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

WRIT PETITION NO. 8865 OF 2015

M/s. Wynn's Mekuba India Pvt. Ltd. ... Petitioner.

V/s.

Mr. Ashok Kumar Trivedi and Anr. ... Respondents.

Mr. Rajesh Datar i/b. V.V. Katti for the Petitioner.

Mr. Amogh Karandikar for Respondent 1.

CORAM : N.M. JAMDAR, J.

DATE : 10 FEBRUARY, 2016.

P.C. :-

The Petitioner challenges the Award of the Labour Court, Mumbai dated 4 December 2014 answering the Reference in affirmative and directing the Petitioner to reinstate the Respondent No.1 with continuity of service and back wages from 30 August 2007. The case of the Respondent that he was working with the Petitioner as a driver since 16 March 1998 and his termination with effect from 20 August 2007 is wrongful, has been accepted by the Labour Court. This Award is under challenge in the present Petition.

2. I have heard the learned Counsel for the parties.

3. The stand of the Petitioner in the Labour Court was that the Respondent was never the employee of the Petitioner and in fact he was an employee of one Rubochem Industries Pvt. Ltd. This said stand has been reiterated by the learned Counsel for the Petitioner. The learned Counsel for the Petitioner submitted that the Respondent himself has admitted that he had worked with the said Rubochem Pvt. Ltd. He submitted that the documents produced by the Respondent were forged and the originals were never produced. He submitted that based upon these documents, the Labour Court could not have come to the conclusion that there was employer employee relationship between the Petitioner and the Respondent.

4. The existence of employer-employee relationship is essentially a question of fact. The Labour Court in the present case has reached the conclusion based upon the material produced on record. The sole contention raised by the Petitioner is that the Respondent was never in its service. In the context of this defence, the documents produced by the Respondent had to be explained by the Petitioner. The Respondent had relied upon a pay-slip for month of February 2005, salary statement, log book, receipt for balance payment, correspondence addressed by the Petitioner to the bank to open the Respondent's account, cheques issued by the Petitioner towards salary, the identity cards issued in favour of the Respondent.

5. The learned Counsel for the Petitioner submitted that the pay-slips and the voucher show that there are erasures and the vouchers are only for in respect of sale of a vehicle. He submitted that the identity card also could not be relied upon as the person who issued the same that is Mr. Thomas, had done so with connivance of the Respondent. In the cross-examination case has been put up to the Respondent confronting him with these documents, Except by stating that these documents are forged and that Mr. Thomas assisted the Respondent in forging these documents, nothing further is shown. Why Mr. Thomas would risk prosecution to help the Respondent is also not explained. In fact, in the cross-examination, suggestion is put that the Respondent was not given wages because of his absenteeism. It is also put to the Respondent that his salary is only an amount of contract. In the cross-examination of the Petitioner's witness he has admitted that to show that the documents produced by the Respondent are forged. He has nothing else except an oral statement. No details, regarding the connection of the Petitioner with Rubochem Industries Pvt. Ltd. have been placed on record. In the light of the oral evidence, the Labour Court has considered the documentary evidence produced by the Respondent. Merely because an another view is possible on appreciating these documents again, is no ground to interfere, as the conclusion reached by the Labour Court is a possible view upon the evidence.

6. The learned Counsel for the Petitioner then submitted that the grant of back wages to the Respondent was incorrect as the Respondent had purchased a goods vehicle and it has to be inferred that he had used the same for earning his livelihood. Ordinarily, when the termination is found to be illegal, grant of back wages generally follow. The Respondent has pleaded that he was unemployed. The Petitioner could have produced registration of the vehicle as commercial/goods vehicle with the Road Transport Authorities, which has not been done. The conclusion of the Labour Court that mere possession of a vehicle will not deprive the Respondent from his claim for back wages, is not perverse and requires no interference.

7. In the circumstances, there is no merit in this Petition which is rejected.

(N.M. JAMDAR, J.)