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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2610 OF 2014

M/s.Bhor Industries Limited .. Petitioner
Vs.
Mr.Gangaram Bhikaji Kudapkar .. Respondent

**WITH
WRIT PETITION NO. 2613 OF 2014**

M/s.Bhor Industries Limited .. Petitioner
Vs.
Anil R.Yeragi .. Respondent

**WITH
WRIT PETITION NO. 2617 OF 2014**

M/s.Bhor Industries Limited .. Petitioner
Vs.
Mr.Bharat Satu Gaikwad .. Respondent

**WITH
WRIT PETITION NO. 2662 OF 2014**

M/s.Bhor Industries Limited .. Petitioner
Vs.
Vilas Baburao Bhosale .. Respondent

**WITH
WRIT PETITION NO. 2663 OF 2014**

M/s.Bhor Industries Limited .. Petitioner
Vs.
Mr.Atul Raghunath Shigvan .. Respondent

Mr.Kiran Bapat i/b Mr.A.H.Fatangare, Advocate for the Petitioner.
Mr.I.A.Saiyed, Advocate for Respondents in W.P.No.2662 of 2014,
W.P.No.2663 of 2014.
Mr.Sunil Kadam, Advocate for Respondents in W.P.No.2610 of 2014,
W.P.No.2613 of 2014 & W.P. No.2617 of 2014.

CORAM : R.G.KETKAR, J.

DATE : 11th February, 2015

P.C. :

. Heard Mr.Kiran Bapat, learned Counsel for the petitioner, Mr.I.A.Saiyed, learned Counsel for the respondents in Writ Petitions No. 2662 of 2014 and 2663 of 2014 and Mr.Sunil Kadam for respondents in Writ Petitions No. 2610 of 2014, 2613 of 2014, 2617 of 2014 at length.

2. By these petitions under Article 226 of the Constitution of India, the petitioner has challenged i) the judgment and award dated 30/07/2011 passed by the learned Judge, 8th Labour Court, Mumbai in references made under section 10(3) read with section 12(5) of the Industrial Disputes Act, 1947 (for short 'Act') as also ii) the judgment and order dated 28/01/2014 passed by the learned Presiding Officer, Sixth Labour Court, Mumbai by which the application made by the petitioner for directing the respondents to accept the cheque in the sum of Rs.5,000/- , or in the alternate, directing the office to accept the said amount was rejected. By the judgment and award dated 30/07/2011, the Labour Court answered the references in the affirmative and held that the respondents are entitled to reinstatement with continuity of services with 50% back wages with effect from the date of dismissal. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, rule is

made returnable forthwith and the petitions are taken up for final hearing.

As common questions of law and facts arise in these petitions, the same can conveniently be disposed of by this common judgment. For appreciating the controversy between the parties, facts from Writ Petition No. 2662 of 2014 are taken into consideration.

3. In support of these petitions, Mr.Bapat submitted that the Labour Court allowed the reference on 30/07/2011. He submitted that though written statement was filed opposing the reference on various grounds, the petitioner did not participate in the proceedings for justifying its action of termination as also for showing that punishment is proportionate to the misconduct of the respondent. After considering the material produced by the respondent on record, the Labour Court answered the reference in the affirmative.

4. He submitted that the petitioner filed application at Exhibit C-1 for setting aside the exparte award. After hearing both sides, by order dated 15/09/2012, the Labour Court allowed the application and set aside the exparte award subject to the payment of costs of Rs.5,000/- within one month to the respondent. It was also made clear that reference is restored to its original stage and number subject to the compliance of order of payment of costs. Mr.Bapat submitted that the petitioner thereafter filed application Exhibit C-16 on 17/10/2013. It was set out therein that since the respondent

challenged the restoration before this Court, he chose not accept that amount. The petitioner, therefore, brought cheque dated 30/09/2013 and sought direction from the Labour Court against the respondent to accept the said cheque. On the same day, the Labour Court directed the office to accept deposit and acknowledge the receipt for the same. Mr.Bapat submitted that advocate appearing for the petitioner was under bonafide impression that the Court has passed the order “other side to say”. The cheque was, therefore, not deposited in the office. The petitioner thereafter filed another application Exhibit C-17 on 02/12/2013 enclosing therewith cheque dated 30/09/2013 and prayed for directing the respondent to accept the said cheque or in the alternate, directing the office to accept the said amount. The respondent resisted the application by filing reply. After hearing both sides, by order dated 28/01/2014, the Labour Court dismissed the application.

5. He submitted that when application at Exhibit C-17 was made on 02/12/2013, cheque which was earlier produced along with application Exhibit 16 dated 17/10/2013 was valid. In other words, he submitted that the cheque which was produced along with application Exhibit 16 dated 17/10/2013 was available with the petitioner for depositing it before the Labour Court subject to the order of the Labour Court. The Labour Court while dismissing the application adopted hyper technical approach. The Labour Court

failed to appreciate that exparte award was set aside on 15/09/2012. This Court also dismissed the petitions challenging the order dated 15/09/2012 on 24/07/2013. If at all, there was failure on the part of the petitioner in paying the costs, the same could have been compensated by directing the petitioner to pay further costs in addition to costs of Rs.5,000/-. He, therefore, submitted that this is a fit case for restoring the reference by setting aside the order dated 28/01/2014.

6. On the other hand, Mr.Saiyed appearing on behalf of the respondents in Writ Petitions No. 2662 of 2014 & 2663 of 2014 supported the impugned order. He submitted that the petitioner was throughly negligent in prosecuting the reference. The reference is pending since 2002. He submitted that on behalf of the petitioner Dnyandeo Govind Sawant was examined. In cross examination, he deposed that he was the Human Resource Head at Bholvde plant i.e. Administrative Work except production till the year 2004, when he retied. He was thereafter appointed as a consultant by the petitioner. Though he was aware of the pendency of the reference, deliberately, the petitioner did not participate in the proceedings before the Labour Court. The respondents-workmen are out of employment and references are pending since 2002. All these year, the respondents are denied the fruits of award dated 30/07/2011. He further submitted that there is no question of now reinstatement in view of

the subsequent development viz. the company is closed. In any case, it is a question of payment of monetary consideration. Having regard to the services put in by the respondents, the petitioner ought to pay all the dues of the respondents as if they continued in the services. In other words, he submitted that the petitioner is liable to pay terminal dues of the respondents as also bonus, gratuity, closure compensation, provident fund contribution, leave wages etc. In any case, if the Court is inclined to restore the references, the petitioner should be ordered to pay 50% of the back wages.

7. Mr.Sunil Kadam appearing on behalf of respondents in Writ Petitions No.2610 of 2014, 2613 of 2014 and 2617 of 2014 supported the impugned order. In the first place, he submitted that award was not an exparte as the petitioner had filed written statement. Secondly, the petitioner had made application on 09/11/2012 Exhibit C-15 stating therein that it is depositing the costs. On the same day, the Labour Court passed an order directing the office to accept the amount of costs. However, the petitioner did not deposit the costs. The petitioner thereafter filed application on 17/10/2013, however, in that application, no explanation is given as regards the bonafide impression of petitioner's advocate that the Court had merely passed order on 09/11/2012 directing the "other side to file say". The said contention is advanced for the first time in this petition. For all these reasons, he submitted that no case is made out

for setting aside order dated 28/01/2014.

8. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is evident from the record that initially by the judgment and award dated 30/07/2011, references were allowed. The petitioner filed application at Exhibit C-1 for setting aside the exparte awards and that application was allowed on 15/09/2012 and exparte awards were set aside subject to the payment of costs of Rs.5,000/- payable to the respondents within one month. It is equally not in dispute that costs were not paid within one month from the date of the order. The petitioner contends that though costs were offered to the respondents, they declined to accept on the ground that they intended to challenge the order dated 15/09/2012. Be that as it may, it appears from the record that on 09/11/2012, the petitioner made application before the Labour Court and prayed for depositing the amount in the Labour Court. On the same day, the Labour Court directed the office to accept the costs. It is now apparent that the petitioner did not comply that order and deposit amount of costs in the Labour Court. The petitions filed by the respondents challenging the order dated 15/09/2012 were dismissed by this Court on 24/07/2013. In other words, order dated 15/09/2012 setting aside exparte award dated 30/07/2011 was maintained. The petitioner thereafter filed application Exhibit C-16 on 17/10/2013 praying for

direction to the respondent to accept the said cheque. On 17/10/2013, the Court directed the office to accept deposit and acknowledge the receipt. Mr.Bapat submits that the advocate representing the petitioner was under bonafide impression that the Court merely passed order "other side to say". After realising that order was already passed on 17/10/2013 directing the office to accept amount of deposit, the application Exhibit C-17 was taken out praying for directing the respondents to accept the amount or in the alternate, directing the office to accept said amount. It is evident that, the cheque dated 30/09/2013 which was produced along with Exhibit C-16 was also produced along with application Exhibit C-17 dated 02/12/2013. In other words, the cheque was valid when the application Exhibit C-17 was made on 02/12/2013. Mr.Bapat submitted that on account of mistake committed by the advocate, the petitioner should not suffer. The Labour Court ought not to have adopted hyper technical approach while considering the application, more so when by the earlier order dated 15/09/2012, exparte award was set aside and the said order was confirmed by this Court on 24/07/2013. I find merit in the submissions. As noted earlier, by order dated 15/09/2012, the exparte award was set aside subject to payment of costs of Rs.5,000/- to the respondent. Respondents challenged that order in this Court by filing petitions which were dismissed on 24/07/2013. Now, one cannot go behind the order

setting aside the exparte award. Only question is about the failure on the part of the petitioner in paying the costs. In my opinion, in view thereof, the Labour Court ought to have allowed the application Exhibit C-17 subject to imposing costs over and above costs which were already imposed by the order dated 15/09/2012. Considering the totality of the circumstances, in my opinion, the petitioner should be directed to pay Rs.15,000/- costs in each petition in addition to the costs of Rs.5,000/- awarded by the order dated 15/09/2012. In other words, the petitioner shall now pay costs of Rs.20,000/- in each petition to the respondent within 2 weeks from today. It is made clear that payment of costs shall be condition precedent for setting aside order dated 28/01/2014. In the result, petitions succeed. Rule is made absolute in the following terms.

- i) The judgment and order dated 28/01/2014 passed by the Labour Court is quashed and set aside thereby, the references are restored to their original stage and numbers subject to paying or depositing amount of costs Rs.20,000/- in each petition in the Labour Court, Mumbai under due intimation to the learned Counsel for the respondents within 2 weeks from today.
- ii) It is made clear that if the amount of costs is not paid or deposited within 2 weeks from today, order dated 28/01/2014 shall stand revived without further reference to the Court.

iii) Upon payment or depositing of costs of Rs.20,000/- each in all the petitions, references shall stand restored to their original stage and number.

iv) Having regard to the fact that the references are pending since 2002, the Labour Court is requested to decide the references within 6 months from the date of the appearance of the parties. The learned Counsel appearing for the parties agree that parties will appear before the Labour Court on 02/03/2015 and for that purpose, fresh notice need not be issued to them. The Labour Court will decide the references within 6 months from the date of the appearance of the parties namely, 02/03/2015 on the basis of the evidence on record and in accordance with law.

(R.G.KETKAR, J.)