

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

WRIT PETITION NO.4719 OF 2016

**Shree Siddheshwar Sahakari Sakhar
Karkhana Ltd., Kumthe,
Post Tikekarwadi, Tal. North Solapur,
Dist. Solapur**

..Petitioner

Versus

Shri. Bhogling Bapurao Patil

..Respondent

**Shri. Vishwanath Patil i/by Shri. Yuvraj D. Patil for the Petitioner.
Shri. Vinod Joshi for the Respondent.**

**CORAM : R. M. SAVANT, J.
DATE : 19th OCTOBER, 2016**

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 05.12.2015 passed by the Learned Member of the Industrial Court, Solapur, by which order, the Revision Application being Revision (ULP) No.35 of 2015 filed by the Petitioner herein came to be dismissed and resultantly, the order dated 07.05.2015 passed by the Learned Judge of the Labour Court, Solapur, allowing Misc. (ULP) No.3 of 2012 came to be confirmed.

2 The Respondent herein was working with the Petitioner herein and his services came to be terminated on 11.03.2005. The said termination was challenged by the Respondent by filing Regular Civil Suit

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No.259 of 2005 which was filed on 19.03.2005. It seems that in the said suit, an application under Section 9A of the Code of Civil Procedure came to be filed by the Petitioner raising the jurisdiction of the Civil Court to try the suit. The said application came to be allowed by the Civil Court by order dated 30.04.2005 and the issue came to be answered against the Respondent and the plaint came to be returned for being filed before the appropriate forum. The Respondent thereafter filed a dispute before the Co-operative Court, Solapur on 13.05.2005. The said dispute was numbered as Dispute No.384 of 2005. Suffice it would be state that the said dispute came to be partly allowed by the Co-operative Court by judgment and order dated 13.08.2010 and resultantly, the dismissal order dated 11.03.2005 came to be set aside. It seems that the Petitioner before the Labour Court raised the issue of jurisdiction of the Co-operative Court, and the said issue came to be answered against the Petitioner. The Co-operative Court thereafter set aside the order of dismissal dated 11.03.2005, but refused the prayer for reinstatement. The reasons therefor are found in the judgment and order of the Co-operative Court dated 13.08.2010.

3 Aggrieved by the said order dated 13.08.2010 passed by the Learned Judge of the Co-operative Court, the Petitioner as well as the Respondent filed separate Appeals. The Petitioner's Appeal was numbered

as 58 of 2010, whereas the Respondent's Appeal was numbered as 49 of 2010. The Co-operative Appellate Court by judgment and order dated 21.12.2012 decided the Appeals and set aside the order passed by the Co-operative Court dated 13.08.2010 principally on the ground that the Co-operative Court did not have the jurisdiction to entertain the dispute considering the subject matter of the dispute. Hence the proceedings filed by the Respondent in the Co-operative Courts ended on 21.12.2012.

4 The Respondent thereafter proposed to file the instant Complaint invoking the MRTU & PULP Act, 1971 in view of the fact that there was a delay of about 7 years and 8 months in filing the Complaint, he filed an application for condonation of delay being Misc. (ULP) No.3 of 2012. In the said application, the condonation of delay was sought principally on the basis of Section 14 of the Limitation Act, 1963 and specifically on the ground that the Respondent was bonafide prosecuting the proceedings before the Civil Court and the Co-operative Courts. The said application came to be replied on behalf of the Petitioner. The Learned Judge of the Labour Court, Solapur by his order dated 07.05.2015 allowed the said Misc. (ULP) No.3 of 2012 and thereby condoned the delay of 7 years and 8 months which has occurred in filing of the Complaint. The Learned Judge of the Labour Court deemed it appropriate to accept the case of the Respondent based on Section 14 of

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the Limitation Act, 1963. This was on the basis that the Respondent was bonafide pursuing remedies before the wrong forums i.e. initially before the Civil Court and thereafter before the Co-operative Courts. As indicated above, the Learned Judge of the Labour Court by his order dated 13.08.2010 has allowed the said Misc. (ULP) No.3 of 2012.

5 Being aggrieved by the said order dated 07.05.2015 passed by the Learned Judge of the Labour Court, the Petitioner herein filed Revision (ULP) No.35 of 2015. The Learned Member of the Industrial Court having regard to the conspectus of facts as narrated hereinabove did not deem it appropriate to interfere with the order passed by the Labour Court condoning the delay of 7 years and 8 months in filing of the Complaint. It appears that an order was passed by the Labour Court initially allowing the application for condonation of delay which resulted in the Petitioner herein filing Revision (ULP) No.60 of 2013 which came to be allowed by the Learned Member of the Industrial Court and the order dated 20.07.2013 passed by the Labour Court allowing the application for condonation of delay was set aside and the matter was remanded back to the Labour Court for a de-novo consideration of the said application by directing the parties to lead evidence. The said order passed by the Industrial Court dated 05.04.2014 was taken exception to by the Respondent by filing Writ Petition No.6181 of 2014. The said order

dated 05.04.2014 was not interfered with by a Learned Single Judge of this Court for the reasons mentioned in the said order. Pursuant to the said order, the parties led evidence and as indicated above, the reasons mentioned by the Respondent for the said delay of 7 years and 8 months has commended acceptance to the Labour Court which has now been confirmed by the Learned Member of the Industrial Court by the impugned order.

6 The Learned Counsel appearing on behalf of the Petitioner Shri. Vishwanath Patil would seek to draw this Court's attention to the conduct of the Respondent so as to contend that the Respondent was not worthy of any indulgence being shown by the Courts below. The Learned Counsel sought to draw this Court's attention to the fact that the filing of the suit was concealed by the Respondent as also the nature of the order passed by the Co-operative Court which observation according to him has been made in the order passed in the Writ Petition filed in this Court.

7 In my view, it is not possible to accept the said contentions as the explanation given by the Respondent by way of his evidence has been considered by the Labour Court and the said explanation has been accepted by the Labour Court. The Labour Court has also in the facts and circumstances of the case deemed it appropriate to exercise discretion in

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favour of the Respondent in the matter of condonation of delay in filing the Complaint. The said exercise of discretion has not been interfered with by the Industrial Court in its revisionary jurisdiction, as the Learned Member of the Industrial Court has by the impugned order dismissed the Revision filed by the Petitioner. This Court in its writ jurisdiction under Article 227 of the Constitution of India therefore does not deem it appropriate to interfere with the discretion exercised by the Courts below. Hence no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]