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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 24th August, 2021
+ **W.P.(C) 8932/2021 and CM APPLs. 27789-90/2021**
SHARAT DAS AND ASSOCIATES Petitioner
Through: Mr. Sandeep Sharma, Advocate.
versus
RAMESHWAR SINGH & ORS. Respondents
Through: None.
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the impugned order dated 1st February, 2021 and the recovery certificate dated 10th March 2021 issued against the same. Vide the said impugned order, a sum of Rs. 8,04,808/- has been awarded along with 10% simple interest as gratuity amount to the Respondent No.1/Workman.
3. This is the second round of litigation between the parties. In both rounds of litigation, the Petitioner/Management was proceeded against *ex parte* and the order was passed by the Controlling Authority under The Payment of Gratuity Act, 1972.
4. Mr. Sandeep Sharma, Id. Counsel for the Petitioner submits that as per the summons issued on 25th November, 2020, the matter was listed on 7th December, 2020 at 11:00 A.M. before the concerned Authority. An e-mail was written to the Authority on 3rd December, 2020 by the Management, wherein the reasons for not appearing physically were stated, and a link was sought for joining for a virtual hearing. However, despite this e-mail having

been sent, the Authority proceeded against the Petitioner/Management *ex parte* on 7th December, 2020, and thereafter, proceeded to pass the impugned order on 1st February 2021.

5. Mr. Sandeep Sharma, Id. Counsel for the Petitioner further submits that during the pandemic, the lawyer or the representative of the Petitioner/Management ought to have been permitted to join virtually and physical appearance could not have been mandated by the Authority. Accordingly, he submits that the order passed against the Petitioner/Management *ex parte* is not tenable.

6. In the morning, when the matter was called, Mr. Sandeep Sharma, Id. Counsel for the Petitioner was asked to contact the Respondent No.1/Workman or his Counsel. Id. Counsel submits that a message was sent to the work. However, none appears on behalf of the Workman. An advance copy of this petition has already been served by e-mail to the Respondent, and the said email is on record.

7. This Court has considered the e-mail dated 3rd December, 2020 and the same is extracted below:

“ From: Bhumit Solanki Solankibhumit2009@gmail.com
Subject: Rameshwar Singh vs M/s Sharatdas and Associates

Date: labdics.delhi@gmail.com, labjlc2.declhi@nic.in

CC: sdapl85@gmail.com, dassharat@gmail.com

Sir,

There are two matters pending adjudication before this forum titled as Rameshwar Singh vs M/s Sharatdas and Associates (both). There is one matter which is listed before the Labour Department under the Gratuity Act having No. Gr.60/LO/SD/2018/11475 and another matter pending before Deputy Labour Commissioner under the Delhi Shops and Establishment act, 1954 bearing No.

S&E/SD/447/2016/5835. That both the matters are listed on 07.12.2020 for further arguments.

That the summons have been received but due to the ongoing pandemic it is not in the health interest of Mr. Sharat Das who is a senior citizen to attend the proceedings. However I am the advocate appearing on behalf of M/s Sharat Das and Associates in both the matters and have a letter of authority in my name on record. That as per the latest Judgment of the hon'ble High Court of Delhi passed in VM Singh vs Madan Lal, the Hon'ble High Court has ruled that an Advocate cannot be asked to appear physically before court amid COVID-19 pandemic. That the order was passed on 24.11.2020 by Hon'ble Mr. Justice Sanjeev Sachdeva.

That in the light of the above circumstances I hereby request you to kindly accommodate us and send me the link to virtual hearing before this forum as the physical presence of Mr. Sharat Das or me is not possible due to the ongoing pandemic. Kindly do the needful."

8. A perusal of the said e-mail clearly shows that the reasons for not appearing physically is two-fold: first, that Mr. Sharat C. Das, the Director of the Petitioner/Company, is a senior citizen who wanted to avoid appearing physically due to the Covid-19 pandemic, and secondly, the advocate also ought to be permitted to appear virtually, in view of the Order dated 24th November 2020 in **CM (M) 586/2020** titled **V.M. Singh vs Madan Lal Mangotra & Ors.** by the Id. Single Judge of this Court. The said order reads as under:

"1. The hearing was conducted through video conferencing.

2 . Petitioner is aggrieved by order dated 26.10.2020 whereby the Trial Court has directed the listing of the matter for physical hearing and the applications filed by learned Counsel for the petitioner for

hearing through virtual mode has been dismissed on the ground that as lengthy arguments may be advanced by the parties, hearing through video conferencing is not possible.

3. Learned Counsel for the petitioner submits that the family members of the Counsel for the petitioner are vulnerable senior citizens and in the present pandemic situation it would not be possible for the Counsel to physically appear before the Trial Court and thus the applications were filed for taking up their case for virtual hearing.

4. Issue notice. Notice is accepted by learned Counsel appearing for respondent No.1.

5. Learned Counsel appearing for respondent No. 1 submits that respondent No. 1 is the plaintiff No. 1 in the suit and is the main contesting party. He submits that presently it is only an application for restoration of the suit which is pending. He further submits that petitioner has not been even appearing virtually before the Trial Court.

6 . Learned Counsel for the petitioner undertakes to appear before the Trial Court through virtual mode as and when the matter is listed.

7 . In view the advisories issued by the High Court, petitioner cannot be asked to appear physically unless the advisory is modified by the High Court, however, recently the High Court has issued a fresh advisory that in case parties do not appear even through virtual mode even after being intimated, the Trial Court is free to proceed in accordance with law.

8 . Furthermore, since only an application for restoration of the suit is pending consideration before the Trial Court, the Trial Court is directed to take up the suit for consideration through virtual mode and dispose of the application in accordance with law.

9 . Keeping in view the fact that the suit has been

pending for several years, Trial Court is directed to expedite the proceedings.

10. The petition is accordingly disposed of in the above terms.

11. Copy of the Order be uploaded on the High Court website and be also forwarded to learned Counsels through email.”

9. This Court is of the opinion that the said e-mail having been sent to the concerned Authority, there was an obligation on the Authority to either make available the virtual link to the Petitioner/Management, or inform the Petitioner/Management that the said request is not acceded to, in order to enable the Petitioner/Management to make alternate arrangements.

10. In any event, not providing a facility to join virtually would be contrary to the spirit of holding hearings during the current pandemic. The Authority ought to make it feasible for advocates and representatives to appear virtually before them. Hence, the impugned order proceeding *ex parte* against the Petitioner/Management is clearly not sustainable.

11. The written statement of the Petitioner/Management is already on record. The matter would now be adjudicated on merits after hearing the Management. However, considering the fact that this is the second time the Management was proceeded against *ex parte*, subject to costs of Rs. 50,000/- being awarded to the Workman, the impugned order is set aside. In view thereof, the recovery certificate dated 10th March 2021 shall not be given effect to.

12. The Controlling Authority under The Payment of Gratuity Act, 1972 shall now hear both the parties and after taking the written statement filed by the Petitioner into consideration, shall proceed in accordance with law.

13. The entire dispute shall be adjudicated within a period of 3 months

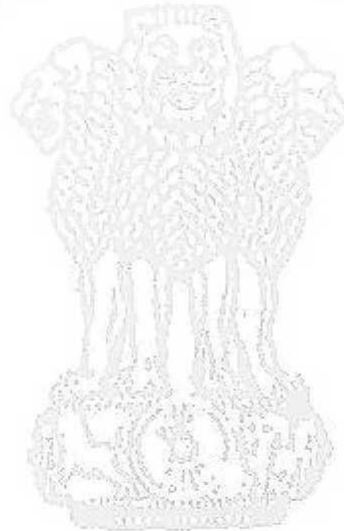
from the first date before the Controlling Authority. The parties are directed to appear before the Controlling Authority on 13th September, 2021. The costs imposed, shall be paid on or before the said date by the Management to the Workman.

14. The present petition, along with all pending applications, is disposed of in these terms.

**PRATHIBA M. SINGH
JUDGE**

AUGUST 24, 2021/Aman/AD

HIGH COURT OF DELHI



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