IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2563 OF 1998

Nasik District Central Co-operative
Bank Limited and another .....Petitioner
: V/S :
The Nandgaon Merchants
Co-operative Bank Ltd and Others .....Respondents

* * * * *

Mr. B.V. Bukhari h/f. Mr. A.V. Bukhari, Advocate for the petitioner.

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

27th March, 2015.

P.C. :-

1). This petition is directed against the order dated 2nd February, 1998 passed by the Industrial Court, Nasik in PGA (Appeal) No.6 of 1997.

2). Petitioner no.1 is District Central Co-operative Bank registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and petitioner no.2 is one of the branches of petitioner no.1. Respondent no.1 is Merchant Co-operative Bank also duly registered under the Maharashtra Co-operative Societies Act. Respondent no.1 has invested a sum of Rs.4,36,200/- with petitioner no.1 in a fixed deposit. Respondent no.2 is an ex-employee of respondent no.1. He had on 3rd October, 1996 filed an application being PGA No. 10 of 1992 in the Labour Court against respondent no.1 for payment of gratuity to him. That application was decided by the Labour Court by its order dated 3rd October, 1996 directing respondent no.1 to make payment of Rs.55,800/- to respondent no.2 towards the amount of gratuity with interest at the rate of 9% p.a.. on the amount from 26th August, 1992 till realisation.

3). When respondent no.1 did not comply with the order, respondent no.2 filed an application being Misc. Application (PGA) No. 8 of 1996 against respondent no.1 and petitioner no.1 in the Labour Court, Nasik for recovery of the amount of gratuity. The petitioners had contested the application contending that because there was no relationship of employer and employee between the petitioners and respondent no.2, the application against the petitioners was not maintainable. The Labour Court decided the application by the order dated 13th December, 1997 upholding the objection of the petitioners and issuing Recovery Certificate against respondent no.1 alone to the Collector, Nasik for recovery of the gratuity amount against respondent no.1 alone. The claim of respondent no.2 against the petitioners to direct them to make the payment of gratuity out of the amount deposited by respondent no.1 with the petitioners was rejected.

4). It appears that, respondent no.1 had preferred an appeal in the Industrial Court being Appeal (PGA) No.1 of 1997 against respondent no.2 to challenge the order dated 3rd October, 1996. The Industrial Court rejected the appeal by its order dated 30th April, 1997 because respondent no.1 had failed to deposit the amount with gratuity controlling authority as a per-requisite for consideration of the appeal. After six months i.e. on 22nd October, 1997 respondent no.1 once again filed appeal under Section 7 of the Payment of Gratuity Act being Appeal No.6 of 1997 to the Industrial Court, Nasik to challenge the order dated 3rd October, 1996. The petitioners were subsequently impleaded to the appeal with an allegation that, they were not permitting respondent no.1 to withdraw the amount of PF and gratuity deposited by respondent no.1 with it. The Court was also informed that respondent no.1 and respondent no.2 had agreed to settle the dispute amicably and therefore it was necessary for respondent no.1 to pay the legal dues inclusive of PF and gratuity to respondent no.2. Because the amount was deposited with the petitioners, they sought directions against the petitioners for releasing the amount in favour of respondent no.2. The Industrial Court, accepted the request and directed respondents no.2 and 3 and gave following directions by the impugned order.

> "1. The Respondent no.2 and 3 are directed to deposit the amount of P.F. and gratuity payable to the respondent workman with interest accrued thereon as on today to enable Appellant Bank to make payment of P.F. And gratuity to the respondent workman."

5). It is the case of the petitioners that, they had not been granted an opportunity by the Industrial Court, Nasik to file their say to the appeal. However, they had filed the notes of arguments taking up the contentions available to them to contest the appeal. According to the petitioners, the appeal preferred by respondent no.1 was barred by limitation provided under Section 7(7) of the Payment of Gratuity Act. There was delay of 1 year and 17 days in filing the appeal. The second contention of the petitioners was that the appeal was barred by the principles of res-judicata or the principles analogus to res-judicata. The petitioner had made reference to the earlier appeal being Appeal (PGA) No.1 of 1997 filed by respondent no.1, which had been rejected for non-deposit of the amount of gratuity. The third contention taken up by the petitioners was that, since there was no relationship of employer and employee between the petitioner and respondent no.1, the appeal was not maintainable against them. The fourth contention of the petitioners was that, remedy provided under Section 8 of the Payment of Gratuity Act for recovery of the amount had been resorted to by respondent no.2 and that the labour Court by its order dated 22nd August, 1997 had issued the Recovery Certificate dated 28th August, 1997 vide Outward Memo No. 1562 to the Tahsildar for recovery of the amount as arrears of land revenue. Respondent no.1 had not challenged the order of the Labour Court dated 13th August, 1997 issuing the Recovery Certificate.

6). The Industrial Court by the impugned order has directed the petitioners to pay to respondent no.2, not just the amount of gratuity decided by the concerned authority by its order dated 3rd October, 1996, but also, the amount of Provident Fund which was not part of the original appeal. Also the amount of Provident Fund was not quantified. The petitioners therefore also challenge the impugned order contending that the impugned order is beyond jurisdiction. It is exceeding the jurisdiction of the Industrial Court and perverse on merits.

7). Perusal of the impugned order shows that, it does not consider any of the contentions raised by the petitioners in their written submissions though these contentions have been referred to in the order. Para-31 of the impugned order shows that, apparently when the appeal was taken up for hearing, respondent no.1 had given up the challenge to the order dated 3rd October, 1996 imposing liability of payment of gratuity to respondent no.2. The moment respondent no.1 informed the Industrial Court that the dispute between it and respondent no.2 is settled and respondent no.2 had agreed to pay not just the amount of gratuity but also PF to respondent no.2 the appeal became infructuous because the challenge to the order impugned therein was given up. In the circumstances, the only order that could have been passed by the Industrial Court on the appeal was to dismiss it on the ground that it has become infructuous and it could not have given any directions to the petitioners in the appeal. Thus, the impugned order is clearly without jurisdiction.

8). If the Industrial Court wanted to consider the appeal despite the statement made by respondents no.1 and 2 that the dispute as regards the payment of gratuity was amicably settled between the two, it was necessary for the Industrial Court to consider the objections raised by the petitioners as regards the bar of limitation, as well as, maintainability of the appeal against the petitioners. The Industrial Court has not decided these objections at all. Section 7(7) of the Payment of Gratuity Act provides the period of limitation for challenging the order of determination of the amount of gratuity of 60 days with an extension of 60 days on the appellant showing sufficient cause for preferring appeal within a period of 60 days. The relevant part of Section 7 reads as follows :-

> "7. **Determination of the amount of Gratuity.-**
> 1. …………
> 2. ………..
> 3. ………..

> 4. ....
> 5. ....
> 6. ....
> (7). Any person aggrieved by an order under Sub-Section (4), may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf."

The provision of Section 7(7) is specific and clear. An appeal to challenge the order of the Controlling Authority passed under Section 7(4) of the PGA Act can be preferred only within 60 days from the date of the order and the period of 60 days could be extended by further period of 60 days. Thus, the outer limit for filing the appeal was of 120 days. The appeal preferred by respondent no.2 was clearly beyond the period of limitation and as such barred by limitation.

9). Next, it is not even the case of the respondents that, there was relationship of employer and employee between the petitioners and respondent no.2. Therefore, the petitioners could not have been impleaded to the appeal preferred under Section 7(7) of the Payment of Gratuity Act. At the highest, the role of the petitioners could have been relevant only for the purpose of execution of the order of determination of gratuity i.e. for action under Section 8 of the Payment of Gratuity Act. This action had already been initiated by respondent no.2 and by its order dated 13th August, 1997 the Labour Court had refused to give any directions to the petitioner for payment of the amount of gratuity to respondent no.2 from the amount invested in fixed deposit with the petitioners. There is no challenge to that order by either of the respondents. The appeal preferred by respondent no.1 was clearly an attempt to circumvent the earlier orders passed in favour of the petitioners.

9). The Industrial Court also ought to have seen that respondent no.1 had already preferred an appeal which was rejected on account of non-deposit of the amount of gratuity, which is mandatory in consideration of the appeal.

10). In all the above circumstances, the order impugned in the petition cannot be sustained. Hence, the petition is allowed. Rule is made absolute in terms of prayer clause (a) and Appeal (PGA) No.6 of 1997 is dismissed.

(SMT. R.P. SONDURBALDOTA, J)