IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3990 OF 2015

Shobha Haridas Kapadia
Ivory Tower, Building no.2,
Second Floor, Room No. 204,
Juhu Koliwada,Mumbai-400 009 ....Petitioner

: V E R S U S :

1. Mr. Madhukar P. Ghorpade
458/468, J.S.S. Road,
J.K. Bhatiya, C.H.S. Ltd, 3rd Floor,
Room No.38, Mumbai-400 002.

2. Mr. Shashikant D. Dave
458/468, J.S.S. Road,
J.K. Bhatiya, C.H.S. Ltd, 3rd Floor,
Room No.38, Mumbai-400 002.

3. Mr. Mahendra Kapadia,
Priya 282, Third Floor, Juhu
Cross Road, Andheri (West),
Mumbai-400 058. .....Respondents

* * * *

Mr. Vijay Vaidya i/by. Mr. Mahendra Agvekar, Advocate for the petitioner.

Mr. P.M. Mokashi, Advocate for respondents no.1 and 2.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

9th JULY, 2015.

P.C. :-

1). Since the orders impugned in the petition are impugned orders, the petition is being disposed off finally at the stage of admission.

2). Heard the Counsel.

3). This petition challenges the order dated 13th October, 2010 passed by the Labour Court allowing an application for interim reliefs in Complaint (ULP) No.167 of 2008, order dated 26th March, 2013 on Review Application (ULP) No. 3 of 2010 and the order of the Industrial Tribunal dated 9th September, 2014 passed on Revision Application (ULP) No.85 of 2013.

4). The facts leading to the petition are as follows :-

. Respondent no.3 and the father of the petitioner were partners of M/s. Odhavji Keshavji & Co., which was carrying on business of warehousing and retail/wholesale distribution of cotton goods. On the death of her father on 26th November, 2001 the petitioner was inducted in the partnership and the business of warehousing continued in the name and style of "M/s. Mahalaxmi Clearing Agency". It had its godown premises at 23/25, Dadisheth Agyari Lane, 2nd Fanaswadi, Kalbadevi Road, Mumbai-400 002. Lately, on account of certain differences, the petitioner gave notice for dissolution of the partnership firm and filed suit for dissolution and accounts. The dispute in the suit was referred to arbitration and by the interim Award dated 7th September, 2006 the firm stood dissolved. Then, consent terms dated 4th April, 2007 came to be filed in the proceedings under which the petitioner became entitled to the godown premises on payment of Rs.54,00,000/- to respondent no.3 who was to handover vacant possession thereof to her. She also became entitled to

Rs.14,00,000/- towards her share in the firm. The petitioner, however, did not receive possession of the godown premises easily. She had to resort to execution proceedings therefor.

5). The petitioner was served with complaint (ULP) no.167 of 2008 filed by respondents no.1 and 2 alleging unfair labour practices under Items-1(b), (d), (f) of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act ("MRTU & PULP Act" for short) on her part and on the part of respondent no.3. By the ad-interim order dated 26th May, 2008 the parties were directed to maintain status-quo. The petitioner contested the complaint contending that it was not tenable as the partnership firm, was dissolved and there was no business of the partnership firm. Therefore, the relationship of employer and employee had come to an end. Respondent no.3, however, supported the complainant and stated that he was willing to pay his share of compensation to respondents no.1 and 2. The Labour Court, later by the order dated 13th October, 2010 confirmed the ad-interim order and restrained the petitioner and respondent no.3 from terminating services of respondents no.1 and 2 without following due process of law.

6). The petitioner, then, without prejudice to her rights and contentions, terminated their services w.e.f. 13th December, 2010 and filed review application in which she submitted that respondent no.1 was not a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act (for short "the I.D. Act"). Besides on the closure of the business, the order of "not to terminate" did not survive. She also pointed out that, respondents no.1 and 2 had forcibly entered into the godown premises and have been occupying the same illegally. The Labour Court, however, dismissed the Review Application with an observation that it was not open for the petitioner to challenge the interim order because she had already complied with it by issuing notice of termination to respondents no.1 and 2.

7). Being aggrieved by the orders of the Labour Court, the petitioner approached the Industrial Tribunal with Revision Application (ULP) No. 85 of 2013. The Industrial Tribunal dismissed the Revision Application by the order dated 9th September, 2014.

8). Mr. Vaidya, the learned Advocate appearing for the petitioner submits that since the application for interim reliefs made by respondents no.1 and 2 was on the allegations of unfair labour practices under Items 1(b), (d), (f) of Schedule-IV of MRTU & PULP Act, it was necessary for the Labour Court to arrive at *prima-facie* finding as regards commission of acts of unfair labour practices. Without such finding, no interim relief could have been granted. He also submits that undisputedly, respondents no.1 and 2 were the employees of the partnership firm. Once the partnership firm is dissolved, it ceases to be a legal entity and there cannot be an employer and employee relationship with the dissolved firm. Further, respondents no.1 and 2 were not in personal employment of the petitioner. Therefore, she cannot be made personally liable for any claim of the respondents. The third argument of Mr. Vaidya is that, as a result of dissolution of the firm, services of respondents no.1 and 2 stood terminated on account of closure under Section 25FFF and consequently these respondents are entitled to only closure compensation, which is not a condition precedent to termination. He also submits that an order of not to terminate services without following due process of law against a closed establishment is completely arbitrary, illegal and beyond the scope of Section 30(2) of the I.D. Act.

9). Mr. Mokashi, the learned Advocate for respondents no.1 and 2, on the other hand, seeks to support the interim order passed by the Labour Court.

10). Respondent no.3, in his reply, filed in the Labour Court to the complaint, does not dispute any of the facts alleged by the petitioner. He admits that the firm stands dissolved by virtue of the arbitral order and the entitlement of the petitioner under the Award to the premises of the warehouse, its business and the firm's name subject to her making payment under the Award. He contends that the petitioner will be entitled to peaceful and vacant possession of the warehouse only when she pays respondents no.1 and 2, 50% of the amount of terminal benefits to them. Respondent no.3 claims to be willing to pay his share. Despite this offer, the Labour Court has not directed respondent no.3 to deposit the amount of his 50% share in the terminal benefits. It could have been made available to respondents no.1 and 2.

11). Perusal of the interim order leaves much to be desired. The Labour Court has neither considered the allegations in the main proceedings nor the material in support of the allegations nor the contentions raised by the petitioner. It concerned itself for answering only one question i.e. whether the services of respondents no.1 and 2 can be terminated without following due process of law. Out of several contentions taken by the petitioner to oppose the application for interim reliefs, it considered only one contention which is of the effect of dissolution of partnership firm. It has opined that, on dissolution of the firm, if one of the partners takes over the entire assets, liabilities and continues the Undertaking, it cannot be said that there is a change in the employer within the meaning of Section 25F and Section 25FF of the I.D. Act. It has not considered the argument of the petitioner that, as a result of dissolution of the firm, services of respondents no.1 and 2 stood terminated on account of closure under Section 25FFF of the I.D. Act and consequently the respondents would be entitled only to closure compensation, which was a material submission.

12). It is well established position in law that an interim relief can be granted only when the main relief can be granted. Therefore, while considering an application for interim reliefs the Court must look into the main reliefs, the averments supporting the main reliefs, the objections thereto and give a *prima-facie* finding of the efficacy of the main application. The order also does not give a, *prima-facie*, finding as regards commission of unfair labour practices as alleged by respondents no.1 and 2. Mr. Vaidya, is correct in his submission that, without such finding, there could be no interim relief whatsoever in the complaint. The impugned order therefore cannot be sustained. In any case, the petitioner has, after the interim order, terminated the services of respondents no.1 and 2, without prejudice to her rights and contentions in the complaint. For that reason also, the interim order cannot survive any more.

13). For the reasons stated above, the petition is allowed in terms of prayer clause (a).

(SMT. R.P. SONDURBALDOTA, J)