के लिखित कथन व विवाद के मुद्दों के विवाधकों को ध्यान में रखते हुए, पक्षकारों की बीच स्थाई लोक अदालत, सुलह कार्यवाहियां द्वारा पक्षकारों को विवाद के स्वंतत्र और निष्पक्ष रीति में सौहार्द्रपूर्ण समझौते पर पहुँचने के लिए उनके प्रयास में सहायता करेगी। अतः यह आवश्यक है कि स्थाई लोक अदालत, उक्त प्रयासों का संक्षेप में अपने आदेश में उल्लेख करे क्योंकि उपधारा (8) के अनुसार यदि पक्षकार किसी करार पर पहुँचने से असफल रहते हैं, उस दशा में ही, स्थायी लोक अदालत विवाद का विनिश्चय कर सकती हैं (यदि विवाद किसी अपराध से संबंधित नहीं है)। उपधारा (8) तक की स्थिति तक पहुँचने से पहले उपधारा (3), (4), (5) व (6) में किये गये प्रयास व उपधारा (7) में समझौते पर न पहुँचने की स्थिति के उपरान्त ही, स्थाई लोक अदालत, उपधारा (8) के अन्तर्गत गुण-दोष पर निर्णय ले सकती है। अतः उक्त कार्यवाही का उल्लेख, संक्षिप्त में ही सही, परन्तु अवश्य होना चाहिये।

(ज) उपरोक्त विश्लेषण से यह पूर्णतः विदित होता है कि, स्थाई लोक अदालत, को सर्वप्रथम पक्षकारों को सौहार्द्रपूर्ण समझौते पर पहुँचाने के लिये अपनी बुद्धिमत्ता, ज्ञान व अनुभव का उपयोग करके प्रयास करना चाहिए। जो उसका सर्वप्रथम कर्तव्य है। इस प्रयास में असफल होने के उपरान्त ही विवाद का विनिश्चय करना चाहिये। परन्तु उपरोक्त कार्यवाहियों का उल्लेख (संक्षेप में) पंचाट में अवश्य होना चाहिए, जिसमें उसके द्वारा विवाद का विनिश्चय करने का कारण पता चल सके। ऐसा उल्लेखित न होने से यह प्रतीत होगा कि स्थाई लोक अदालत, द्वारा पक्षकारों के बीच समझौता कराने का कोई प्रयास नहीं किया गया, जो उक्त अधिनियम के प्रावधानों का हनन करने के समकक्ष होगा। अतः ऐसी दशा में 'पंचाट' विधिक रुप से मान्य नहीं माना जायेगा। प्रकरण में उत्पन्न विधिक प्रश्न का निर्धारण उपरोक्त वर्णन द्वारा किया जाता है।

(झ) वर्तमान प्रकरण में पंचाट में समझौते के प्रयास के संबंध में कोई उल्लेख नहीं किया गया है, केवल एक स्थान पर समझौते के लिए तारीख निर्धारित की गयी, ऐसा उल्लेखित है, परन्तु उक्त तारीख पर क्या प्रयास किये गये व क्यों पक्षकार समझौता नहीं कर पाये, ऐसा कुछ भी नहीं लिखा गया है। अतः यह प्रतीत होता है 'स्थाई लोक अदालत' ने सौहार्द्रपूर्ण समझौते के लिए कोई भी प्रयास नहीं किया होगा या युक्ति युक्त प्रयास की कमी रही होगी तथा वो सीधे विवाद में विनिश्चय की स्थिति पर पहुँच गये जो, उपरोक्त विश्लेषण के पूर्णतः विपरीत है। अतः आक्षेपित पंचाट इसी कारणवश, अविधिक व दूषित हो जाता है। क्यों कि यह न्यायालय इस निष्कर्ष पर पहुँचता है कि स्थाई लोक अदालत द्वारा समझौते की प्रक्रिया का प्रयास किये बिना विवाद पर गुण-दोष पर निर्णय देना अवैधानिक है, अतः इस स्तर पर पंचाट की गुण-दोष पर जाँच करने की आवश्यकता नहीं है।

7. **<u>निष्कर्ष</u>**

उपरोक्त विश्लेषण के फलस्वरुप, आक्षेपित 'पंचाट' निरस्त किया जाता है तथा वाद 'स्थाई लोक अदालत' को प्रतिप्रेषित किया जाता है और निर्देशित किया जाता है कि वो समझौता कराने की प्रक्रिया को अपना कर पक्षकारों के मध्य सुलह कराने का युक्तियुक्त प्रयास करेगी व उसके असफल होने के उपरांत ही वाद का गुण-दोष पर विनिश्चय करेगी तथा समझौते के प्रयास असफल होने का संक्षेप में उल्लेख पंचाट में भी करेगी। उपरोक्त निर्देश के साथ यह याचिका आंशिक रुप से स्वीकार की जाती है।

(2022)01ILR A280
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.12.2021

BEFORE

THE HON'BLE JAYANT BANERJI, J.

Writ C No. 7012 of 2016

Sone Lal Kushwaha ...Petitioner
Versus
Presiding Officer Labour Court-III, U.P. Kanpur & Anr. ...Respondents

Counsel for the Petitioner:
Sri Mukesh Kumar Kushwaha, Sri Bhupendra Nath Singh, Mahima Maurya Kushwaha, Sri Nar Singh Narayan Verma, Sri Pramendra Pratap Singh, Sri Devendra Pratap Singh, Sri A.P. Singh, Sri Abhishek Pandey

Counsel for the Respondents:
C.S.C., Sri Anoop Trivedi, Sri Shashi Shekhar Mishra

A. Labour law – U.P. Industrial Disputes Act, 1947 – Section 4-K & 6-H (1) – Adjudication – Ex-parte Award in favour of workman was passed and published – An application u/s 6-H (1) was also allowed and recovery certification was issued – Satisfaction with regard to adequacy of service was recorded in the award – Subsequently, Labour Court allowed the application of the employer to recall the recovery certificate – Validity challenged – No application to set aside the ex-parte award – Effect – Held, the award is not a nullity inasmuch as the employer was afforded an opportunity to represent its case before the Labour Court by due service of notice – It was, however, open to the employer to press for setting aside the exparte award where it could have demonstrated that sufficient cause preventing it from appearing during the course of the adjudication. (Para 12)

B. Labour law – Adjudication – Ex-parte Award – Absence of defendant – Sufficient cause – Principle laid down – Held, the test that has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so – The sufficient cause is a cause for which defendant could not be blamed for his absence – The sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application – Parimal's case is followed. (Para 14)

Writ petition allowed. (E-1)

List of Cases cited :-

1. M/s Haryana Suraj Malting Ltd. Vs Phool Chand; (2018) 16 SCC 567

2. IA No. 6993 of 2004 in Cs(OS) 87 of 1995; Jai Gopal Goyal & anr.Vs Bishen Dayal Goyal decided on 30.4.2007

3. Civil Application No. 19 of 2018 in Second Appeal ST No. 22803 of 2017; Kanta alias Shanti Vs Manjulabai @ Kholki decided on 18.6.2019

4. Grindlays Bank Ltd. Vs Central Government Industrial Tribunal & ors.; 1980 (Supp) SCC 420

5. Parimal Vs Veena @ Bharti; 2011 (3) SCC 545

(Delivered by Hon'ble Jayant Benerji, J.)

1. Heard Sri Devendra Pratap Singh and Pramendra Singh, learned counsel for the petitioner and Sri Shashi Shekhar Mishra, learned counsel appearing for respondent no.2, Kanpur Development Authority, Kanpur.

2. By means of this writ petition, quashing of order dated 29.1.2016, passed by respondent no. 1, Presiding Officer, Labour-III, U.P. Kanpur passed on paper No. 16/D and 19/D in Adjudication Case No. 35 of 2013 has been sought.

3. Facts as stated in the petition are that the petitioner raised an industrial dispute against his termination before the State Government and that was referred for adjudication to the Labour Court, Kanpur by means of a reference under Section 4K of the U.P. Industrial Disputes Act, 19471. After registration of the case as Adjudication Case No. 35 of 2013, notices

were issued to the parties. A written statement was filed by the petitioner on 25.5.2013 but, despite notice, neither was any appearance put by the Kanpur Development Authority before the Labour Court nor was any written statement filed. Accordingly, proceedings took place exparte that culminated in an Award dated 29.5.2014 which was subsequently published on 16.7.2014 on the Notice Board of the Labour Court, Kanpur.

4. When the Kanpur Development Authority did not comply with the award despite passing of a sufficient time from the date of publication of the award, an application under Section 6H(1) of the U.P. Act was filed by the petitioner before the Assistant Labour Commissioner, Kanpur. A show cause notice of the Assistant Labour Commissioner dated 31.10.2014 met with no response from the respondent no.2. Whereafter a recovery certificate dated 20.11.2014 was issued. The amount of recovery certificate is stated to have been paid by means of bank draft dated 30.12.2014. On 19.10.2015, the respondent no.2 filed an application to recall the exparte award. A writ petition was also filed by the respondent no.2 which was dismissed as withdrawn. On 8.12.2015, the petitioner filed a reply to the recall application filed by the respondent no.2. By the order passed on 29.1.2016, the Labour Court allowed the recall application of respondent no.2, which order is under challenge in the present writ petition.

5. The contention of the learned counsel for the petitioner is that to sustain the application for recall of the exparte award, which was filed by the respondent no.2 citing negligence of the counsel/authorised representative, the respondent no.2 was required to demonstrate the factum of engagement/authorization of the counsel/representative, and, on which all dates the respondent no.2 attempted to contact its counsel after his engagement. It is contended that there is no evidence on record to demonstrate the same.

6. Learned counsel for the petitioner has relied upon a judgement of the Supreme Court, in the matter of **M/s Haryana Suraj Malting Ltd. Vs. Phool Chand2,** to contend that for setting aside an exparte award, those very principles that are applicable while consideration an application under Order 9 Rule 13 C.P.C, would apply while considering an application under Rule 16(2) of the U.P. Industrial Disputes Rules. It is contended that no attempt was made by the respondent no. 2 to cogently demonstrate whether sufficient cause actually existed to merit the application for recall being allowed. Further, learned counsel has relied upon a judgement of Delhi High Court passed in a case between **Jai Gopal Goyal and another Vs. Bishen Dayal Goyal3** to contend that responsibility of respondent no. 2 did not end by merely engaging a counsel. The respondent no.2 was required to show due diligence on its part and that it had acted bona fide, and only then the fault of the counsel may not be labelled as penalty against the litigant. Learned counsel has also referred to the judgement of the Bombay High Court (Nagpur Bench) passed in the matter of **Kanta alias Shanti Vs. Manjulabai alias Kholki4** to contend that a litigant who approaches to the Court must be diligent and it must take all steps to pursue its litigation.

7. On the other hand, the learned counsel for the respondent has referred to his application for recall that has been filed

as Annexure No. 5 to the writ petition, to contend that after engagement of the counsel, the counsel did not inform any development of the case, that is to say, whether a written statement was required to be filed and what was the date fixed and whether any documents were required to be filed and whether any date for cross examination of the workman had been fixed. It is contended that the respondent no.2 has been deprived of its right to produce evidence and make statement before the Labour Court to demonstrate its case. It is further contended that since the matter involves public money, proper adjudication is required to be done by the Labour Court in the matter, and, in the interest of justice, the writ petition may be dismissed and the parties be relegated to the jurisdiction of the Labour Court so that the case may be considered on its merits.

8. As is evident from the record, the dispute was referred for adjudication by the Deputy Labour Commissioner by means of an order dated 14.5.2013. The award was passed on 29.5.2014. Satisfaction regarding service was recorded in the award and it was mentioned that nobody appeared on behalf of the respondent no. 2 and, therefore, exparte proceeding was ordered. It was held in the award that dismissal of workman/petitioner with effect from 1.1.2002 was wrong and illegal and reinstatement with 50% back wages and Rs. 1000/ towards cost was awarded. It is not in dispute that the award was published on 16.7.2014. As stated in the petition itself, in paragraph no. 12, that the respondent no.2 paid the entire amount of recovery certificate issued by the Assistant Labour Commissioner pursuant to an application filed under Section 6-H(1) of the U.P. Act, to recover the amount due under the aforesaid award, by means of a cheque/draft dated 30.12.2014. In paragraph no.11 of the counter affidavit filed on behalf of the respondent no.2, the fact that the cheque/draft dated 30.12.2014 was given to the petitioner pursuant to the aforesaid recovery, has not been denied. Thereafter, on 19.10.2015, the aforesaid recall application was filed by the respondent no.2, purportedly under Rule 16(2) of the U.P. Industrial Disputes Rules. In paragraph 3 of this recall application dated 19.10.2015, it is stated that only a few days ago, the respondent no.2 came to know of the exparte award dated 29.5.2014. In paragraph no. 5 of the application, it is stated that authorised representative Sri Mahesh Mani Pandey never appeared before the Labour Court on any date and neither did he file the authorisation letter given by respondent no.2 before the Court/Tribunal. In paragraph no. 6 of the recall application, it is stated that due to negligence and want of care by its counsel, respondent no.2 has been deprived of its right to contest the case at various stages. It has further been stated that for the fault of its counsel, the respondent no.2 should not be held liable and, therefore, it was prayed that the exparte award be set aside and be decided on its merit.

9. In the reply filed by the petitioner to the aforesaid application of respondent no.2, the application was opposed and it was pointed out that the employer/respondent no.2 was required to demonstrate that there was negligence of its counsel and, further, it

was required to file a copy of the authorisation letter given to the counsel, which was not done.

10. A perusal of the impugned order dated 29.1.2016 reveals that the Labour Court had noticed the divergent views in the decision of the Supreme Court regarding the stage at which the Labour Court/Industrial Tribunal would be rendered *functus officio* and whether an application for recall of an exparte award may be entertained by the Labour Court after 30 days from the date of making/publishing the award. It was noticed by the Labour Court that a bench of the Supreme Court in **M/s Haryana Suraj Malting Ltd(supra)** had referred the matter to a larger Bench in view of the divergence of opinion. However, the Labour Court chose to opt for the opinion of the Supreme Court which held that an application for recall of an exparte award may be entertained after 30 days from the date of pronouncement/publication of the award on the ground that it was a later judgement. The Prescribed Officer also relied upon a decision of the Jammu and Kashmir High Court that a party ought not to suffer due to negligence of its counsel and, therefore, the exparte award ought to be set aside. The award dated 29.5.2014 was, accordingly, set aside by the impugned order.

11. Learned counsel for the petitioner has submitted a judgement of a three Judge Bench of the Supreme Court dated 18.5.2018 in the matter of **M/s Haryana Suraj Malting Ltd(supra)**. A perusal of the judgement reveals that the previous judgement of the Supreme Court in **Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and others5** was referred, in which it was held that setting aside an exparte award is a matter of procedural review exercised ex debito justitiae to prevent abuse of its process and such powers are inherent in every Court or Tribunal. Where the Tribunal proceeds to make an award without notice to a party, the award is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the ex parte award and direct the matter to be heard afresh. That power cannot be circumscribed by limitation. It was further observed that power and duty of the Tribunal exercising its ancillary and incidental powers to set aside an award which is a nullity is in its power. In that process, the Tribunal is governed by the principles of Order 9, Rule 13 C.P.C. While noticing various decisions, the Supreme Court in **M/s Haryana Suraj Malting Ltd.** held as follows:-

"34. In case a party is in a position to show sufficient cause for its absence before the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

35. It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in Grindlays

[Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal, 1980 Supp SCC 420 : 1981 SCC (L&S) 309] , an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.

. . . . . .

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."

12. In the present case, it is admitted by the respondent no.2 that it had notice of the proceedings before the Labour Court. Therefore, in view of the aforesaid judgement of the Supreme Court, the award is not a nullity inasmuch as the respondent no.2 was afforded an opportunity to represent its case before the Labour Court by due service of notice. It was, however, open to the respondent no.2 to press for setting aside the exparte award where it could have demonstrated that sufficient cause preventing it from appearing during the course of the adjudication.

13. The Supreme Court in the case of **Parimal Vs. Veena alias Bharti; 2011 (3) SCC 545** while interpreting order 9 Rule 13 C.P.C has observed as follows:-

"12. It is evident from the above that an ex parte decree against a defendant has to be set aside if the party satisfies the court that *summons* had not been duly served or he was prevented by sufficient cause from appearing when the suit was called on for hearing. However, the court shall not set aside the said decree on mere irregularity in the service of summons or in a case where the defendant had notice of the date and sufficient time to appear in the court. The legislature in its wisdom, made the second proviso mandatory in nature. Thus, it is not permissible for the court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso herein.

13. "Sufficient cause" is an expression which has been used in a large

number of statutes. The meaning of the word "sufficient" is " adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or" remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.....

14. In *Arjun Singh v. Mohindra Kumar* this court observed that every good cause is sufficient cause and must offer an explanation for non-appearance. The only difference between a "good cause" and "sufficient cause" is that the requirement of a good cause is complied with on a lesser degree of proof than that of a "sufficient cause".....

15. While deciding whether there is sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it. .....

16. In order to determine the application under Order 9 Rule 13 CPC, the test that has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application."

14. Thus, the Supreme Court categorically observed that the test that has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. The sufficient cause is a cause for which defendant could not be blamed for his absence. The Supreme Court further held that the sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application.

15. As noticed above, the Prescribed Officer had recorded its satisfaction with regard to adequacy of notice on the respondent no.2 in the award dated 29.5.2014. The award was published on 16.7.2014. It is also admitted that pursuant to issuance of recovery certificate in proceedings under Section 6H(1) of the U.P. Act, the cheque/draft dated 30.12.2014 was issued by the respondent no.2 to the petitioner. The recall application was filed on 19.10.2015 stating that only few days back, they had came to know of the exparte award being passed. A perusal of the recall application filed by the

petitioner that has been enclosed as Annexure no. 5 to the writ petition reveals that it does not specify the date on which the authorisation letter was given to its counsel. The contention on behalf of the petitioner in its reply to the aforesaid recall application, that the respondent no.2 had failed to file the authority letter by which the counsel was appointed, was not even considered by the Presiding Officer of the Labour Court while setting aside the exparte award. It has been stated by the learned counsel for the respondent no.2 that the counsel who was previously engaged has been removed from panel of the advocates of the Kanpur Development Authority. However, neither is there averment to that effect in the recall application filed nor the date of removal of the advocate has been mentioned in the counter affidavit of the respondent no.2.

16. In the case of **Jai Gopal Goyal (supra)**, the Delhi High Court has held as under:

"12. Learned Counsel for the plaintiffs referred to the judgment of a learned single judge (as he then was) of this Court in ***Indian Sewing Machines Co. Pvt Ltd. v. Sansar Machine Ltd. and Anr., 1994(31) DRJ 382*** , where the plea the negligent absence by the counsel was taken by the applicant seeking to set aside the ex parte decree. The applicant failed to prove his diligence in pursuing the case or his counsel and gave no explanation about steps taken to prepare or file the written statement. It was held that no sufficient cause was made out for setting aside the ex parte decree. The court observed that there is no dispute on the principle of law that a litigant should not be made to suffer for the fault of his counsel. However, the question to be examined is whether the responsibility of the defendants ends merely by engaging a counsel and should not a litigant show diligence on his part. It can be understood if a litigant has been diligent enough and acting bona fide then the fault of the counsel may not be labelled as a penalty against the litigant.? In ***National Small Industries Corporation Ltd. v. Thermosetting Industrial Projects 2001 II AD (Delhi) 857*** it was observed that engaging a lawyer does not mean that the party is absolved of his/her duty to diligently pursue the case. Recently a tendency has developed amongst litigants to blame his/her lawyers for adverse orders passed without realising that a lawyer cannot conduct the case without proper instructions from the party. The lawyer is not expected to write to his client after every date of hearing about the developments in the case unless there is a specific contract about the same.

13. On consideration of the submissions advanced by learned Counsel for the parties and the case law cited at the Bar, I am of the considered view that there is no dispute about the legal principle that an innocent litigant must not be allowed to suffer due to the fault of his counsel. Simultaneously, it is also a settled legal principle that a litigant must show due diligence in pursuing or defending the case and mere entrustment of a case to the counsel does not absolve the litigant of all responsibilities. The observations made in Indian Sewing Machines Co.Pvt. Ltd's Case (supra) thus lucidly set forth this aspect.

14. In National Small Industries Corporation Ltd.'s case (supra), it has been observed that a recent trend has developed that litigants who fail to take steps or

defend a matter attempt to blame their counsels for the adverse orders.

15. I am of the considered view that this is one more case of that category. The facts and order sheets referred to above in the present case show the negligent manner in which the defendant has been proceedings not only in the present suit but also in other legal proceedings between the parties. No doubt as a legal principle, a party has to explain the absence on a particular date in a particular matter, but the court can certainly take cognizance of a continued trend to evade legal proceedings. In the criminal proceedings filed by the defendant, he failed to appear resulting in dismissal of the same. In the criminal proceedings filed against the defendant, the defendant has been declared a proclaimed offender. These criminal proceedings arise out of the same dispute. Not only that the suit filed by the defendant for possession in respect of the present dispute was also simultaneously dismissed when the ex parte proceedings were initiated in the present suit and no steps have been taken for the last about six years for restoration of the suit. It is only when the defendant faced the consequences of the decree passed in the present suit that the present application has been filed."

17. Further in the case of **Kanta alias Shanti (supra)**, the Bombay High Court has observed as under:-

"4. This submission, at the first blush, appears very attractive and tends the Court to interfere with the matter. However, after hearing the learned counsel for the applicant, especially when a query was put to the learned counsel in respect of the conduct on the part of the applicant as to whether at any point of time, she on her own, contacted her advocate, the reply was in negative. A litigant who approaches to the Court must be diligent. He or she must take all steps to pursue his or her litigation. It is expected from the litigant that he or she is in contact with the lawyer who is representing his or her cause in the Court of law. A litigant cannot take a spacious plea that once the case is entrusted with an advocate his or her work is over and the advocate will take care of the matter. An Advocate always discharges his duties on the instructions given to him by his client.

.....

7. It is very easy for a litigant to make allegations against an advocate behind his back. If the applicant wishes to make allegations against the advocate, the applicant should have a courage to join the advocate as a party and in his presence should make allegation against him. Here, the applicant wants to condemn the advocate behind his back. In my view, it is impermissible and unacceptable. Further, no steps are also being taken by the applicant against any advocate under the provision of the Advocates Act."

18. In view of the aforesaid two judgements, I am of the opinion that the respondent no.2 has failed to exercise due diligence and has failed to pursue the case in a manner warranted by ordinary prudence. Not only the counsel who was allegedly issued the letter of authorisation, but the respondent no.2 itself was grossly negligent in pursuing the case, inasmuch as despite admittedly making payment under the recovery certificate issued against it, the respondent no.2 had failed to promptly file a application for recall. As a matter of fact, it waited around 11 months after making payment under the recovery certificate before filing the application for recall. Such a conduct may not be condoned. It is pertinent to mention here that in the recall

application, in paragraph no.10 thereof the submission is that, in case the exparte award is not recalled and the respondent is not given adequate opportunity to present its case, then the loss being suffered by the respondent cannot be saved and in future also loss would be caused, and it will be deprived of bringing the full and correct facts before the court because there was no relationship of master and servant between the respondent and the petitioner. Therefore, apart from this vague submission, which merely gives a hint of the case on merit, and which is wholly unsubstantiated, there is no other averment in that application nor was there any evidence before the Presiding Officer of the Labour Court to have proceeded to recall the exparte award. Therefore, under the circumstances, allowing the recall application cannot be said to be a judicious exercise of discretion by the Labour Court.

19. In view of the aforesaid, the impugned order dated 29.1.2016, passed by the Prescribed Authority setting aside the exparte award is hereby quashed and the writ petition is, accordingly, **allowed.**

(2022)01ILR A289
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.01.2022

BEFORE

THE HON'BLE RAJESH BINDAL, C.J.
THE HON'BLE PIYUSH AGRAWAL, J.

Writ C No. 18526 of 2021

Smt. Prabha Shukla ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Udayan Nandan, Sri Shashi Nandan (Senior Adv.)

Counsel for the Respondents:
C.S.C., Mr. Pranjal Mehrotra

A. Acquisition law – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Section 11 – Acquisition for the purpose of construction of a Railway over-bridge, a public purpose – Principle, required to be kept in mind, while exercising the discretionary power by the Court, laid down – Held, once a project of public importance, which is good in larger public interest, is being executed and has been completed about 45%, setting aside of acquisition in a petition filed by one of the land owners owning a small portion of the land, will not be in larger public interest – Projects of public importance should not be halted as the same would be against the larger public interest and the constitutional courts should weigh public interest vis-à-vis private interest, while exercising its discretion. (Para 8 and 10)

Writ petition dismissed. (E-1)

List of Cases cited :-

1. Kamal Trading Pvt.Ltd.Vs St. of W.B. & ors.; (2012) 2 SCC 25

2. Usha Stud & Agricultural Farms Pvt. Ltd. & ors. Vs St. of Har.& ors.; (2013) 4 SCC 210

3. Nareshbhai Bhagubhai & ors. Vs U.O.I. & ors.; (2019) 15 SCC 1

4. Ramniklal N. Bhutta & anr.Vs St. of Mah. & ors.; AIR 1997 SC 1236

5. Pratibha Nema & ors. Vs St. of M.P. & ors.; AIR 2003 SC 3140

6. Jaipur Metro Rail Corporation Ltd.Vs Alok Kotahwala & ors.; AIR 2013 CC 754.

(Delivered by Hon'ble Rajesh Bindal, C.J.)