

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6728 OF 2016

Amit Spinning Industries Limited .. Petitioner

vs.

Shahu Soot Girani Kamgar Sangh .. Respondent

Mr.Kiran S. Bapat with Mr.Jayesh Desai i/b M/s.Desai & Desai Associates for the petitioner

Mr.Bennet D'costa with Ms.Jignasha Pandya for the respondent

CORAM : K. K. TATED, J.
DATE : DECEMBER 15, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 226 and 227 of the Constitution of India, the Petitioner challenges the order dated 2.3.2016 passed by Member, Industrial Court No.2, Kolhapur on preliminary issue in complaint (ULP) No.141 of 2015.

3 In the present proceedings, respondents filed complaint (ULP) No.141 of 2015 before the Industrial Court, Maharashtra at Kolhapur under section 28(1) read with item no.9 and 10 of Schedule IV to the provisions of the Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971 and the Rules made thereunder. The respondent made following prayers in their complaint:

- “a) the instant Complaint may please be allowed with costs;
- b) it be declared that the respondents have engaged into and engaging in an unfair labour practices under item 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 by not making the payment of wages stated above and further by not paying the statutory dues i.e. provident fund, amounts shown to have been deducted on account of L.I.C. instalments, society loan, deposits;
- c) that the respondents be directed to pay to the employees remaining amount of wages for the month of March 2015 and entire amount of earned wages for the month of March, 2015 and entire amount of earned wages for the months of April, 2015, for the month of May, 2015, for the period 1st May, 2015 to 19th May, 2015 and for the month of July, 2015 with 18% interest p.a.;
- d) the respondents be directed to pay the concerned authority i.e. provident fund authority, Life Insurance Corporation of India and the Co-operative Society of the employees the amounts shown to have deducted from the wages of the employees as stated in para no.3-F and 3-G of the complaint.
- e) the respondents be directed to pay to the concerned provident fund authority the amounts of employer's share in respect of the employees of the respondents, due from the month of December, 2014.
- f) the respondents be directed to cease and desist from engaging unfair labour practices forthwith.
- g) the respondents be directed to pay interest and compensation to the concerned employees;
- h) interim relief as prayed for may please be granted.

- i) any other just and reasonable orders which this Hon'ble Court may deem fit and proper may please be granted in favour of the Complainant.
- j) the permission to add, alter or amend the foregoing Complaint may please be granted to the Complainant if and when found necessary.”

4 During the pendency of the said complaint, petitioner filed their written statement and raised several objections. The petitioner also filed an application on 17.11.2015 for framing preliminary issue about the maintainability of the complaint in view of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. The petitioner in their application pleaded that the reference is already registered with BIFR. Hence, Industrial Court has no jurisdiction to decide the complaint filed by the respondents on its own merits. The said application rejected by the Industrial Court by order dated 2.3.2016. Hence, the present Writ Petition.

5 The learned counsel for the petitioner submits that the petitioner company made reference to the BIFR and subsequently the company declared as a SICK company. Therefore, in view of section 22 of the said Act, all proceedings pending against the Company for recovery of money is required to be stayed. In support of these contentions, he relies on the judgment of the Apex Court in the matters of ***Raheja Universal Limited vs. NRC Limited and others, (2012) 4 SCC 148, KSL and Industries Limited vs. Arihant Threads Limited and others, (2015) 1 SCC 166 and unreported judgment of this court (Coram: S.C.Gupte, J.)*** in the matter of ***Suryakant Ramchandra Mahadik vs.***

Khatau Makanji Spinning and Weaving Mills Ltd. in Writ Petition No.752 of 2016 (High Court Original Side).

6 The learned counsel for the petitioner submits that in all these authorities, the Apex Court as well as our Hon'ble Court held that if reference is pending before BIFR, provisions of section 22 of the said Act is applicable. Therefore, all the proceedings pending against the Company is required to be stayed. He relies on paragraph 44, 45, 48 and 61 of judgment in the matter of ***Raheja Universal Limited vs. NRC Limited and others*** (Supra), paragraph 26 of judgment in the matter of ***KSL and Industries Limited vs. Arihant Threads Limited and others*** (Supra) and paragraph 7, 8 and 9 of judgment in the matter of ***Suryakant Ramchandra Mahadik vs. Khatau Makanji Spinning and Weaving Mills Ltd. in Writ Petition No.752 of 2016 (High Court Original Side)*** (Supra).

7 The learned counsel for the petitioner submits that the Industrial Court rejected their application mainly on the ground that in section 22 of the said Act, reference is made to the Suit and not to the Complaint. He submits that the Industrial Court dismissed their application on the ground that if the Suit is pending against the Company then only section 22 of the said Act is applicable. On the basis of these submissions and the authorities as above, the learned counsel for the petitioner submits that the impugned order passed by Industrial Court dated 2.3.2016 is required to be set aside.

8 On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He submits that there is

no dispute that the petitioner Company's reference is admitted under the said Act and same is declared as SICK Industry. He submits that BIFR at the time of accepting the petitioner's reference framed guidelines for preparation of rehabilitation scheme dated 24.7.2012. He submits that clause no.11 of the said guidelines protect the interest of the workers. Said guideline reads thus:

“11. The company shall note that protection of Section 22(1) of SICA would not be available to it against withholding of any of the workers dues including Employees Provident Fund & ESIC dues (other than damages levied, if any), gratuity, wages for the working period, etc. The Company shall not default in the timely payment of any such dues on the ground that its case is pending with the BIFR.”

9 The learned counsel for the respondent submits that the petitioner's reference under the said Act was admitted by the BIFR subject to those guidelines which were not challenged by the petitioner and same in force as on today also. Hence, there is no bar on Industrial Court in deciding the complaint filed by the petitioner for their wages and other reliefs. Hence, there is no substance in the present Writ Petition and same is required to be dismissed.

10 I have heard both the sides at length. It is admitted fact that the petitioner company is declared as SICK Industry. Preparation of rehabilitation scheme is pending before the BIFR. BIFR gave guidelines for preparation of the rehabilitation scheme of the petitioner company. In that scheme, clause no.11 as reproduced hereinabove clearly shows that Company shall not default in payment of any dues of the workers on the ground that case is pending with BIFR. This itself shows that

BIFR at the time of registering the petitioner's company as SICK Company made it clear that the workers can take proceeding against the Company for their dues. Apart from that those guidelines were not challenged and or altered at the request of petitioner till today. Therefore, the authority cited by the petitioner as stated hereinabove are not applicable in the facts and circumstances of the present case.

11 Apart from that, though the Industrial Court dismissed the petitioner's application for preliminary issue on the ground that in section 22 of the said Act, the word 'Suit' is used and therefore, same is not applicable to complaint, that is not relevant for deciding this Writ Petition because the guidelines framed by BIFR are crystal clear that the workers can proceed to take action against the company for their dues.

12 Considering these facts, I do not find any reason to interfere in the impugned order passed by Industrial Court in the present Writ Petition.

13 Writ Petition stands dismissed.

14 No order as to costs.

JUDGE