

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1205 OF 2014

Ambiyakhan Yusuf Khan,
Age 47 years, Occ. Nil,
R/o Barkat Nagar, Parli Vaijinath,
Tq. Parali V., Dist. Beed.

..Petitioner

Versus

Sarsawati Loknatya Kala Mandir,
Through its Proprietor,
Shardabai Sakharam Jadhav,
Age major, Occ. Business,
R/o Lodga, Tq. Ausa, Dist. Latur.

..Respondent

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Advocate for Petitioner : Shri Kakde Sunil B.
Advocate for Respondent : Shri Suryawanshi Kamlakar J.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 13, 2015

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ORAL JUDGMENT :-

1. Heard.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner has challenged the judgment and award dated 12.3.2013, delivered by the Labour Court in Reference (IDA) No. 35 of 2008.

5. Having heard the learned Advocates for the respective sides, it is apparent that the case of the petitioner hangs on oral statements made by him and his witnesses. It is contended by the petitioner that he was in employment of the respondent, which is a registered proprietary firm. He was working as a "Sevak" (Servant) from 1985 till 2006. The respondent had agreed to pay yearly wages at the rate of Rs.18,000/- per annum from 1985 to 1989, Rs.21,600/- per annum from 1989 to 1995 and Rs. 24,000/- per annum for the period 1996-2007.

6. Application (IDA) No. 35 of 2008 was filed under Section 33-C(2) of the Industrial Disputes Act, 1947 ("ID Act" for short), by the petitioner, alleging that the respondent had not paid Rs.4,62,000/-, as salary for 21 years that the petitioner had worked. It was stated that there was employer - employee relationship between the petitioner and the respondent.

7. The petitioner relied upon a statement made by the Proprietor - Shardabai before the Police Station dated 6.3.2005 admitting that the petitioner was working as a servant at the rate of Rs.1500/- per month. He was given Rs. 50,000/- advance on 28.1.2001 for solemnizing his daughter's marriage and after taking the said amount, he never turned up for work and did not return the said amount. The proprietor had subsequently, after about 4-5 months, met the petitioner and asked him to start working as a servant, which he avoided.

8. Before the Labour Court, there was hardly any evidence. The petitioner's contention is that his oral statement, statement of Shardabai made before the Police and the statements of certain witnesses produced by the petitioner should be believed. In his deposition, he denied he had taken Rs.50,000/- from the respondent. However, he has contended that unpaid salary is to be recovered from the respondent.

9. It is, therefore, strenuously submitted by the petitioner that the conclusions drawn by the Labour Court vide the impugned judgment deserves to be quashed and set aside and this petition deserves to be allowed.

10. Learned Advocate for the sole respondent has vehemently opposed the petition. He submits that it has been stated in the Written Statement that the petitioner did not report for duties after he has taken Rs.50,000/- from the respondent. He was paid Rs.1,000/- per month since his entire lodging and boarding was at the costs of the respondent. After 2001, he has never turned up for employment. The Labour Court has rightly concluded that there is no evidence of the quantum of wages decided and the terms of employment. He, therefore, pressed for the dismissal of this petition.

11. I have considered the submissions of the learned Advocates, who have taken me through the petition paper book. There is not an iota of evidence as regards the terms and conditions of employment. It all appears to be a private arrangement where the petitioner has acted as a servant,

probably with the proprietor of the respondent. It is stated that he used to reside along with the proprietor of the respondent and had no permanent residence. He used to move along with her where ever she went. His lodging and boarding was taken care of by her.

12. One witness produced by the petitioner, namely, Vaishnav submitted in cross-examination that the petitioner had worked for a few years with Shardabai (the proprietor). He had taken Rs.50,000/- from her and left the job in 2001. He had not received any summons from the Court in the said matter, but was deposing at the request of the petitioner herein.

13. I have considered the impugned judgment. In the light of the above, I find that it seems to be a private arrangement of staying with the proprietor of the respondent and moving along with her where ever she went. There is no evidence to indicate that he was ever appointed or engaged by the respondent firm as an employee of the said firm. The agreement written on a Rs.10/- stamp paper bearing the signature of the petitioner and Shardabai, indicates that he had taken Rs.50,000/- from her and had left her on 16.5.2001. It was agreed that there is no claim by the petitioner against the respondent.

14. Section 33-C(2) of the ID Act provides for making a claim within one year from the date the amount became due from the employer. No doubt such a claim can be entertained after the expiry of the said period, provided the Presiding Officer of the Labour Court, for reasons to be

recorded in writing is convinced. A claim from 1985 onwards has been raised in 2008 and that too without any documentary evidence, which would have convinced the Labour Court to consider his claim.

15. In the light of the above, I do not find any merit in the petition and the same is, therefore, dismissed. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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