

GAHC010244042023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/216/2023

M/S CANDIDA ENTERPRISE
REPRESENTED BY ITS AUTHORISED SIGNATORY, SRI UTPAL CHANDRA
DAS,
S/O DULAL CHANDRA DAS,
BENSON HOUSE, HOUSE NO. 11/B, M.L.N ROAD, PANBAZAR, GUWAHATI,
KAMRUP M ASSAM

VERSUS

RINTU DAS AND ANR.
EX EMPLOYEE OF M/S CANDIDA ENTERPRISE,
RESIDENT OF ADABARI COLONY, NEAR BARUAH SCHOOL, PO PANDU, PS
JALUKBAR, DIST KAMRUP M GUWAHATI 781013

2:THE ASSISTANT LABOUR COMMISSIONER CUM AUTHORITY
KAMRUP M ULUBARI
GUWAHATI 78100

Advocate for the Petitioner : MR. A SATTAR

Advocate for the Respondent : MR. R C PAUL

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18.12.2023

Heard Mr. A. Sattar, learned counsel for the appellant. Also heard Mr.

R.C. Paul, learned counsel for the respondent no.1-caveator.

2. The appellant has filed this appeal under Section 100 CPC against the judgment dated 25.07.2023 passed by the learned District Judge, Kamrup (M), Guwahati in Money Appeal No. 02/2021. The said appeal was entertained against the orders dated 18.02.2021 and 17.04.2021 passed by the Assistant Labour Commissioner –cum- Authority, Guwahati under the Payment of Wages Act, 1936.

3. The Court is of the *prima facie* opinion that second appeal would be maintainable only against the decree. It is apparent from the provision of Section 15 read with section 20(6) of the Payment of Wages Act, 1936 that the enforcement of the award is through realization of fines. The second appellate jurisdiction to this Court is not conferred under the Payment of Wages Act, 1936, whereas the said Act provides for appeal against the order of the Assistant Labour Commissioner before the jurisdictional District Judge under Section 17(1) of the Payment of Wages Act, 1936.

4. Therefore, in the opinion of the Court, the appellate order passed by the learned District Judge under the Payment of Wages Act, 1936 may be subject to any other nature of challenge, but second appeal under Section 100 CPC would not be maintainable.

5. Consequently, this second appeal is returned to the appellant. However, liberty is granted to the appellant to challenge the order impugned in this appeal in such appropriate manner the appellant may be so advised. In order to facilitate the appellant to do the needful, the Court is inclined to direct the Registry to return to the learned counsel for the appellant the memo of

appeal along with Vakalatnama in original by retaining a photocopy thereof for the record. Accordingly, the learned counsel shall supply authenticated photocopy of the memo of appeal and Vakalatnama for the records. Moreover, Registry shall also return the original certified copy of the order of the learned District Judge, Kamrup (M), Guwahati in Money Appeal No. 02/2021 as we find that the photocopy thereof is already annexed to this memo of appeal as Annexure-6.

6. As the Court has returned this second appeal on the ground that the appeal would not be maintainable, the Registry shall also return back the Court fees which has been paid by the appellant in form of Court fees stamp with liberty to do the needful as the appellant may be so advised.

7. With the aforesaid observations and liberty to approach in an appropriate jurisdiction, this appeal memo is returned to the appellant.

JUDGE

Comparing Assistant