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the subordinate courts unless their attention were also drawn to the contrary view adopted in the other unreported decisions mentioned above. Now that the question has been authoritatively settled by a Division Bench, I need say nothing more on the point. I may, however, note that the decision in *Harnam Kaur's* case has again been followed by same Bench in *Mst. Sham Kaur* v. *Puran Singh and others* (Regular Second Appeal No. 85-P of 1952).

In this view of the matter it is hardly necessary to consider if the Court below was right in raising a presumption about Mst. Shamo having actually paid the amount on the basis of the assumed regularity of official acts.

The contention based on the Full Bench decision of the Pepsu High Court in *Prithi Singh's case* was also repeated before me, but I agree with the reasoning of the Court below for rejecting it. Besides, this point also loses its importance in view of the construction placed by me on the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act.

As a result of the foregoing discussion this appeal fails and is dismissed but without any order as to costs.

R. S.

CIVIL MISCELLANEOUS

Before Inder Dev Dua, J.

THE WORKS MANAGER, CARRIAGE AND WAGON SHOPS,—*Petitioner.*

versus

GHANSHYAM DASS,—*Respondent.*

Civil Miscellaneous No. 827 of 1961.

1961

Oct. 27th

Payment of Wages Act (IV of 1936)—Section 15(3) and Payment of Wages (Procedure) Rules, 1937—Rule 8—Ex parte *proceedings—When can be ordered—"Duly instructed"—Whether include clerk instructed to seek adjournment—Rule of procedure—Considerations to be borne in mind for the application of.*

Held, that Rule 8 of the Payment of Wages (Procedure) Rules, 1937, is only an enabling provision. It merely permits the Authority in case of default to hear and determine the case *ex parte* which perhaps it would not be entitled to do in the absence of this provision; but it does not make it incumbent on the Authority to do so irrespective or unmindful of the attending circumstances and facts. The decision whether or not to proceed *ex parte* involves exercise of sound judicial discretion; it does not depend on a mere arbitrary and unguided whim or passing fancy of the Authority. One of the generally-recognised exceptions is that when a party is duly served and has been afforded a reasonable opportunity of appearing, then in case of default, proceedings may be held *ex parte*. But the Tribunal must apply its judicial mind and form an opinion that the party had a reasonable opportunity of appearing and defending the cause. Again, if the party later comes and shows good or sufficient cause for the default, the cause shown must be judicially scrutinised and not arbitrarily or summarily rejected. Good or sufficient cause is to be shown for the purposes of relegating the parties back to the stage when the default was committed. In so far as future proceedings are concerned, there is scarcely any legal impediment in the way of a party taking part in them, and by and large, he is at full liberty to participate in them. It is only to obviate the adverse or detrimental effects of the default that he has to show good and sufficient cause.

Held, that the expression "duly instructed" in Rule 8 would include a clerk of the department who, on instructions, appears and asks for adjournment of the case.

Held, that one of the basic considerations which must always be kept in the forefront by the Tribunals while exercising judicial or quasi-judicial functions and dealing with a *lis*, is that rules of procedure expressly provided or necessarily implied are grounded on principle of natural justice which postulates hearing before condemnation and which disapproves of adverse or detrimental decisions reached behind the parties' backs. Parties to a *lis* should not, generally speaking, be precluded, whenever it is reasonably possible from participating in the proceedings vitally affecting them. The provisions of Order IX Rule 6 of the Code of Civil Procedure supply the necessary guidance

for the Authority in coming to a just and satisfactory decision on the question whether or not the case is to proceed *ex parte*. The Authority should always endeavour to avoid snap decisions and afford the parties before it a real and effective opportunity of fighting out their cases fairly and squarely.

Petition under Article 227 of the Constitution of India praying that the order, dated 6th April, 1961, be set aside and the Authority be directed to allow the petitioner to defend the case.

PARTAP SINGH, ADVOCATE, for the Petitioner.

RAJINDRA SACHAR, ADVOCATE, for the Respondent.

ORDER

Dua, J.

DUA, J.—The Works Manager Carriage And Wagon shops, Northern Railway Workshop, Jagadhri, district Ambala, has approached this Court under Article 227 of the Constitution for setting aside the order dated 6th April, 1961, of the Authority under the Payment of Wages Act, Jagadhri, and for directing the said Authority to permit the petitioner to defend the case. It appears that respondent Ghanshyam Dass, employed in the Northern Railway Workshop, Jagadhri, filed an application under section 15(3) of the Payment of Wages Act with the Authority under the said Act. Notice was issued to the present petitioner for 23rd of March, 1961, which was served on a clerk in the present petitioner's office on 20th March, 1961. Ved Parkash, a clerk, in the office of the Works Manager, was deputed to appear before the Authority on 23rd March, 1961, to pray for a reasonable time to be granted for necessary communication with the Government through the proper channels and for issuing proper instructions to a Railway Attorney to appear and defend the case as required by Order 27, rules 5, 6 and 7 of the Code of Civil Procedure. The said Ved Parkash appeared personally before Shri O. P. Bhatia, Sub-Divisional Magistrate, Jagadhri, who acted as Authority under the Payment of Wages Act when

a request was made for adjournment. Ved Parkash is also alleged to have produced the relevant office order on the precis of the case, but the Authority refused to take notice of the office order and directed *ex parte* proceedings to be taken, fixing 6th of April, 1961, for further proceedings in the matter.

On 6th April, 1961, Shri Kidar Nath, Law Assistant of the Northern Railway, appeared before the Authority on behalf of the present petitioner and applied for setting aside the *ex parte* Order dated 23rd of March, 1961, praying that the Department may be allowed to contest the case so that a decision on the merits is given after a proper contest. The provisions of Order 27, Code of Civil Procedure were brought to the notice of the Authority. The prayer was, however, summarily rejected. This order of rejection is the subject-matter of the present application under Article 227 of the Constitution and the impugned order is described to be illegal, *ultra vires* and arbitrary. It is contended that the order contravenes the provisions of section 15(3) of the Payment of Wages Act and the salutary provisions of Order 27, Code of Civil Procedure.

At the outset, it may be stated that no point has been sought to be made at the bar with respect to the applicability or otherwise of Article 227 of the Constitution ; nor has any attempt been made whether or not the case is governed by the provisions of Order 9 or Order 27 of the Code of Civil Procedure. The counsel for the petitioner has, however, tried to base his contention on the assumption that Order 27 of the Code governs the case. On the facts and circumstances of the present case, however, it makes no material difference whether the present proceedings are considered to be under Article 227 of the Constitution or secion 115 of the Code of Civil Procedure; the infirmity in the impugned order being open to correction under either of the two provisions.

Section 18 of the Payment of Wages Act (No. IV of 1936) provides for the powers of Authorities appointed under section 15, which lays down that

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every Authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 or Chapter XXXV of the Code of Criminal Procedure. No further rule of procedure for the trial of applications under section 15 has been laid down in this Act. Rule 8 of the procedure rules framed under the Act lays down that the Authority, on entertaining the application, shall call upon the employer by a notice in Form 'E' to appear before him on a specified date together with all relevant documents and witnesses, if any, and shall also inform the applicant of the date so specified. If the employer or his representative fails to appear on the specified date, the Authority may proceed to hear and determine the application *ex parte*. Such an order, however, is liable to be set aside and the application reheard on good cause being shown within one month from the date of the said *ex parte* order. Form 'E' which is referred to in Rule 8 provides for appearance of the employer in person or by any person duly instructed and able to answer all material questions relating to the application or who shall be accompanied by some person able to answer all such questions.

Now Rule 8 is only an enabling provision. It merely permits the Authority in case of default to hear and determine the case *ex parte* which perhaps it would not be entitled to do in the absence of this provision ; but it does not make it incumbent on the Authority to do so irrespective or unmindful of the attending circumstances and facts. The decision whether or not to proceed *ex parte* involves exercise of sound judicial discretion, it does not depend on a mere arbitrary and unguided whim or passing fancy. Form 'E' requires the party served with the notice to appear either in person or through a person duly instructed. My attention

has not been drawn to any definition of the expression "duly instructed" and nothing cogent or convincing has been said at the bar as to why the clerk appearing and praying for adjournment did not satisfy the requirements of this expression. The reasoning of the Authority in refusing to recognise the clerk in question betrays an approach which is not only hyper-technical but is also not justified on the language of the section; besides it also tends to defeat rather than promote the cause of justice. In this connection, it is pertinent to mention that under Rule 6, Payment of Wages (Procedure) Rules applications, etc., are also permitted to be sent by registered post (unlike the procedure of Civil Courts) which suggests that according to the legislative scheme of the statutory instrument in question, personal presence may not be absolutely essential for presenting applications for adjournments.

Now one of the basic considerations which must always be kept in the forefront by the Tribunals in this Republic, while exercising judicial or quasi-judicial functions and dealing with a *lis*, is that rules of procedure expressly provided or necessarily implied are grounded on principle of natural justice which postulates hearing before condemnation and which disapproves of adverse or detrimental decisions reached behind the parties' backs. Parties to a *lis* should not, generally speaking, be precluded, whenever it is reasonably possible, from participating in the proceedings vitally affecting them. I should, however, not be understood to lay down that there are no exceptions to the general rule enumerated above. Exceptions, where they are, must be given effect, but the basic general rule is to attempt to decide disputes after hearing the parties concerned.

And one of the generally recognised exceptions is that when a party is duly served and has been afforded a reasonable opportunity of appearing, then in case of default, proceedings may be held

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ex parte. But the Tribunal must apply its judicial mind and form an opinion that the party had a reasonable opportunity of appearing and defending the cause. Again, if the party later comes and shows good or sufficient cause for the default, the cause shown must be judicially scrutinised and not arbitrarily or summarily rejected. Good or sufficient cause is to be shown for the purposes of relegating the parties back to the stage when the default was committed. In so far as future proceedings are concerned, there is scarcely any legal impediment in the way of a party taking part in them, and by and large, he is at full liberty to participate in them. It is only to obviate the adverse or detrimental effects of the default that he has to show good and sufficient cause. In the case in hand, it appears to me that the petitioner has succeeded in showing good cause for sending the clerk to seek adjournment on 23rd March, 1961.

It has not been satisfactorily shown on the present record that service effected on 20th March, 1961, was reasonably sufficient to enable the Department to properly and effectively defend the case on 23rd March, 1961. One of the guiding factors for the Authority to come to a just and satisfactory decision, whether or not to grant adjournment, was to determine if the Department had sufficient time to prepare the defence. For this purpose, one may legitimately turn to the Code of Civil Procedure for instructive and helpful assistance. Order 5, Rule 6, which deals with the subject of fixing day for appearance of defendants, lays down *inter alia* that the day for such appearance should be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day. Order 27, Rule 5 which deals with suits against the Government or public officers in their official capacity, says that the Court shall allow a reasonable time for the necessary communication with the Government through the proper channel and for the issue of instructions to the Government counsel to appear and answer on behalf of the Government and the Court may also

extend the time in its discretion. Rule 7 of this order expressly provides for extension of time at the instance of a public officer, who is a defendant, to enable him to make such references and receive orders through the proper channel. In this case, the Court has been enjoined to extend the time for so long as appears to it to be necessary. Order 9, Rule 6(1)(c) also contains a guiding principle ; it lays down that if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court and shall direct notice of such day to be given to the defendant. Sub-rule (2) also suggests that if the plaintiff is at fault in the service not being effected in sufficient time, costs may be imposed on him.

These provisions, in my opinion, clearly supply the necessary guidance for the Authority in coming to a just and satisfactory decision on the question whether or not the case is to proceed *ex parte*. In the present instance, the Authority has obviously acted in a manner which is neither calculated to promote the cause of justice nor is it in consonance with the well-recognised basic principles underlying the law of procedure laid down for the guidance of Civil Courts, which affords a very healthy and helpful analogy. The Authority, it may be stated, should always endeavour to avoid snap decisions and afford the parties before it a real and effective opportunity of fighting out their cases fairly and squarely. This the Authority in the case in hand, has clearly failed to do, it has ignored that rules of procedure are not meant to be penal, but are intended to facilitate reaching just results.

This brings me to the question if this Court can interfere with the impugned order in the present proceedings. That the impugned order of the Authority has resulted in failure of justice is undeniable, for, it has shut out the present petitioner from properly putting forth its defence.

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The procedure adopted by the Authority is indisputably tainted with material irregularity and clearly falls within the rule laid down by the Supreme Court in *Keshardeo Chamria* v. *Radha Kissen* (1). The infirmity is of course also curable under Article 227 of the Constitution, which is no narrower than section 115, Code of Civil Procedure in some respects, though the exercise of power under this Article is justifiable only in graver cases.

It is only fair at this stage to mention that the respondent very frankly did not controvert the position that the petitioner can at any stage start participating in the proceedings. It has, however, been submitted on his behalf that the written statement cannot now be filed by the petitioner because of the order for *ex parte* proceedings. As discussed above, in my view, the petitioner cannot be said to have lost the right to file the written statement and the Authority below was clearly in error in declining to adjourn the case on 23rd March, 1961, and the said order is liable to be quashed and I hereby quash it.

In view of the foregoing discussions, the petition succeeds and allowing the same, I set aside the impugned order and direct the Authority to permit the petitioner to defend the case according to law and in the light of the observations made above. Parties have been directed through their counsel to appear before the Authority on 13th November, 1961, when another short date would be given for further proceedings. The petition before the Authority must be disposed of with due despatch and promptitude. In the peculiar circumstances of the case there would be no order as to costs of these proceedings.

R.S.

(1) A.I.R. 1953 S.C. 23.