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

WRIT PETITION NO. 10947 OF 2014.

Satyendra Prakash R. Tiwari.

.. Petitioner

Vs.

M/s Damani Shipping Pvt. Ltd.

.. Respondent

Ms Neeta Karnik, for the Petitioner.

Ms.N.R.Patankar a/w Mr.V.P.Sawant and Mr.Prabhakar Jadhav, for Respondent.

***CORAM: N.M.Jamdar, J.
Tuesday 6 October, 2015***

P.C.:

By this petition, the Petitioner challenges the order passed by the Labour Court dated 5 April 2014 rejecting the application under Section 33C(2) of the Act. The Labour Court has rejected the application on the ground that the employer-employee relationship and the entitlement of the Petitioner, is disputed.

2. The learned counsel for the Petitioner submitted that it is not that moment application is disputed by the employer, the Court loses the jurisdiction and the Court is entitled to examine whether the stand of the employer is only to deprive the workmen of the benefit of Section 33C(2). The learned counsel for the Respondent supported the impugned order and submitted that there is yet another ground on which the Petitioner's application cannot

succeed. She submitted that the Petitioner has challenged the factum of his dismissal in the application under Section 33C(2) which is borne out by the fact that back wages and other ancillary benefits flowing from the challenge to order of dismissal have been claimed.

3. The learned counsel for the Petitioner, on instructions then submitted that the Petitioner will not claim the back wages and will not challenge the order of termination in the proceedings under Section 33C(2). The learned counsel for the Petitioner submitted that the Petitioner will file another application under Section 33C(2) on that basis. Since objection is raised by the learned counsel for the Respondent which is being acceded to by the Petitioner, on instructions, the Petitioner will be at liberty to file such application and the impugned order will not come in his way.

4. If such application under Section 33C(2) is filed by the Petitioner on above basis it will be considered on its own merits. The learned Labour Court will no doubt keep the ambit of Section 33C(2), the legislative policy, and various decisions of this Court and the Apex Court, while deciding the said application.

5. If after taking a stand in the application as above, the Petitioner chooses to challenge his termination in some other proceedings, the Labour Court hearing the application and the Court before which such proceeding, if filed, will be entitled to take note of the stand of the Petitioner and the legal consequences

flowing therefrom. In view of this clarification, nothing further is required to be directed and accordingly the writ petition is **disposed** of.

(N.M.Jamdar, J.)