

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

WRIT PETITION NO.12257/2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Vishal Muglikar i/b. Yogesh Jaybhav for the petitioner

Mr. Burhan Bukhari for the respondent

CORAM : K. K. TATED, J.

DATE : DECEMBER 22, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 09.06.2016 passed by the 1st Labour Court, Nasik below Exhibit-U-10 in Misc IDA No.4/2013.

2. In the present proceedings, the respondent filed Misc. Application (IDA) No.4/2013 for setting aside the *ex parte* award dated 26.06.2012 in Reference (IDA) No.47/2009. In that application the petitioner made an application u/s. 17 and 17-A of the Industrial Disputes Act on the ground that the Labour Court has no jurisdiction to entertain the application made by the respondent being Misc. Application (IDA) No.4/2013. On that

application the 1st Labour Court passed order holding that the question of jurisdiction can be decided at the stage of final hearing of Misc. Application (IDA) No.4/2013. The operative part of the said order reads thus:

“Whether application filed by the employer is tenable or not is a question of merit, which can be decided at final stage of the matter. Hence, present application cannot be decided at this stage. Hence, application Exh.U-10 stands rejected. matter be proceeded further.”

3. The learned counsel for the petitioner submits that the order passed by the Labour Court dated 09.06.2016 is contrary to the law. He submits that once the Award is published, then the court become *functus officio* and has no jurisdiction to entertain any application. In support of this application, he relied on judgment in ***Dnyaneshwar Anatrao Kulkarni Vs. Superintendent Engineer, PWD, Osmanabad 2016 (2) Mh.L.J. 144.***

4. The learned counsel for the petitioner submits that the impugned order passed by the Labour Court dated 09.06.2016 is required to be set aside and the application made by them below Exhibit- U-10 be allowed.

5. The learned counsel for the respondent in

submits that even after 30 days from the date of publication of the award, the Court passing the award has jurisdiction to entertain subsequent application filed in the same matter. He relied on the judgments in *Ram Shiroman Mishra Vs. Vishwanath Pandey (2012) 8 SCC 575* and *Radhakrishna Mani Tripathi Vs. L.H. Patel & Anr. (2009) 2 SCC 81*.

6. It is to be noted that the Labour Court specifically recorded in operative part that the objection raised by the petitioner can be decided at the time of final hearing of Misc. Application (IDA) No.4/2013. This itself shows that the Labour Court has not rejected the petitioner's objection about jurisdiction.

7. Considering these facts, I am of the opinion that the authority cited by the petitioner in *Dnyaneshwar Anatrao Kulkarni* (supra) is not applicable in the facts and circumstances of the present case. The Labour Court has kept open all contentions of the parties. I do not find any substance in the Writ Petition.

8. Hence, the Writ Petition stands rejected.

JUDGE