

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

WRIT PETITION NO.2435 OF 2015

Kishore Fabrics, through its proprietor,
Mr. Kishore Galaiyya
Gala No.5, First Floor, House No.156,
Udyan Nagar, Kamat Ghar,
Near Agra Road,
Bhiwandi, Dist. Thane

.. Petitioner.

V/s

Mr. Madhukar Gosavi Kaliram Patil
C/o. Bhiwandi Kamgar Sangh,
238, Hira Complex,
Chandan Baug, Bharat Colony,
Kamat Ghar, Bhiwandi,
Dist. Thane.

Residential address :

Mr. Madhukar Gosavi Kaliram
House No.76, Vadu Nawaghar,
Bhiwandi, Dist. Thane.

.. Respondent.

Mr. Sachin Rege, for the Petitioner.
Mr. A.S. Rao, for the Respondent.

**Coram : Smt. R.P. SondurBaldota, J.
Date : 16th June, 2015**

P.C.

1. The petitioner-employer challenges the order dated

21st March, 2014 by which the Labour Court allowed the Reference (IDA) No.53 of 2007 and held that dismissal from service of the respondent on 26th July, 2007 is illegal and directed the petitioner to reinstatement the respondent in service with full back wages and continuity of service from 26th July, 2007.

2. The petitioner carries on business of fabric weaving. The respondent was working with it as Warper since 27th November, 1995. After working with it for 11 long years he was orally terminated from service on 26th July, 2007. The respondent claimed that since the date of joining service with the petitioner, he has worked for more than 240 days in every year. At the instance of the respondent, the dispute raised by him was referred to the Labour Court for adjudication.

3. The petitioner claimed in the written statement that it is a proprietary concern of Kishore Galaiyya and his mother

Pushpaben Galaiyya has been wrongly impleaded to the reference. She is only the owner of House No.156, wherein the business of the petitioner is carrying on. According to the petitioner, the House No.156 has 10 galas and except for Gala No.5 on the first floor, all other galas are let out to different persons. The petitioner also denied that the respondent was employed by it and denied the relationship of employer and employee in between the two.

4. The Labour Court firstly noted that the petitioner has shifted from the stand taken before the Conciliation Officer. On appreciation of the evidence it found that the petitioner has failed to establish that there is no relationship with the respondent. The petitioner has failed to produce the relevant documents of attendance register, wage register and cash vouchers for the period of April, 2004 to March, 2006, despite being called upon to produce and therefore, it drew adverse inference that if the documents were to be produced, the same

would not have supported the petitioner. The Labour Court also disbelieved the claim of the petitioner that except for Gala No.5, all other galas have been let out to the different persons. In any case, admittedly, the petitioner has 16 powerlooms and one warping machines in Gala No.5. The petitioner had claimed that in fact one Vithoba was working with it as Warper, but failed to produce evidence to support the claim. Perusal of the evidence also shows that there is not even a suggestion given to the respondent in his cross examination that there was no relationship of employer and employee with him. The impugned order has considered the entire evidence on record to arrive at the conclusion that the dismissal of the respondent from the service was illegal. There is no infirmity in the impugned order. Hence, the petition is dismissed.

(Smt. R.P SondurBaldota, J.)