REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5650 OF 2018
(Arising out of S.L.P.(C) No. 6091 of 2010)

M/S. HARYANA SURAJ MALTING LTD. ... APPELLANT (S)

VERSUS

PHOOL CHAND ... RESPONDENT (S)

WITH

CIVIL APPEAL NO. 5649 OF 2018
(Arising out of S.L.P.(C) No. 6092 of 2010)

AND

CIVIL APPEAL NO.5893 OF 2012

J U D G M E N T

KURIAN, J.:

Leave granted.

2. The question arising for consideration in this case is whether the Industrial Tribunal/Labour Court is *functus officio* after the award has become enforceable, and is thus, prevented from considering an application for setting aside an *ex parte* award.

3. In view of the conflict between two decisions of this Court - **Sangham Tape Co. v. Hans Raj**[1] and **Radhakrishna**

1 (2005) 9 SCC 331

Mani Tripathi v. L.H Patel and another[2], by order dated 21.01.2011 in **Haryana Suraj Malting Limited v. Phool Chand**[3], a reference to a larger bench was made in the following terms:

> **"1.** Whether the Industrial Tribunal/Labour Court becomes functus officio after 30 days of the pronouncement/publication of the award and loses all powers to recall an ex parte award on an application made by the aggrieved party after 30 days from the date of pronouncement/publication of the award is the question that once again arises for consideration in these cases.
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> **2.** It may be noted that on this question two Division Bench decisions have taken apparently conflicting views. In *Sangham Tape Co.* v. *Hans Raj* a two-Judge Bench held and observed that an application for recall of an ex parte award may be entertained by the Industrial Tribunal/Labour Court only in case it is filed before the expiry of 30 days from the date of pronouncement/publication of the award. A contrary view was taken in *Radhakrishna Mani Tripathi* v. *L.H. Patel* to which one of us (Aftab Alam, J.) was a party.
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> **3.** In both cases, that is to say, *Sangham Tape Co.* and *Radhakrishna Mani Tripathi*, the Court referred to and relied upon the earlier decisions in *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal* and *Anil Sood* v. *Labour Court* but read and interpreted those two decisions completely differently.
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> **4.** The conflict which has arisen as a result of the two decisions can only be resolved by a larger

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2 (2009) 2 SCC 81

3 (2012) 8 SCC 579

Bench. Let these cases be, therefore, listed before a three-Judge Bench."

4. Heard learned counsel appearing for the parties and Mr. Shekhar Naphade, learned senior counsel assisting the Court as *Amicus Curiae*.

5. The Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") was enacted "...*to make provision for the investigation and settlement of industrial disputes, and for certain other purposes*". Chapter IV provides for the "*procedure, powers and duties of authorities*". Under Section 11(1) of Chapter IV, it is provided that the Labour Court or Tribunal can follow such procedure as it thinks fit.

> "11(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit."

6. Under Section 17(1), an award shall be published by the appropriate Government within 30 days of its receipt. Under Section 17(2), the award becomes final subject to Section 17A. Under Section 17A, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17.

7. Section 20 deals with the commencement and conclusion of proceedings. Under Section 20(3), proceedings before the Court/Tribunal shall be deemed to have been concluded on the date on which the award becomes enforceable under Section 17A.

> "**20. Commencement and conclusion of proceedings**.-(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock- out under section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.
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> (2) A conciliation proceeding shall be deemed to have concluded-
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> (a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;
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> (b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under section 17, as the case may be; or
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> (c) when a reference is made to a Court, Labour Court, Tribunal or National Tribunal] under section 10 during the pendency of conciliation proceedings.
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> (3) Proceedings before an arbitrator under section 10A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case

may be and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under section 17A."

8. Section 38 provides for power to frame rules for the purpose of giving effect to the provisions of the Act including the powers and procedure of the Courts/Tribunals.

9. Rule 10B(9), as introduced in 1984 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as the "Central Rules"), reads as follows:

> "10B(9). In case any party defaults or fails to appear at any stage the Labour Court, Tribunal or National Tribunal, as the case may be, may proceed with the reference *ex parte* and decide the reference application in the absence of the defaulting party:
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> Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, may on the application of either party filed before the submission of the award revoke the order that the case shall proceed *ex parte*, if it is satisfied that the absence of the party was on justifiable grounds."

10. Rule 22 of the Central Rules also provides that the Court/Tribunal can proceed *ex parte* in case any party fails to attend the Court/Tribunal without sufficient cause being shown. The Rule reads as follows:

> “**22. Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte.-***If without sufficient cause being shown, any party to proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

11. Rule 24 provides that the Boards, Courts, Labour Courts, Tribunals and National Tribunals shall have the same powers as are vested in a Civil Court in respect of the matters specified within the Rule. The Rule reads as follows:

> “**24**. **Power of Boards, Courts, Labour Courts, Tribunals and National Tribunals**.- In addition to the powers conferred by the Act, Boards, Courts, Labour Courts, Tribunals and National Tribunals shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:-
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> **(a)** discovery and inspection;
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> (b) granting adjournment;
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> **(b)** reception of evidence taken on affidavit,
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> and the Board, Court, Labour Court, Tribunals or National Tribunal may summon and examine any person whose evidence appears to it to be material and shall be deemed to a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1973.”

12. Thus, under the statutory scheme, the Labour Court/Tribunal is empowered to follow its own procedure as it thinks fit, meaning thereby, a procedure which is fit and proper for the settlement of the industrial dispute and for maintaining industrial peace. If a party fails to attend the Court/Tribunal without showing sufficient cause, the Court/Tribunal can proceed *ex parte* and pass an *ex parte* award. The award, *ex parte* or otherwise, has to be sent to the appropriate Government as soon as it is made and the appropriate Government has to publish it within 30 days of its receipt. The award thus published becomes enforceable after a period of 30 days of its publication.

13. In case of an *ex parte* award, whether the Court/Tribunal can set aside the same after 30 days of its publication, is the question to be considered.

14. That an *ex parte* award can be set aside in case the Court/Tribunal is approached within 30 days of its publication under Section 17 of the Act, is no more *res integra*. In **Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others**[4], it has been held at

[4] 1980 (Supp) SCC 420

paragraph-14 that:

> "**14.** 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……."

At paragraph-6 in **Grindlays** (supra), it was held that the Tribunal can exercise such powers, if it thinks fit, in the interest of justice. It has also been held that the Tribunal is endowed with such incidental or ancillary powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties, unless there is any express indication in the statute to the contrary. To quote:

> **"6.** We are of the opinion that the Tribunal

had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

15. In paragraph-7, it has been held that although the Tribunal or other authorities specified in Section 11 of the Act are not Courts, they have the trappings of a Court and they exercise quasi-judicial functions.

16. At paragraph-8, it has been held that "*... all these authorities being quasi-judicial in nature, objectively determining matters referred to them, have to exercise their discretion in a judicial manner, without caprice and according to the general principles of law and rules of natural justice*".

17. At paragraph-10, it has been held that an award passed

without participation on sufficient causes is a nullity, and hence, the Court/Tribunal has the power and duty to set aside an *ex parte* award.

18. At paragraph-11, it has been held that the view taken at paragraph-10 is in consonance with the mandate of Rule 22.

19. At paragraph-12, the Court took the view that going by Rule 24 of the Central Rules regarding grant of adjournment being governed by the Code of Civil Procedure, 1908 (hereinafter referred to as “the CPC”), the provisions of Order IX Rule 13 of the CPC would apply in case of an *ex parte* award.

20. In paragraph-13, it was held that setting aside an *ex parte* 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.

21. Paragraphs-10 to 13 read as follows:

> “**10.** When sub-section (1) of Section 11 expressly and in clear terms confers power upon the Tribunal to regulate its own procedure, it must necessarily be endowed with all powers

which bring about an adjudication of an existing industrial dispute, after affording all the parties an opportunity of a hearing. We are inclined to the view that where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. It is needless to stress that 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 to direct the matter to be heard afresh.

11. The language of Rule 22 unequivocally makes the jurisdiction of the Tribunal to render an ex parte award conditional upon the fulfilment of its requirements. If there is no sufficient cause for the absence of a party, the Tribunal undoubtedly has jurisdiction to proceed ex parte. But if there was sufficient cause shown which prevented a party from appearing, then under the terms of Rule 22, the Tribunal will have had no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex parte award. In other words, there is power to proceed ex parte, but such power is subject to the fulfilment of the condition laid down in Rule 22. The power to proceed ex parte under Rule 22 carries with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing.

12. Under Rule 24(*b*) a Tribunal or other body has the powers of a civil court under Order 17 of the Code of Civil Procedure, relating to the grant of adjournments. Under Order 17, Rule 1, a civil court has the discretion to grant or refuse an adjournment. Where it refuses to adjourn the hearing of a suit, it may proceed either under Order 17, Rule 2 or Rule 3. When it decides to

proceed under Order 17, Rule 2, it may proceed to dispose of the suit in one of the modes directed in that behalf by Order 9, or to make such other order as it thinks fit. As a necessary corollary, when the Tribunal or other body refuses to adjourn the hearing, it may proceed ex parte. In a case in which the Tribunal or other body makes an ex parte award, the provisions of Order 9, Rule 13 of the Code are clearly attracted. It logically follows that the Tribunal was competent to entertain an application to set aside an ex parte award.

13. We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji* is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. Sub-sections (1) and (3) of Section 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act. While the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in Section 11. The answer to the question is, therefore, to be found in sub-section (1) of Section 11 and not in sub-section (3) of Section 11. Furthermore, different considerations arise on review. The expression “review” is used in the two distinct senses, namely (*1*) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a

misapprehension by it, and (*2*) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in *Patel Narshi Thakershi case* held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal."

(Emphasis supplied)

22. The Court has unambiguously held that it is the power and duty of the Tribunal exercising its ancillary and incidental powers to set aside an award which is a nullity. In that process, the Tribunal is governed by the principles of Order IX Rule 13 of the CPC. However, apparently, on facts, the Court came to the conclusion that the power to set aside an *ex parte* award remained only till the award had become enforceable under Section 17A, *viz.*, before the expiry of 30 days from the date of its publication under Section 17. It may be seen that the application for setting aside the award in **Grindlays** (supra) was filed within 30 days of publication; the award was made on 09.12.1970, published on 25.12.1976 and the application was filed on 19.01.1977. It is interesting to note that in **Grindlays**

(supra), the Court summarised the legal position in the concluding paragraph to the effect that *"...There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders."*

23. In **Anil Sood v. Presiding Officer, Labour Court II**[5] , the Court relied on **Grindlays** (supra). The facts in the case of **Anil Sood** (supra) are important for the purpose of calculating the 30 days period. In this case, a reference was made to the Labour Court and the award was made on 11-09-1995. An application was filed by the appellant therein on 06-11-1995 contending that he had no notice of the proceedings. That application was dismissed on the ground that the Labour Court had become *functus officio*. It is pertinent to note that the decision does not mention the date of publication of the award. Following the decision in **Grindlays** (supra), the Court held as follows:

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5 (2001) 10 SCC 534

“5. This Court in *Grindlays Bank Ltd. case* examined the scheme of the provisions under the Industrial Disputes Act and enunciated that Section 11 of the Industrial Disputes Act conferred ample powers upon the Tribunal to devise its own procedure in the interest of justice which includes powers which bring out the adjudication of an existing industrial dispute. Sub-sections (1) and (3) of Section 11 of the Act thereby indicate the difference between procedure and powers of the Tribunal under the Act, while the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the extent of powers of the civil court are clearly set out.

6. The aspect that the party against whom award is to be made due opportunity to defend has to be given is a matter of procedure and not that of power in the sense in which the language is adopted in Section 11. When matters are referred to the tribunal or court they have to be decided objectively and the tribunals/courts have to exercise their discretion in a judicial manner without arbitrariness by following the general principles of law and rules of natural justice.

7. The power to proceed ex parte is available under Rule 22 of the Central Rules which also includes the power to inquire whether or not there was sufficient cause for the absence of a party at the hearing, and if there is sufficient cause shown which prevented a party from appearing, then if the party is visited with an award without a notice which is a nullity and therefore the Tribunal will have no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex parte award.

8. If this be the position in law, both the High Court and the Tribunal (*sic* Labour Court) fell into an error in stating that the Labour Court had become functus officio after making the award though ex parte. We set aside the order made and the award passed by the Labour Court and

affirmed by the High Court in this regard, in view of the fact that the learned counsel for the respondent conceded that application filed by the appellant be allowed, set aside the ex parte award and restore the reference. To decide the matter afresh, the parties shall appear before the Labour Court on 11-12-2000 to take further directions as regards the proceedings. As the matter is very old, it would be appropriate for the Labour Court to dispose of this reference as expeditiously as possible but not later than six months from today."

24. In **Sangham** (supra), the Court took the view that the Labour Court/Tribunal retains jurisdiction over disputes referred to it for adjudication only up to the expiry of 30 days of the publication of the award, and thereafter, the Court/Tribunal becomes *functus officio*. Referring to paragraph-14 in **Grindlays** (supra), the Court held as follows**:**

> "**8.** 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 17-A of the Act, an application therefor must be filed before the expiry of 30 days from the publication thereof. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication, and only up to that date, it has the power to entertain an application in connection with such dispute.
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> XXX XXX XXX
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> **10.** In view of this Court's decision in

Grindlays Bank [1980 Supp SCC 420 : 1981 SCC (L&S) 309] 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 17-A 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.

11. *Grindlays Bank* has been followed in *Satnam Verma* v. *Union of India* and *J.K. Synthetics Ltd.* v. *CCE*."

(Emphasis supplied)

25. This Court in **Sangham** (supra) also referred to the decision in **Anil Sood** (supra) and noted as follows:

"12. This Court in *Anil Sood* 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* v. *State of Maharashtra*). 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."

(Emphasis supplied)

26. In **Jammu Tehsil v. Hakumar Singh and others**[6], following the decisions in **Grindlays** (supra), this Court at paragraph-5 held that "*In view of this Court's decision in Grindlays Bank case 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 17-A 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*".

27. In **Radhakrishna Mani Tripathi** (supra) the argument was that Rule 26 (2) of the Industrial Disputes (Bombay) Rules is *ultra vires*. The Rule as quoted in the decision, to the extent relevant, reads as follows:

> "(2) Where any award, order or decision is made ex parte under sub-rule (1), the aggrieved party, may within thirty days of the receipt of a

[6] (2006) 12 SCC 193

> copy thereof, make an application to the Board, Court, Labour Court, Tribunal or an arbitrator, as the case may be, to set aside such award, order or decision. If the Board, Court, Labour Court, Tribunal or arbitrator is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it or he may set aside the award, order or decision so made and shall appoint a date for proceeding with the matter:
> Provided that, no award, order or decision shall be set aside on any application as aforesaid unless notice thereof has been served on the opposite party."

It was contended that under Section 17-A of the Act an award becomes enforceable on expiry of 30 days from the date of its publication whereupon the Labour Court is rendered *functus officio*. Reliance was placed on certain observations in **Grindlays** (supra) and it was further submitted that the provision of Rule 26(2) of the Bombay Rules was in derogation of Section 17-A of the Act. However, the Court held as follows:

> **"15.** Similarly, the Court pointed out in *Grindlays Bank*, the provision of Rule 24(*b*) empowered the Industrial Courts to refuse to adjourn the hearing and to proceed ex parte. Hence, in a case in which the Industrial Court makes an ex parte award the provisions of Order 9 Rule 13 CPC would be clearly attracted. It logically follows that the Tribunal is competent to entertain an application to set aside an ex parte award. (*Vide* para 12 of the decision.) The Court thus founded the Industrial Court's jurisdiction and power to recall an ex parte award on Rules 22 and 24(*b*) of the Central Rules. It is thus to be seen that in *Grindlays*

Bank what this Court held to be implicit in Rule 22 of the Central Rules is made explicit and clear in the Bombay Rules in the form of sub-rule (2) of Rule 26."

28. After referring to and quoting paragraph-14 in **Grindlays** (supra), it was further held that:

> **"16.** ...From the above quotation it would appear that in *Grindlays Bank* the recall application was filed within thirty days from the date of publication of the award and hence, the objection raised on the basis of Section 17-A did not arise in this case. In *Grindlays Bank* this Court did not say that the Industrial Courts would have no jurisdiction to entertain an application for setting aside an award made after thirty days of its publication. Nevertheless, on the basis of the passage marked in italics in the above quotation Ms Issar strongly contended that that is the true import of the judgment.
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> **17.** We are unable to accept. The position is made clear in the later decision in Anil Sood v. Labour Court. In Anil Sood interestingly the Labour Court had rejected the recall application on the very same ground that after making the award it became functus officio in the matter. The order of the Labour Court was challenged before the High Court but the High Court also took the same view. In appeal this Court noted that the award was made on 11-9-1995 and the application for its recall was filed on 6-11-1995. ...
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> **18.**In light of the decision in *Anil Sood* we find no substance in the appellant's submission based on Section 17-A of the Act. There being no substance in the first limb of the submission

there is no question of any conflict between Rule 26(2) of the Bombay Rules and Section 17-A of the Act."

(Emphasis supplied)

29. **Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd. and Another**[7] is a decision by a Bench of 3 Judges which has also referred to **Grindlays** (supra). It is a case where the award was made on 12.06.1987 and published on 10.08.1987. The recall application was made on 07.09.1987, before the expiry of the 30 days period provided under Section 17A. It is also to be noted that the application for recall of the award was with a prayer for raising an additional issue. To quote from paragraph-20 of the judgment, *"...The recall of the award of the Tribunal was sought not on the ground that in passing the award the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered.*

[7] (2005) 13 SCC 777

Apparently the recall or review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication." Therefore, **Kapra** (supra) is distinguishable on facts and on the question of law dealt with therein: it was a case of substantive review whereas, setting aside an *ex parte* award is a matter of procedural review. In the case of procedural review, as held in **Kapra** (supra), the party "*... has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but*

because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again."

30. Therefore, all the decisions hereinabove noted by us referred to **Grindlays** (supra). On a close reading of paragraph-14 of **Grindlays** (supra), in the background of the analysis of law under paragraphs-10 to 13, it is difficult for us to comprehend that the power to set aside an *ex parte* award is not available to a Labour Court/Industrial Tribunal. On the principles of natural justice, and on a purposive interpretation of the scheme of the Act and Rules, we find it difficult also to discern that the ratio of the decision in **Grindlays** (supra), is what is stated in paragraph-14 to the extent that an application for setting aside an *ex parte* award has to be filed within 30 days of publication of the award. On the contrary, the ratio in

Grindlays (supra) is that the Tribunal can exercise its ancillary and incidental powers, on the broader principles contained under Order IX Rule 13 of the CPC. No doubt, the Limitation Act, 1963 is not applicable to the Labour Court/Tribunal[8].

31. In **Union of India and another v. Paras Laminates (P) Ltd**[9] this Court held that the legislature has intended and has conceded certain powers to the tribunals in their assigned field of jurisdiction for the efficacious and meaningful exercise of their power. Such powers are implied in every tribunal unless expressly barred.

> **"8.** There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the

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[8] M.P. Steel Corporation v. Commissioner of Central Excise (2015) 7 SCC 58; Nityananda, M. Joshi and others v. Life Insurance Corporation of India and others (1969) 2 SCC 199.

[9] (1990) 4 SCC 453

> powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in *Maxwell on Interpretation of Statutes* (11th edn.) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution". [See also *ITO* v. *M.K. Mohammed Kunhi]*."

In **J. K. Synthetics Ltd v. Collector of Central Excise**[10], while dealing with a case from the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), this Court went a step further to hold that there are certain inherent powers vested in every tribunal in regulating their own procedure. It held at paragraph-6 as follows:

> "**6.** If, in a given case, it is established that the respondent was unable to appear before it for no fault of his own, the ends of justice would clearly require that the ex parte order against him should be set aside. Not to do so on the ground of lack of power would be manifest injustice. Quite apart from the inherent power that every tribunal and court constituted to do justice has in this respect, CEGAT is clothed with express power under Rule 41 to make such order as is necessary to secure the ends of justice. CEGAT has, therefore, the power to set aside an order passed ex parte against the respondent before it if it is found that the respondent had, for sufficient cause, been unable to appear."

32. In case a party is in a position to show sufficient cause for its absence before the Labour Court/ Tribunal when it was

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10 (1996) 6 SCC 92

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.

33. 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**, an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.

34. In this context, it is also necessary to refer to Section 29, the penal sanction which includes imprisonment for breach of award.

"**29. Penalty for breach of settlement or award.**- Any person who commits a breach of any term

of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach."

35. 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.

36. We may also add that when an application for setting aside an *ex parte* award is made at the instance of the management, the Labour Court/Tribunal has to balance equities. The appeals are hence disposed of as follows. The awards are remitted to the Labour Court for consideration as to whether there was sufficient cause for non-appearance of the management. Since the litigation has been pending for a long time, we direct the appellants to pay an amount of Rs.1,00,000/- in each case to the workmen by way of provisional payment. However, we make it clear that the payment is subject to the final outcome of the awards and will be adjusted appropriately.

We record our deep appreciation for the gracious assistance rendered by Mr. Shekhar Naphade.

.....J.
[KURIAN JOSEPH]

.....J.
[MOHAN M. SHANTANAGOUDAR]

.....J.
[NAVIN SINHA]

NEW DELHI;
May 18, 2018.

ITEM NO.1501 COURT NO.5 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No. 6091 of 2010

M/S. HARYANA SURAJ MALTING LTD. Appellant(s)

VERSUS

PHOOL CHAND Respondent(s)

WITH

SLP (C) No. 6092 of 2010 (IV)

C.A. No. 5893/2012 (XIV)

Date : 18-05-2018 These matters were called on for Judgment today.

For Appellant(s) Mr. Chetan Joshi, Adv.
Mr. Rameshwar Prasad Goyal, AOR

Mr. Aftab Ali Khan, AOR

For Respondent(s) Mr. Rishi Malhotra, AOR

Hon'ble Mr. Justice Kurian Joseph pronounced the reportable Judgment of the Bench comprising His Lordship, Hon'ble Mr. Justice Mohan M. Shantanagoudar and Hon'ble Mr. Justice Navin Sinha.

Leave granted in SLP (C) No. 6091 of 2010 and SLP (C) No. 6092 of 2010.

The appeals are disposed of.

Pending Interlocutory Applications, if any, stand disposed of.

(JAYANT KUMAR ARORA) (RENU DIWAN)
COURT MASTER ASSISTANT REGISTRAR

(Signed reportable Judgment is placed on the file)