

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

**CIVIL APPLICATION NO.451 OF 2015
IN
WRIT PETITION NO.2337 OF 2013**

Shri. Arvind Vasant Magar Applicant

Vs.

M/s Tigon Enterprises Respondent

Mr. Vikas Shekdar, Advocate for the Applicant.

Mr. Rahul Nerlekar alongwith Ms. Neeta Solanki i/by Kiran Jain,
Advocate for the Respondent.

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

Date : 17th June, 2015.

P.C.

1 This Civil Application is taken out by the employee seeking relief under Section 17-B of the Industrial Disputes Act, 1947 of payment of last drawn wages to him, during the pendency of the petition to challenge the order of reinstatement in service.

2 The respondent has opposed the application contending that in view of closure of business, the application under Section 17-B of the Industrial Disputes Act is not maintainable. It appears that the

applicant had filed recovery proceedings in respect of the back-wages awarded by the impugned order and the respondent has made payment of an amount of Rs.3,25,000/- to the applicant. The respondent contends that it has in fact paid an excess amount to the applicant and has demonstrated in the affidavit-in-reply as to how the amount paid was in excess of the award.

3 The main question to be considered in the application is the liability of the respondent to pay last drawn wages under Section 17-B of the Industrial Disputes Act, during the pendency of the petition, in view of the contention that the establishment is closed down.

4 Mr. Shekdar, the learned advocate for the applicant submits that there is no evidence of closure of the establishment. The reply filed by the respondent however, is sufficient to establish the fact of closure. The respondent states that in the month of June/July, 2003, the electricity connection to the premises of the establishment was permanently disconnected. The partnership firm of the respondent stood dissolved w.e.f. 4th October, 2006. The Special Recovery Officer, Pune by the notice dtd. 16th December, 2002 sealed the property of the firm on 2nd January, 2003. Thereafter the properties of the establishment were sold and the premises have been disposed off by a public auction. Not just that, but the deponent of the affidavit-in-reply one of the partners in the establishment had to take up employment in

the year 2005 with Paramount Surgimed Limited and work until the year 2008. The respondent has produced the documents in support of the claim. Hence, there is sufficient material on record as regards the closure of the establishment.

5 Mr. Nerlekar, the learned advocate for the respondent submits relying upon the decisions of this court and Kerala High Court in (i) Hind Rectifiers Limited Vs. Presiding Officer, 1st Labour Court, Bombay & Anr., reported in 2004(4) MH.L.J. Page 622 and (ii) N. Mahalingam & Company vs. T. Santhosh Kumar & Ors, reported in 2015(145)FLR page 540 that once there is closure of the establishment, the right of the employee under Section 17-B of the Industrial Disputes Act ceases to operate. Considering the fact of closure of the establishment, the application under Section 17-B of the Industrial Disputes Act would not be maintainable. Hence, the Civil Application is dismissed.

(Smt. R.P. SondurBaldota, J.)