

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3965 OF 2015

Total Oil India Private Limited
A Company registered under the
Companies Act, 1956 having its
registered office at 3rd Floor,
The Leela Galleria,
Andheri-Kurla Road,
Mumbai-400 059.

.. Petitioner

V/s

The General Secretary
Dharmarajya Kamgar Karmachari
Mahasangh, 3 Laxmi Nivas,
Ghantali Devi Path
Wamanrao Oak Pathpedi,
Near Navpada, Thane (West),
Thane-400 602.

.. Respondent.

N.R. Patankar a/w Prabhakar Jadhav i/b V.P. Sawant, for Petitioner.
Jane Cox i/b Mr. Manmohan Amonkar, for Respondent.

Coram : Smt. R.P. SondurBaldota, J.

Date : 16th June, 2015

P.C.

1. The petitioner-employer challenges the order dated 10th March, 2015 passed by the Tribunal-Cum-Labour Court-II (Central), Mumbai on the interim application at Exhibit 7.

Considering the nature of the impugned order, the petition is taken up for final disposal at the stage of admission. Heard Advocates.

2. The manner in which the impugned order is passed by the Presiding Officer, CGIT-2, Mumbai is sufficient by itself to set it aside. It is clear from the Roznama maintained by the Learned Presiding Officer that the submissions heard were on Exh.12 and the application decided was Exh.7. The details of the matter are as below.

3. At the instance of 'The General Secretary Total Oil Employees Union', the Conciliation Officer and Assistant Labour Commissioner ©-III, Mumbai made reference for adjudication of following questions.

“All the 8 employees enlisted Annexure-'A' to this Application shall be treated as permanent employees from the date of joining shown in the Annexure against the name of the employees and

all Labour Welfare benefits such as wages, HRA, Bonus shall be extended to the 8 employees at par with the permanent employees on the roll of the Company.”

The arrears of wages, benefits and perquisites on art with the permanent employees shall be extended to the employees from the date of joining the services of the Company as if the employees were employed on the roll of the company as permanent employees and arrears to be paid with interest @ 15% per annum.”

The statement of claim before the in the reference was however, filed not by Total Oil Employees Union, but by another Union by name Dharmarajya Kamgar Mahasangh on 30th August, 2013. On the same day, the Union filed the Application at Exhibit 7 for interim reliefs. Then the reference was adjourned for the say on Exhibit 7 and for written statement of the petitioner. After a couple of adjournments the petitioner, on 19th December, 2013 filed the application at

Exhibit 9 for discarding the statement of claim and dismissal of the application for the interim relief contending that Dharmarajya Kamgar Mahasangh could not have filed the statement of claim and the application. The reference was then adjourned to 13th February, 2014 for filing say by both the sides on the two applications Exhibit 7 and Exhibit 9. On the adjourned date, the petitioner filed one more application at Exhibit 12 claiming that it had arrived at settlement with three of the workmen and stating offer of the same settlement to the remaining five workers. On the basis of the settlements the petitioner sought final disposal of the reference. Thereafter the reference was adjourned for reply of the petitioner to Exh.7, reply of the respondent to Exh.12 and hearing of Exhibit 9. The next two adjournments were for filing say to Exhibits 7 and 12. On 23rd April, 2014, the respondent filed say to Exhibit 12. Therefore, that application was adjourned for hearing and Exhibit 7 was adjourned for say of the petitioner. The further two adjournments of 26th June, 2014 and 24th July, 2014 were

for the same reasons. On 28th August, 2014 submissions of the parties were heard on Exhibit 12 and it was adjourned for orders. Exhibit 7 was, however, adjourned again for filing say. Then there were 8 adjournments for orders on Exhibit 12 and Say on Exhibit 7.

4. After so many adjournments apparently the Court lost track of the applications and on 10th March, 2015 passed order on Exhibit 7 and left Exhibit 12 unattended. The Roznama of that date makes no reference to Exhibit 12. As regards Exhibit 9 the same was simply forgotten.

5. Ms. Patankar, the learned advocate for the petitioner further points out that the learned Presiding Officer could not have decided Exhibit 7 before deciding Exhibit 9 and 12 which raise preliminary objections. There is substance in the submission.

6. In the above circumstances, the petition is allowed in terms of prayer clause-(a). The application at Exhibit 7 is restored to file. The petitioner is at liberty to file its reply to the application.

(Smt. R.P SondurBaldota, J.)