

IN THE HIGH COURT OF BOMBAY AT GOA**COMPANY APPEAL NO.1 OF 2012**

Shri Santosh Kanta Assoldekar,
r/o. House No.45, Pimpoll-Cotto,
Sirwoi, Quepem-Goa-403 705.

.... Appellant

V/s

The Official Liquidator of
M/s. National Auto Accessories Ltd.,
through its Official Liquidator
Shri M.M. Gupta, IFCI Limited,
Room No.22/23, 'B' Block,
Mezzanine Floor, EDC House,
Dr. Dada Vaidya Road, Panaji-Goa.

.... Respondent

Mr. D. Pangam, Advocate for the Appellant.
Ms. Amira Razaq, Advocate for the Respondent.

CORAM : F.M. REIS, J.

DATE : 11th DECEMBER, 2015

ORAL JUDGMENT :

Heard Mr. D. Pangam, the learned Counsel appearing for the appellant and Ms. Amira Razaq, the learned Counsel appearing for the respondent.

2. The above appeal challenges the order passed by the Official Liquidator dated 20/04/2011, whereby the claim put forward by the appellant came to be rejected.

3. Mr. D. Pangam, the learned Counsel appearing for the appellant has pointed out that the appellant was a workman in the establishment of the company in liquidation and that as his dues were not paid, the workman raised claims with that regard before different authorities. The learned Counsel further pointed out that at the time when the company in liquidation went on strike, it ultimately led to its closure. The learned Counsel also points out that somewhere in the year 2001 there was a settlement arrived before the Conciliation Officer between the Union to which the appellant belongs, with the company in liquidation. The learned Counsel further points out that thereafter on 28/09/2001, the company went in liquidation and an Official Liquidator was appointed by the Court. The learned Counsel further submits that in the year 2004, the appellant raised a claim before the Official Liquidator for all the arrears of wages and other benefits to which the appellant was entitled. The learned Counsel further submits that a part of the claim of the appellant was allowed whereas a substantial claim came to be rejected and, consequently, the appellant preferred an appeal before the Company Judge being appeal no.2/2006 which was partly allowed and the matter was remanded to the Official Liquidator to decide the claim afresh in accordance with law. The learned Counsel further submits that thereafter the appellant filed a supplementary claim before the Official Liquidator,

inter alia, contending that the settlement arrived at in the year 2001 was not in accordance with law and, as such, could not be relied upon. The learned Counsel further submits that the Official Liquidator, however, rejected the claim of the appellant which forced the appellant to file an appeal before this Court being Company Appeal No.8/2009. The learned Counsel further points out that whilst disposing of the said appeal this Court had inter alia directed the Official Liquidator to examine the claim of the appellant that the settlement was not in accordance with law and a nullity. The learned Counsel further points out that the Official Liquidator thereafter proceeded to re-examine the matter in the light of the directions of this Court in the said order dated 17/09/2010 and ultimately dismissed the claim of the appellant on the ground that the Official Liquidator had no powers to examine the validity or otherwise of the settlement arrived at with the company in liquidation. The learned Counsel further points out that despite of directions issued by this Court the Official Liquidator proceeded not to examine the correctness of the contentions raised by the appellant with regard to the validity of such settlement which according to him is contrary to the directions issued by this Court. The learned Counsel further points out that the Official Liquidator also went to the extent of holding that the appellants were not entitled to raise such contentions in respect of such settlement as the

appellant had not taken any steps to challenge the validity of such settlement. The learned Counsel has thereafter taken me through the impugned order of the Official Liquidator to point out that the direction issued by this Court had not been complied with by the Official Liquidator whilst deciding the claim put forward by the appellant. The learned Counsel further submits that in any event even in case the appellant proceeds to get an adjudication with regard to the claim of the appellant to the effect that the settlement of the year 2001 is a nullity before the competent forum under the Industrial Disputes Act, the finding of the Official Liquidator referred to herein above could come in the way of the appellant raising such claim. The learned Counsel, as such, submits that the impugned order be quashed and set aside and the Official Liquidator be directed to examine the validity or otherwise of the settlement in the light of the directions issued by this Court by the said order dated 17/09/2010. In support of his contentions, that such settlement is not valid, Mr. Pangam, the learned Counsel appearing for the appellant has relied upon the judgment of the Apex Court reported in ***(2005) 1 CLR 816*** in the case of ***Oswal Agro Furane Ltd. & Anr. V/s. Oswal Agro Furane Workers Union & Ors.***

4. On the other hand, Ms. A. Razaq, the learned Counsel appearing for

the respondent has vehemently disputed the contentions raised by the learned Counsel appearing for the appellant. The learned Counsel has taken me through the claim put forward by the appellant before the Official Liquidator way back in the year 2004 to point out that the validity or otherwise of the settlement was not even raised in such claim. The learned Counsel further submits that even whilst disposing of the appeal preferred by the appellant by this Court by order dated 17/09/2010, the Official Liquidator was not represented before this Court and, as such, the judgment passed by the learned Company Judge in connection with such settlement where another workman had also raised similar claim was not brought to the notice of this Court whilst passing the said order. The learned Counsel further points out that the validity or otherwise of the settlement arrived at between the Trade Union and the company in liquidation before the appointment of the Official Liquidator cannot be adjudicated by the Official Liquidator and it was incumbent upon the appellant to diligently pursue the remedy, if any, to get such settlement set aside. The learned Counsel further submits that even in case the appellant now chooses to move the Labour Court this Court cannot grant any leave to the appellant as it would foreclose any defences which the Official Liquidator is entitled to raise in such proceedings. The learned Counsel further points out that considering the

findings arrived at by the learned Company Judge in the order dated 23/02/2007 whilst disposing of Company Application No.51/2006 in Company Petition No.1/2001, in the case of ***Venkatesh K. Patil V/s. M/s. National Auto Accessories Ltd.***, the directions of the learned Company Judge in the subsequent order dated 23/02/2007 would not survive. The learned Counsel, as such, submits that the learned Official Liquidator has rightly come to the conclusion that the appellants cannot resile from the settlement arrived at between them which according to the learned Counsel is binding on the appellant. The learned Counsel, as such, submits that the appeal be rejected.

5. I have carefully considered the submissions of the learned Counsel and with their assistance I have also perused the impugned order. It is very disturbing that the appellant had to approach this Court in the appeal against the orders passed by the Official Liquidator rejecting his claim without getting an appropriate adjudication on merits with regard to the stand of the appellant that the settlement arrived at in the year 2001 is vitiated. This Court whilst passing an order dated 17/09/2010 had recorded the contention of the appellant to the effect that it is the case of the appellant that the settlement of the year 2001 stands vitiated and null and void and is not binding on the appellant. This Court had

accordingly directed the Official Liquidator to examine the correctness or otherwise of such contentions. But however, without examining such aspect, the claim of the appellant came to be rejected by the Official Liquidator on the ground that as the appellant had not raised the challenge before the competent forum in connection with the subject settlement the appellant was now precluded from raising such contention. I am afraid that once this Court had issued a specific direction it was incumbent upon the Official Liquidator to examine the validity of such contention and examine the conclusion on merits unless it found it had no jurisdiction to do so. But however, the Official Liquidator cannot be faulted to hold that such dispute cannot be adjudicated by the Official Liquidator but had to be adjudicated before a competent forum under the Industrial Disputes Act. Whether the appellant is entitled to raise such claim at this stage is a matter which the competent Court or Tribunal has to adjudicate on its own merits. Once the Official Liquidator found that he cannot proceed to examine the validity of the settlement based on the contentions of the appellant, there was no reason to proceed to examine whether the appellant was entitled or otherwise to raise this contention before the concerned Court. This aspect would have to be left to the competent Court or Tribunal to examine whether such claim of the appellant can be entertained or not.

6. Ms. A. Razaq, the learned Counsel appearing for the respondent has submitted that though there is no period of limitation to raise such dispute or claim before the Tribunal such claim has to be raised within a reasonable time. But according to the learned Counsel as there is gross delay on the part of the appellant the question of appellant now proceeding to raise such claim before the Tribunal is not at all justified. It is for the Tribunal or the competent Court under the Act to examine whether there is any justifiable reason to approach before such Court by the appellant with delay. This Court in the present appeal cannot go into this aspect and, as such, the contentions of the learned Counsel appearing for the respondent on that count are to be left open to be examined in a proper forum in case such occasion arises. Ms. A. Razaq, the learned Counsel also points out that as the settlement has been arrived at by the Trade Union, an individual workman cannot raise such dispute and he is estopped from raising such contention as he has also accepted part of the settlement term. In reply to such contention, Mr. Pangam, the learned Counsel has brought to my notice the provisions of Section 2(a) of the Industrial Disputes Act. This aspect in any case would have to be examined by the Competent Court on its own merits.

7. From the aforesaid reasons and subject to what has been stated herein above, I find that there is no reason for interference in the impugned order. The appellant, if so advised, may take a remedy in accordance with law to get his alleged claim on the validity or otherwise of the settlement decided in appropriate forum in accordance with law. Subject to the above the appeal stands rejected. Needless to state that, the finding in the impugned order will not come in the way of the appellant, to get his claim adjudicated on its own merits in accordance with law. All contentions of both the parties with that regard are left open.

F.M. REIS, J.

NH/-