

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

**CIVIL APPLICATION NO.611 OF 2016
IN
WRIT PETITION NO.4664 OF 2013**

Yeshwant R. Kadam and others .. Applicants

IN THE MATTER BETWEEN

Vidyut Metallic Ltd. ..Petitioner

Versus

Yeshwant R. Kadam and others ..Respondents

Shri. Yogendra Pendse for the Applicants in Civil Application No.611 of 2016.

Shri. K. M. Naik, Senior Advocate a/w Shri. Hemant Telkar i/by Shri. S. P. Salkar for the Respondent No.1.

CORAM : R. M. SAVANT, J.

DATE : 27th SEPTEMBER, 2016

PC.

1 The above Civil Application has been filed invoking Section 17-B of the Industrial Disputes Act, 1947 (For short “the I. D. Act”). The Award of the Labour Court granting reinstatement without backwages has been taken exception to by the Respondent No.1 i.e. M/s. Vidyut Metallic Pvt. Ltd. by filing the above Writ Petition No.4664 of 2013. The above Writ Petition has been admitted on 16.06.2014 and interim reliefs staying the reinstatement of the workmen came to be granted. The provisions of Section 17-B of the I. D. Act come into play in such an

eventuality. The said provision postulates the employer's liability to pay the workmen the last drawn wages during the pendency of the proceedings in the High Court or the Supreme Court. As indicated above, the application is founded on the said provision. It has been averred in the application that the Applicants are unemployed and therefore require sustenance during the pendency of the above Petition.

2 At the outset, a request was made by the Learned Senior Counsel on behalf of the Respondent/original Petitioner M/s. Vidyut Metallics Pvt. Ltd. to join M/s. Supermax Personal Care Pvt. Ltd. as a party to the above Civil Application on the ground that it is the successor in interest of the Respondent/original Petitioner. The said request was opposed on behalf of the Applicants by the Learned Counsel Shri. Yogendra Pendse in view of the stand taken by the said M/s. Supermax Personal Care Pvt. Ltd. in the companion Civil Application filed by another worker as also on the basis of the mandate of Section 17-B of the I. D. Act. In view of the said opposition, the said request was rejected.

3 On behalf of the original Petitioner i.e. the Respondent No.1 M/s. Vidyut Metallic Pvt. Ltd. an affidavit in reply has been filed through one Gordhandas Daulal Arora the Director of the Respondent No.1. In the affidavit in reply, a Business Transfer Agreement dated 30.12.2010 is

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adverted to and it is averred that in terms of the said Business Transfer Agreement, the business of the Respondent to the above Civil Application i.e. the original Petitioner M/s. Vidyut Metallica Pvt. Ltd. is transferred to M/s. Supermax Personal Care Pvt. Ltd. It is required to be noted that the Respondent herein is the original Petitioner and who has filed the above Writ Petition and who has obtained an order of stay to the reinstatement of the Applicants. In the said context the case sought to be put up by the Respondent on the basis of the said Business Transfer Agreement, the stand of the said M/s. Supermax Personal Care Pvt. Ltd. assumes importance. In the companion Civil Application being No.2026 of 2014 filed in Writ Petition No.5743 of 2013 in respect of another workman Mr. A. Jaykumar Nadar which also involves the Respondent herein i.e. M/s. Vidyut Metallica Pvt. Ltd., an affidavit has been filed on behalf of the said M/s. Supermax Personal Care Pvt. Ltd. The said affidavit makes an interesting reading. In paragraph 2, it has been stated that the said M/s. Supermax Personal Care Pvt. Ltd has come into existence on 09.09.2016, by which time the Applicant in the said Writ Petition came to be already terminated. It is further averred that the Respondent No.2 i.e. the M/s. Supermax Personal Care Pvt. Ltd. is not a necessary party. It is further averred in paragraph 3(b) that the Respondent No.1. i.e. M/s. Vidyut Metallica Pvt. Ltd. has deposited backwages to the extent of

Rs.10,89,650/- in this Court. Hence the undertone of the affidavit filed by the said M/s. Supermax Personal Care Pvt. Ltd. is that the liability to pay wages under Section 17-B of the I. D. Act is not that of M/s. Supermax Personal Care Pvt. Ltd., but is that of M/s. Vidyut Metallica Pvt. Ltd. i.e. Respondent herein.

4 The Learned Senior Counsel appearing on behalf of the M/s. Vidyut Metallica Pvt. Ltd. Shri. K. M. Naik would lay much emphasis on Section 18(3)(c) of the I.D. Act to contend that the successor in interest would be liable for the payment arising out the Award passed by the concerned Court. The upshot of the pleadings as aforesaid is that the Applicants are caught in the crossfire between M/s. Vidyut Metallica Pvt. Ltd. and its alleged successor in interest M/s. Supermax Personal Care Pvt. Ltd. which cannot be permitted. As indicated above, the mandate of Section 17-B of the I. D. Act is absolutely clear. The Respondent herein is the original Petitioner who has filed the above Writ Petition and who has obtained interim orders. Significantly neither before the Labour Court nor even before this Court at the time of admission of the above Petition the facts relating to the Business Transfer Agreement were brought to notice.

5 In my view, the Respondent/original Petitioner or the alleged successor in interest cannot be permitted to pass on the buck. The

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liability interse between the parties assuming that there is a Business Transfer Agreement cannot be adjudicated whilst considering an application under Section 17-B of the I. D. Act. The fact that the Applicants are not employed is not disputed by the Respondent/original Petitioner. The Civil Application is accordingly allowed and made absolute in terms of prayer clause (i). The Civil Application is accordingly disposed of.

6 At this stage, the Learned Senior Counsel Shri. K. M. Naik applies for stay of the instant order. In the facts and circumstances of the case, the said prayer is rejected.

[R.M.SAVANT, J]