

## **M/S Sangham Tape Company vs Hans Raj on 27 September, 2004**

**Equivalent citations: AIR 2004 SUPREME COURT 4776, 2005 (9) SCC 331, 2004 AIR SCW 5452, 2004 LAB. I. C. 4039, 2004 AIR - JHAR. H. C. R. 3003, 2004 (8) SCALE 267, 2005 (1) SERVLJ 224 SC, (2005) 2 ALLMR 344 (SC), (2005) 1 SERVLJ 224, (2005) 1 JCR 45 (SC), 2004 (6) SLT 185, (2004) 5 CTC 104 (SC), (2004) 8 JT 109 (SC), 2004 (8) JT 109, 2004 LAB LR 1098, (2005) 25 ALLINDCAS 355 (SC), (2004) 2 CLR 554 (SC), 2004 (9) SRJ 375, (2005) ILR (KANT) 1024, (2004) 4 PAT LJR 203, (2005) 1 ANDHLD 54, (2004) 7 SUPREME 118, (2004) 8 SCALE 267, (2004) 4 ESC 575, (2004) 4 JLJR 307, (2004) 4 LAB LN 726, (2005) 1 MAD LJ 33, (2004) 107 FJR 436, (2004) 103 FACLR 699, (2004) 24 INDLD 23, (2004) 3 CURLR 776, (2004) 6 SERVLR 78, (2004) 4 ALL WC 3215, 2005 SCC (L&S) 65**

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**Bench: N. Santosh Hegde, S.B. Sinha**

CASE NO. :

Appeal (crl.) 2064 of 2002

PETITIONER:

M/s Sangham Tape Company

RESPONDENT:

Hans Raj

DATE OF JUDGMENT: 27/09/2004

BENCH:

N. Santosh Hegde & S.B. Sinha

JUDGMENT:

**J U D G M E N T** S.B. SINHA, J :

This appeal is directed against a judgment and order dated 30.4.2001 passed by a Division Bench of the Punjab & Haryana High Court in Civil Writ Petition No.8231 of 2000 whereby and whereunder the writ petition filed by the Respondent herein questioning the order of the Labour Court dated 11.5.2000 setting aside an ex parte award in favour of the Respondent herein, was allowed.

**FACTS :**

The Respondent was appointed as a Machineman by the Appellant in 1980. The Appellant contended that the Respondent had been absenting from duties off and on but he had been allowed to join his duties in different periods. On or about 09.11.1991, a complaint petition was filed by him through the trade union before the Labour Inspector Circle III Jalandhar on an allegation that the management had not provided him and other similarly situated persons duties since 8.11.1991. The said complaint was registered as Ref. No. 87/91 wherein a settlement was arrived at, pursuant where to or in furtherance where of the Respondent is said to have received a sum of Rs. 2675.70 in full and final settlement of his dues. Despite the said settlement, on or about 17.11.1992, he allegedly filed a reference petition before the Labour Court, Jalandhar which was marked as Reference No.87 of 1991, claiming his reinstatement with full back-wages, continuity of service and all consequential service benefits.

An ex parte award was passed by the said Labour Court on 5.2.1996.

The Appellant purportedly upon coming to know about the pronouncement of the said ex parte award, moved an application for setting aside the same. By reason of an order dated 11.5.2000, the ex parte award was set aside. Contending that that the Labour Court had no jurisdiction to set aside the ex parte award after a lapse of 30 days from the date of publication of the award, the respondent herein filed a writ petition before the Punjab and Haryana High Court which was marked as Civil Writ Petition No.8231 of 2000. By reason of the impugned judgment, the High Court set aside the order of the Labour Court. Being aggrieved by and dissatisfied therewith, the appellant is in appeal before us.

Mr. Neeraj Kumar Jain, learned counsel appearing on behalf of the Appellant, would submit that having regard to the fact that the provisions of Order IX Rule 13 of the Code of Civil Procedure are applicable to an industrial adjudication, the Labour Court must be held to have ample jurisdiction to set aside an ex parte award, if sufficient cause therefor is shown. The learned counsel would further submit that such exercise of jurisdiction by the Labour Court cannot be limited to a period of 30 days from the date of publication of the award. Reliance, in this connection, has been placed on Anil Sood vs. Presiding Officer, Labour Court II [2001 (2) SCALE 193].

An industrial adjudication is governed by the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and the rules framed thereunder. The rules framed under the Act may provide for applicability of the provisions of the Code of Civil Procedure. Once the provisions of the Code of Civil Procedure are made applicable to the industrial adjudication, indisputably the provisions of Order IX Rule 13 thereof would be attracted. But unlike an ordinary Civil Court, the Industrial Tribunals and the Labour Courts have limited jurisdiction in that behalf. An award

made by an industrial court becomes enforceable under Section 17A of the Act on the expiry of 30 days from the date of its publication. Once the award becomes enforceable, the Industrial Tribunal and/or Labour Court becomes functus officio.

This Court in *Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and Others* [(1980) Supp. SCC 420] held that the Tribunal does not become functus officio provided an application for setting aside the award is filed within thirty days of publication of award having regard to the provisions contained in Section 11 of the Act and Rules 22 and 24 of the Industrial Disputes (Central) Rules, 1957 stating : "The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under Section 17-A. Under Section 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Section 17-A. In the instant case, the Tribunal made the ex parte award on December 9, 1976.

That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent 3, acting on behalf of respondents 5 to 17 on January 19, 1977 i. e, before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal ."

The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award but having regard to the provision contained in Section 17A of the Act, an application therefor must be filed before the expiry of 30 days from the publication thereof. Till then Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date, it has the power to entertain an application in connection with such dispute.

It is not in dispute that in the instant case, the High Court found as of fact that the application for setting aside the award was filed before the Labor Court after one month of the publication of the award.

In view of this Court's decision in *Grindlays Bank* (supra), such jurisdiction could be exercised by the Labour Court within a limited time frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17A of the Act, the Labour Court or the Tribunal, as the case may be, does not retain any jurisdiction in relation to setting aside of an award passed by it. In other words, upon the expiry of 30 days from the date of

publication of the award in the gazette, the same having become enforceable, the Labour Court would become functus officio.

Grindlays Bank (supra) has been followed in Satnam Verma vs. Union of India [(1984) Supp. SCC 712] and J.K. Synthetics Ltd. vs. Collector of Central Excise [(1996) 6 SCC 92].

This Court in Anil Sood (supra) did not lay down any law to the contrary. The contention raised on the part of Mr. Jain to the effect that in fact in that case an application for setting aside an award was made long after 30 days cannot be accepted for more than one reason. Firstly, a fact situation obtaining in one case cannot be said to be a precedent for another. [See Mehboob Dawood Shaikh vs. State of Maharashtra (2004) 2 SCC 362]. Secondly, from a perusal of the said decision, it does not appear that any date of publication of the award was mentioned therein so as to establish that even on fact, the application was made 30 days after the expiry of publication of the award. Furthermore, the said decision appears to have been rendered on concession.

For the foregoing reasons, there is no merit in this appeal which is accordingly dismissed. No costs.