$~A-14 (2019)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 3rd January, 2022

\+ **W.P.(C) 5002/2019**

BHIKAM MASIH ..... Petitioner

Through: Mr. Sarfaraz Khan, Advocate.

versus

M/S TRIG DETECTIVES PVT. LTD. ..... Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.

2. None appears for the Respondent/Management. Counter affidavit has also not yet been filed. It is noticed from the record that the Respondent had entered appearance on 6th March, 2020, and thereafter, has not appeared at all in this matter. Vide order dated 25th January, 2021, the right to file the counter affidavit was closed by the Registrar. Despite the same, one more opportunity was thereafter granted, vide order dated 10th March, 2021. Even so, none is appearing on behalf of the Respondent and counter affidavit has not been filed.

3. Mr. Khan, ld. Counsel appearing for the Petitioner/Workman submits that the Workman in this case had filed his claim against the Respondent/Management. However, due to certain reasons, he could not appear before the Labour Court, leading to the passing of the impugned Award dated 4th April, 2016 in ***LIR No.5101/2016 (Old Case ID No.156/14/13)***, dismissing the claim filed by the Petitioner/Workman.

4. An application was also filed by the Workman seeking setting aside of the impugned Award dated 4th April, 2016, which was also dismissed in default for non-prosecution on 14th December, 2016, as the ld. Counsel for the Workman had noted the next date before the Labour Court as 19th December, 2016, instead of 14th December, 2016. Thereafter, an application was moved on 20th December, 2016 i.e., within one week's time, seeking to set aside the order dated 14th December, 2016. However, the Labour Court, vide order dated 11th September, 2017 disposed of the said application preferred by the Workman and held that the Workman was trying to mislead the Labour Court.

5. Mr. Khan, ld. Counsel for Petitioner/Workman submits that the Workman had no *mala fide* intention to mislead the Labour Court, and the ld. Counsel for the Workman could not attend the hearing due to a genuine mistake in noting down the next date. He submits that the Workman ought not to suffer for this default on the part of his Counsel.

6. A perusal of the order sheets of the Labour Court as also the record shows that the Workman is a very poor person and the reason for non-appearance at the initial stage of the proceedings was that the Workman was stated to have been suffering from jaundice in May, 2016. Thereafter, when he returned to Delhi on 11th August, 2016, he was informed of his dismissal.

7. Moreover, ld. Counsel for the Workman has placed his Court Diary on record. A perusal of the copy of the Court Diary shows that there were a large number of matters which are listed in the counsel's court diary on 16th December, 2016 and on 19th December, 2016. The matter relating to the Petitioner herein is reflected in the advocate's Court Diary to be listed on 19th December, 2016. Thus, the fact that the application seeking setting aside

of the impugned Award was wrongly noted to be listed on 19th December, 2016, instead of 14th December, 2016, is established by a perusal of the said Court Diary.

8. Advocates who appear before a court of law usually have the practice of maintaining their court diary. The entries in the same are maintained by court clerks working with advocates. In the said diary, the previous date, the number and name of the case, is entered. Some advocates' offices or court clerks also enter the forum where the case is listed. Once the matter is over, the next date is entered in the diary. In the diary, on the date to which the matter is adjourned, the case name is again entered. In this process, it is usual for a wrong entry to take place, due to inadvertence by the court clerk or counsel. Merely because of such a wrong entry or a wrong date being entered, inadvertently, upon an adverse order being passed, the litigant ought not to suffer. Of course the court or the tribunal would have to examine as to whether the wrong entry is merely an excuse or whether it is genuine.

9. A perusal of the diary in this case shows that there is a similar pattern. The case is entered in the advocate's diary for 19th December 2016 and the previous date is also mentioned. The advocate must have enquired on 19th December, 2016 and realized that the matter was dealt with the court on 14th itself and adverse orders were passed. On 20th December 2016, the application seeking setting aside was filed. The fact that the application was filed on the next day itself proves the *bona fides* of the advocate.

10. Considering the fact that the Court Diary of the ld. Counsel has been placed on record as also the fact that the Petitioner/Workman is a poor person and there is no reason to disbelieve the medical condition of the

Workman in 2016, in the opinion of this Court, this is a fit case for restoration of the claim petition before the Labour Court.

11. Accordingly, the matter before the Labour Court in ***LIR NO.5101/2016 (Old Case ID No.156/14/13)*** titled ***Sh. Bhikam Masih v. M/s. Trig Detectives Pvt. Ltd.*** is restored to its original number. The Labour Court shall now proceed with the said claim petition, in accordance with law. Parties to appear before the Labour Court on 7th February, 2022.

12. The present petition, along with all pending applications, is disposed of, in the above terms.

13. Let the Registry inform the Respondent/Management of today's order. Ld. Counsel for the Petitioner/Workman shall also inform the ld. Counsel for the Respondent/Management of this order.

PRATHIBA M. SINGH
JUDGE

JANUARY 3, 2022
Rahul/A.S