent order dated 23.09.2003 restored its the award. Both these orders were also then challenged in this petition which was filed in November, 2003.

7. This Court had on 28th November, 2003 while issuing notice of the writ petition to the respondent no.1-workman stayed the operation of the impugned award subject to the petitioner--management paying unrefundable litigation expenses of ₹ 5,000/- to the respondent no.1-workman.

8. Learned counsel for the petitioner had mainly sought to justify the management's absence during the trial, which had led to the passing of the ex parte award, on the same grounds on which it was sought to got set aside before the labour Court. It was also contended by the learned counsel that though the ex parte award had been set aside by the Labour Court but the condition of deposit 75% of the award amount imposed was too harsh and so it could not be complied with since the business of

Super Garments which was taken over by the petitioner was closed in November, 1995 itself. Therefore, counsel contended, this Court should suitably modify the condition imposed by the Labour Court for setting aside the award and in any event since the business of the firm where the respondent no.1 was employed is no more going on the direction for the reinstatement of respondent no.1 has become impossible to be complied with and so the same deserves to be substituted with any other direction if at all this Court is not inclined to give another opportunity to the petitioner-management to contest the claim of the respondent no.1 on merits by cross-examining his witnesses and also by adducing its any defence evidence.

9. Learned counsel for the respondent no.1 on the other hand submitted that now there is no justification for giving any other opportunity to the petitioner-management to contest the claim of the respondent no.1-workman since it had already been given that opportunity by the Labour Court and at that time the respondent no.1 himself had agreed to the setting aside of the ex parte award. It was further submitted that the only intention of the petitioner is to delay the execution of the award in favour of

the workman. It was also contended that since the petitioner is still having its business it cannot avoid to reinstate the workman even if the business which was being carried on by Super Garments is not being carried on now, though this point was neither taken before the Labour Court nor is there any evidence to that effect and so should not be entertained at all.

10. Having considered the rival submissions and perused the record this Court is of the view that since the Labour Court had the discretion to impose any condition on the petitioner while setting aside its award to secure the interest of the workman also and that discretion having been exercised by the Labour Court, which cannot be said to have been exercised arbitrarily, and the petitioner having failed to comply with the condition for which there appears to be no justification, it cannot expect any interference by this Court in exercise of the writ jurisdiction scope of which is in any case very limited in such cases. The only intention of the petitioner in filing this petition appears to be to delay the execution of the award against it.

11. The question whether the award has become unexecutable or not need not be gone into by this Court and the same can be

left to be decided by the executing Court if at all the petitioner would resist the same on this ground.

12. This petition is devoid of any merit and so it is dismissed.

P.K. BHASIN, J

August 6, 2012