

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2937 OF 2016

Sahebrao s/o Narayanrao Chaure,
Age 55 years, Occu: Service,
r/o. At Post Shirad, Tq. Hadgaon,
Dist.Nanded.

**...PETITIONER
(Ori. Respondent)**

VERSUS

Vijay s/o Arjun Dhage,
Age 35 years, Occu. Mason,
R/o. Near Ginning Press,
Datta Bardi, Hadgaon,
Tq. Hadgaon, Dist. Nanded.

**...RESPONDENT
(Ori. Applicant)**

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Shri S.D.Kamble, Advocate for petitioner.
Shri R.K.Ingole Patil, Advocate for respondent /
sole.

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CORAM: P.R.BORA, J.

DATE: June 10th, 2016

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JUDGMENT:

1. Heard. Rule. Rule made returnable and
heard forthwith with the consent of learned Counsel for the
parties.

2. Aggrieved by the order dated 10.8.2015, passed by the Labour Court at Nanded in Application (IDA) No.12/2011, the petitioner has filed the present petition.

3. Respondent herein had filed the aforesaid application invoking the provisions under Section 33-C(2) of the Industrial Disputes Act, 1947, claiming an amount of Rs.72,146/- with interest thereon at the rate of 16% per annum, and the cost of the application. It was the contention of the respondent in the said application that the present petitioner had provided him the work of constructing his house, and had agreed to pay him his labour charges at the rate of 127/- per Square Feet. It was the further contention of the respondent that he accordingly carried out the construction work but the petitioner did not pay him his labour charges as agreed by him. According to the respondent, amount of Rs.72,148/- was balance towards the petitioner and since he refused to pay the same, he was constrained to file a complaint before the Labour Court under the provisions of the Industrial Disputes Act, 1947.

The application so filed by the respondent was opposed by the present petitioner on factual as well as legal grounds. The petitioner had raised a specific objection that the application so filed by the respondent was not maintainable before the Labour Court under the provisions of the Industrial Disputes Act, 1947. Learned Labour Court, however, partly allowed the application filed by the respondent and directed the petitioner to pay to the respondent an amount of Rs.17,650/- with interest at the rate of 9% per annum from the date of filing of the application till actual realization of the amount. Aggrieved by the aforesaid order, the petitioner has filed the present petition.

4. Heard learned Counsel appearing for the parties. Perused the impugned order. Perusal of the application filed by the respondent before the Labour Court, Nanded, reveals that the petitioner and the respondent had entered into an agreement for construction of the house of the petitioner. As per the said agreement, the labour charges to be paid to the respondent by the petitioner were determined at the rate of Rs.127/- per

Sq.Ft. Respondent has contended in paragraph no.2 of his application that he has been carrying out the work of a Mistri and taking up the contracts of construction of houses of different persons. It is, thus, evident that respondent is a private Mason who undertakes the masonry work on contract basis. The averments in the complaint apparently reveal that neither the petitioner is an industry nor is the respondent an employee.

5. For invoking the provisions under the Industrial Disputes Act, 1947, a person claiming any relief under the said Act, must be a 'workman' and against whom such relief is claimed must be an 'employer' as defined under the Act. The definition of 'workman' as provided in Section 2(s) in the said Act reads thus:

"2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

... .."

Thus, to fall in the definition of a workman, the person must have been employed in any industry. As defined in Section 2(j) of the said Act, the 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. Since in Section 33-C (2) of the Act, word 'employer' is used, it would be useful to see the definition of 'employer' also which is provided under Section 2(g) of the said Act and reads thus:

"2 (g) "Employer" means-

- (i) In relation to any industry carried on by or under the authority of any department of [the Central Government or a State Government,] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) In relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority; "

From the plain reading of the definitions of 'employer', 'industry' and 'workman', as are provided under the Industrial Disputes Act, 1947, there remains no doubt that neither the respondent can be said to be a workman, nor the petitioner can be branded as the industry, or the employer.

6. The respondent is admittedly a Mason who privately carries out the masonry work on contract basis. Similar such contract was entered into between the petitioner and the respondent. In the circumstances, if at all it was the grievance of the respondent that the petitioner did not pay him his labour charges in terms of the contract entered into between them, the remedy available for the respondent was elsewhere but certainly not under Section 33-C(2) of the Industrial Disputes Act. It is surprising that the learned Labour Court could not appreciate these basic aspects and proceeded with the application filed before it and also partly allowed the said application. The order passed by the Labour Court is without jurisdiction and hence deserves to be set aside. Hence, the following order:

ORDER

- 1) The Writ Petition is allowed.
- 2) The order dated 10.8.2015, passed by the Labour Court at Nanded in IDA No.12/2011 is quashed and set aside.

- 3) No order as to costs.
- 4) Rule made absolute in above terms.

(P.R.BORA)
JUDGE

AGP/2397-16wp

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