

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 516 OF 2014
AND
MISC. CIVIL APPLICATION NO. 457 OF 2015

MISC. CIVIL APPLICATION NO. 516 OF 2014

M/s. Shree Gajanana Industries,
Represented by its sole proprietor,
Mr. Gajanan Tilu Naik,
Major of age,
Xeldem, Quepem, Goa. Applicant

V e r s u s

Workmen,
Represented by Goa Mine Workers Union,
Through its General Secretary,
Mr. Naresh Kushali Shigaonkar,
Major of age,
Registered office : P. O. box no., 90,
Mukund Bldg., 2nd Floor,
F. L. Gomes road,
Vasco da Gama, Goa. Respondent

Mr. Joaquim Godinho, Advocate for the Applicant.
Mr. Thalman Pereira, Advocate for the Respondent.

AND

MISC. CIVIL APPLICATION NO. 457 OF 2015

Workmen,
Represented by Goa Mine Workers Union,
Through its General Secretary,
Mr. Naresh Kushali Shigaonkar,
Registered office : P. O. box no., 90,
Mukund Bldg., 2nd Floor,
F. L. Gomes road,
Vasco da Gama, Goa-403 802. Applicant

V e r s u s

M/s. Shree Gajanana Industries,
Represented by its sole proprietor,
Mr. Gajanan Tilu Naik,

Major of age,
Xeldem, Quepem, Goa.

..... Respondent

Mr. Thalman Pereira, Advocate for the Applicant.
Mr. Joaquim Godinho, Advocate for the Respondent.

Coram:- F. M. REIS, J.

Date:- 13th August, 2015

ORAL ORDER

Heard Shri Godinho, learned Counsel appearing for the Applicant and Shri Thalman Pereira, learned Counsel appearing for the Respondents.

2. Both the above applications have been filed by the parties to withdraw the amount deposited in this Court as reflected in the Judgment dated 06.05.2009 passed in Writ Petition no. 292 of 2001.

3. Briefly the facts of the case are that the Applicants in Misc. Civil Application no. 516 of 2014 challenged the Award passed by the Tribunal directing the Applicants to pay the bonus to the workers. The workers were being represented by their Trade Union who are the Respondents to the above application. Operative part of the said Order reads thus :

- “1. Writ Petition is dismissed. Rule discharged.
2. The relevant Union shall inform each of the workers of this Order.
3. Each of the 21 workers shall make their

respective separate and independent claims to the Registrar of this Court within six months from today.

4. The amount shall be disbursed to the respective workers upon they identifying themselves and applying independently and directly after giving notice of their respective applications to the Petitioner.
5. The Petitioner shall be entitled to be heard only upon such identification of the employees before the Registrar of this Court.
6. The Registrar shall pass the order of refund, if any, on merits in each of the separate applications of the 21 workers.
7. Writ Petition disposed off accordingly.”

4. On perusal of the above operative part of the Order, the Trade Union were given six months time to identify the respective 21 workers and after such proper identification, the Registrar was directed to disburse the amounts to such workers. Despite of such specific directions up to this date, the Respondents are not in a position to either trace or identify any of the 21 workers. This Court had directed the Trade Union to file an affidavit to disclose the names and the whereabouts of the 21 workers. An affidavit has been filed, inter alia, stating that the workers were not available at the place where they were last known and their identity or whereabouts are not known.

5. In such circumstances, the question of holding the money with the Registrar would not serve any purpose. In such

circumstances the amount would have to be returned to the party who had deposited in this Court such amount. The contention of Mr. Pereira, learned Counsel, that the Trade Union should be given the amount deposited, cannot be accepted as the Judgment passed by this Court specifically directs that such amount has to be paid to the 21 workers identified by the Trade Union. No doubt, whilst allowing the applications to withdraw the money, the interest of the 21 workers has to be protected to ensure that any such claim is put forward to receive the amounts in terms of the Award passed in their favour, such amounts should be immediately made available to such workers.

6. Shri Pereira, learned Counsel, has also raised an apprehension that the Applicant is a Proprietary concern and the Proprietor is a Senior citizen.

7. Shri Godinho, learned Counsel appearing for the Applicants, upon instructions, states that any direction issued by this Court shall also bind the descendants and/or legal representatives of such applicant.

8. In the peculiar facts and circumstances of the case, as the Trade Union is not in a position to identify the 21 workers in terms of the directions of this Court in the said Judgment dated 06.05.2009, I find it appropriate to dispose of both the applications by the following :

ORDER

(I) The Applicant shall be permitted to withdraw the amount deposited along with accrued interest thereon subject to the Petitioner furnishing a Bank Guarantee from a Nationalised Bank for the total amount so withdrawn to the satisfaction of the Registrar (Judicial) of this Court initially for a period of four years and such Bank Guarantee shall be renewed and kept alive until the amounts are disbursed or claimed by the 21 workers or until further orders.

(II) The Applicants shall file an undertaking before withdrawing the said amount to the satisfaction of the Registrar (Judicial) of this Court to the effect that the Applicants shall comply with all the directions in the said Judgment of this Court dated 06.05.2009 and pay the amounts in terms thereof to the 21 workers as and when demanded by the workers or by the Trade Union in terms of the said Judgment.

(III) The undertaking shall also disclose that such liability/obligation also bind the descendants and/or legal representatives/successors of the Applicants in terms of law.

(IV) The Respondents-Trade Union are at liberty to identify and locate any of the 21 workers and raise a claim for such amount under Section 33 of the Industrial Disputes Act before the competent

authorities in accordance with law.

(V) Both the applications stand disposed of in the above terms.

F. M. REIS, J.

arp/*