

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5162 OF 2016**

M/s. Modi Rubber Ltd. and anr. : Petitioners.
versus
Mr. A D Mathunny and anr. : Respondents.

**Mr. Jayesh K Desai a/w Mr. K S Bapat i/by M/s. Desai & Desai Associates
for the Petitioners.**

Mr. Suresh Babu i/by M/s. Unilex for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 24th August 2016

P.C.

1 The writ jurisdiction under Articles 226 and 227 of the Constitution of India of this Court is invoked against the order dated 25/07/2013 passed by the learned Presiding Officer, 11th Labour Court, Mumbai by which order the application filed by the Respondents herein under Section 33-C(2) of the Industrial Disputes Act, 1947 came to be partly allowed and the Petitioners herein were directed to pay an amount of Rs.2,04,125/- towards wages and amount of Rs.89,115/- towards difference of gratuity to the Respondent No.1 herein i.e. the original Applicant.

2 The application in question being Application (IDA) No.91 of 2004 was filed by the Respondent No.1 herein claiming earned wages for the period from September 2001 to July 2003 and for payment of difference in gratuity. The Respondent No.,1 herein was working with the Petitioners in their Bombay office at the relevant time. It seems that the Respondent No.1 had submitted

his resignation on 01/08/2003 with effect from 31/08/2003 which was accepted on 24/08/2003 and on such acceptance the Respondent No.1 was paid monetary benefits which he was entitled to on his resignation.

3 The Respondent No.1 herein filed the instant application after a period of 5 months of the acceptance of his resignation and sought the payment of his earned wages for the period from September 2001 to July 2003 which, according to him, were not paid to him as also the difference in gratuity.

4 The parties placed material before the learned Presiding Officer, 11th Labour Court, Mumbai for and in support of their respective assertions. In so far as the Respondent No.,1 is concerned, reliance was placed on the decision of the Industrial Court in Complaint (ULP) No.1095 of 2001, as confirmed by the Division Bench of this Court in Writ Petition No.3505 of 2006 as also to the effect that though against the order passed by the Division Bench the matter was carried to the Apex Court, the Apex Court had not granted any stay. In so far as the said adjudication by the Industrial Court is concerned, the Industrial Court had held that the employees of the Petitioners were entitled to wages from September 2001 to July 2003 and did not thereby accept the case of the Petitioners that they are not liable to pay the wages on account of the fact that there was no work for the said employees.

5 Relying upon the said order, the learned Presiding Officer held that though the Respondent was not one of the complainants in the said complaint, but he would nevertheless be entitled to the benefits of the said order as he was also an employee of the Petitioners and claiming the same benefits i.e. payment of wages between September 2001 to July 2003.

6 In so far as the aspect of gratuity is concerned, the learned Presiding Officer, 11th Labour Court, Mumbai has held that the scheme of gratuity could not be changed to the detriment of the workman without there being a notice issued under Section 9-A of the Industrial Disputes Act and since the scheme as comprised in the Modi Rubber Limited Employees Gratuity Fund is applicable, the Respondent No.1 would be entitled to the gratuity at the rate contemplated in the said scheme. The learned Presiding Officer therefore held that the total gratuity payable to the Respondent was Rs.1,68,168/- out of which Rs.79,053/- was paid and therefore the balance remaining was Rs.89,115/-. It is pertinent to note that in the evidence it has come on record that though a reference was made to the BIFR in the year 2004 the Petitioner has ceased to be a sick company since the year 2008. The learned Presiding Officer has concluded, by holding that the Respondent No.1 is entitled to the said amounts towards earned wages and difference in gratuity as per his pre-existing right.

7 In my view, having regard to the reasons mentioned by the learned Presiding Officer, 11th Labour Court, Mumbai for partly allowing the Application (IDA) No.91 of 2004, no fault can be found with the impugned order, the exercise of the writ jurisdiction is therefore not warranted. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]