

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

WRIT PETITION NO.7222 OF 2014

**Shri. Kancast Kayam Kamgar Sanghatana
General Secretary Mr. P. B. Chalke**

..Petitioner

Versus

Kancast Pvt. Ltd. and others

..Respondents

Mr. A. B. Tajane for the Petitioner.

Mr. Kiran Bapat i/by Mr. A. H. Fatangare for the Respondent No.1.

Ms. Pavitra Manesh i/by Mr. Meelan Topkar for the Respondent No.3.

CORAM : R. M. SAVANT, J.

DATE : 22nd SEPTEMBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 28.11.2013 passed by the Learned Member of the Industrial Court, Pune, by which order, the Complaint in question being Complaint (ULP) No.413 of 2005 came to be dismissed.

2 The Petitioner is a Union which is espousing the cause of the employees who were working with the Respondent No.1. It seems that the Petitioner had filed Complaint (ULP) No.24 of 2002 which came to be allowed by judgment and order dated 02.12.2004 and resultantly, a liability of Rs.2,43,84,740/- was fastened upon the Respondent on account of the wages of the employees represented by the Petitioner. In

view of the fact that the said order passed by the Industrial Court was not being complied with, the Petitioner filed an application under Section 50 of the MRTU & PULP Act, 1971 (For short "the said Act") being Misc. Application No.34 of 2004. It seems that during the contemporaneous time when the application was being heard, the Respondent No.1 was negotiating for sale of its property with the Respondent No.3 and an agreement to sale was executed between the Respondent No.1 and Respondent No.3. This resulted in the Respondent No.3 intervening in the said Misc. Application No.34 of 2004. At the hearing of the said application, a statement came to be made by an office bearer of the Petitioner Union that the matter in respect of the recovery of the amount in terms of the order dated 02.12.2004 of the Industrial Court is being settled. Thereafter on 15.04.2005 a settlement was effected between the parties. In terms of which settlement the employees represented by the Petitioner were to resign and they were to get a lumpsum amount which was mentioned against their names in the annexure to the settlement. It seems that in terms of the settlement the amount was to be paid in instalments. Out of the said amount, the first installment of Rs.34,00,000/- was paid and then the balance amount was to be paid when due. The employees represented by the Petitioner have executed resignation letters and receipts in favour of the Respondent No.3 who as

indicated above had purchased the property of the Respondent No.1. The Petitioner thereafter filed another application being Misc. Application (ULP) No.13 of 2005 which came to be rejected by the Learned Member of the Industrial Court and which resulted in the filing of Writ Petition No.5303 of 2006 by the Petitioner Union in this Court. It seems that a direction came to be issued by a Learned Single Judge of this Court to the Respondent No.1 to deposit the balance remaining amount of Rs.2,11,00,000/-. The said order passed by the Learned Single Judge was carried in Appeal by the Respondent No.1 by filing LPA No.12 of 2008. The said LPA No.12 of 2008 came to be allowed and resultantly, the order dated 24.01.2008 came to be set aside. In so far as the said proceedings are concerned, the matter rests there.

3 The Petitioner thereafter has filed the instant Complaint numbered as Complaint (ULP) No.413 of 2005 invoking items 9 and 10 of Schedule IV of the said Act. The substratum of the instant Complaint is the same as the Misc. Application (ULP) No.13 of 2005. In the said Complaint, diverse stands have been taken by the General Secretary of the Petitioner Union Shri. Chalke, vis-a-vis the execution of the settlement dated 15.04.2005. The said Complaint purports to proceed on the basis of the adjudication of Complaint (ULP) No.24 of 2002 in as much as the relief sought in the instant Complaint is on the basis that the

order passed in the said Complaint (ULP) No.24 of 2002 be treated as a settlement. A contention was accordingly raised on behalf of the Petitioner Union by its Learned Advocate on the said basis at the hearing of the instant Complaint. In so far as the settlement dated 15.04.2005 is concerned, though initially Shri. Chalke sought to deny the execution of the said settlement by him however when confronted with his signature on the said settlement as also the signature of another workman Mr. Khandagale on the resignation letter, he was left no choice but to accept the execution of the said settlement as also the annexure which was annexed thereto. In view thereof, the Learned Member of the Industrial Court held that the said settlement and the annexure thereto would have to be read in evidence. The Learned Member of the Industrial Court thereafter adverted to the fact that the employees had executed resignations as also receipts of having received payment pursuant to the said settlement dated 15.04.2005. The Learned Member referred to the aspect of the payment made to the employees pursuant to the said settlement. The Learned Member also did not countenance the case of the Petitioner that illegal deductions were made from the amounts paid to the employees as no evidence in that regard was produced by the Petitioner Union. The Learned Member thereafter adverted to the fact that Misc. Application (ULP) No.13 of 2005 wherein similar relief was

sought was rejected and the Writ Petition out of the same being Writ Petition No.5303 of 2006 is pending and therefore observed that the adjudication of the said Misc. Application (ULP) No.13 of 2015 would act as res-judicata in so far as the relief sought vide the instant Complaint (ULP) No.413 of 2005. The Learned Member therefore observed that it would be contingent upon the decision that would be rendered in the said Writ Petition No.5303 of 2006 that the entitlement of the employees represented by the Petitioner to the amount adjudicated in Complaint (ULP) No.24 of 2002 notwithstanding the execution of the settlement dated 15.04.2005, would depend. The Industrial Court as indicated above accordingly dismissed the instant Complaint (ULP) No.413 of 2005.

4 Heard the Learned Counsel for the parties.

5 The instant case is a case, where the adjudication by the Industrial Court by order dated 02.12.2004 passed in Complaint (ULP) No.24 of 2002 has been superimposed by the settlement which was arrived by the parties on 15.04.2005 in the proceedings filed for recovery of the amount due under the said order dated 02.12.2004. Notwithstanding the said settlement, the Petitioner Union seems to re-agitating the issue of the entitlement of the employees represented by it

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on the basis of the order passed by the Industrial Court dated 02.12.2004. The Industrial Court has therefore rightly observed that the said entitlement of the employees represented by the Petitioner Union would be contingent upon the decision that would be rendered in the said Writ Petition. In the facts as aforestated, no case for exercise of the writ jurisdiction under Article 227 of the Constitution of India is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]