

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10474 OF 2015

THE MUNICIPAL COUNCIL,
THROUGH ITS CHIEF OFFICER

PETITIONER

VERSUS

SHAIKH KHAJAMIYA SK.IBRAHIM

RESPONDENT

Mr.M.S.Karad h/f Mr.S.S.Thombre, Advocate for the petitioner.
Mr.M.S.Indani, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/10/2015

PER COURT :

1. The petitioner is aggrieved by the order dated 05/10/2015 in Misc.(ULP) No.1/2015 by which the application for staying the ex-parte judgment dated 11/12/2014 delivered by the Labour Court in Complaint (ULP) No.13/2014 has been rejected.

2. The petitioner submits that Complaint (ULP) No.13/2014 was filed by the respondent on the ground that after working as a Peon from 08/03/2002, he was orally terminated on 15/11/2013. The petitioner / Municipal Council did not cause an appearance in the proceedings before the Labour court.

3. Consequentially in a period of 10 months and 8 days, the complaint has been allowed by the judgment dated 11/12/2014 in the light of the affidavit filed in lieu of examination in chief and the original identity card coupled with the experience certificate dated 12/07/2010.

4. The petitioner submits that the respondent moved an application dated 18/12/2014 by which copy of the ex-parte judgment was served upon the petitioner on 18/12/2014. Within 30 days thereof, a Misc. application no.1/2015 was filed by the petitioner before the Labour Court u/s 31 of the MRTU and PULP Act, 1971 seeking setting aside of the ex-parte judgment.

5. By the impugned order, application Exh.U-9, filed by the Municipal Council, seeking stay to the ex-parte judgment, has been rejected. It is further submitted that Criminal (ULP) No.2/2015 is being taken up by the Labour Court and charges have been framed against the Chief Officer of the petitioner on 05/10/2015.

6. Contention is that when an application praying for vacating the ex-parte judgment is filed within 30 days from the receipt of the copy of the order, the Labour Court should have stayed the ex-parte

judgment in the light of the pending criminal complaint. It is further submitted that there is a possibility that the petitioner may suffer an adverse order in the criminal proceedings and there is every possibility that the ex-parte judgment could be set aside in course of time.

7. Mr.Indani, learned Advocate has appeared on behalf of the sole respondent. He has vehemently opposed this petition and prayed that the same be dismissed. He further submits that the ex-parte judgment is based on the merits of the matter notwithstanding the continued absence of the petitioner. The respondent is neither reinstated nor is being paid his monthly wages. He, therefore, prays that the petitioner be directed to reinstate the respondent and prosecute Misc.Appl.No.1/2015.

8. I have considered the submissions of the learned Advocates as have been recorded above.

9. It is trite law that a Court cannot base its judgment on an affidavit alone. Merely because the complaint has gone unchallenged and the evidence of the complainant is equally unchallenged, need not necessarily lead to the allowing of the complaint.

10. Be that as it may, the fact remains that the application seeking vacating of the ex-parte judgment has been filed within 30 days from the date of receipt of its copy. Criminal ULP No.2/2015 is also being prosecuted by the respondent. The Labour Court should have considered that there could be a possibility that in the Criminal Complaint, the Chief Officer of the petitioner may be punished, but the ex-parte judgment may also be vacated if a good cause is made out by the petitioner. In this peculiar situation, the Labour Court should have stayed the ex-parte judgment by imposing certain conditions on the petitioner.

11. In the light of the above, this petition is partly allowed. The ex-parte judgment dated 11/12/2014 shall stand stayed. Application Exh.U-9, filed by the petitioner, stands allowed.

12. Criminal (ULP) No.2/2015 shall stand stayed till the decision of the Labour Court in Misc.Appl.No.1/2015.

13. The Labour Court shall endeavour to decide Misc.Appl.No.1/2015 as expeditiously as possible and preferably on or before 31/03/2016.

14. However, the petitioner shall deposit the last drawn gross monthly wages of the respondent before the Labour Court beginning from the month of October till the Misc.Appl. is decided. Such wages for each month shall be deposited before the Labour Court on or before the 10th day of the said month. In so far as the month of October is concerned, the petitioner shall deposit the wages from October 2015 on or before the 6th day of November before the Labour Court. Thereafter for the months from November 2015, such wages shall be deposited on or before the 10th day of the succeeding month.

15. The respondent shall be at liberty to withdraw the said amount without conditions from the Labour Court. Needless to state, both the litigating sides shall co-operate with the Labour Court for the disposal of Misc.Appl.No.1/2015 within the time frame as recorded above.

(RAVINDRA V. GHUGE, J.)