

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.840 OF 2016
IN
WRIT PETITION NO. 2189 OF 2015**

Pandurang T. Bhane

..Applicant

Vs.

Saket Tex-Dye Pvt Ltd. & ors.

..Respondents

Mr. Prashant Kamble i/b Mr. A. S. Rao for the Applicant

**Mr. A. K. Jalisatgi i/b Mr. C. M. Lokesh for the Respondents / original
Petitioners**

CORAM : R. M. SAVANT, J.

DATE : 5th OCTOBER, 2016

P.C.

1 The above Civil Application has been filed invoking Section 17B of the Industrial Disputes Act. The Applicant herein is the original Respondent and the Respondents in the above Civil Application are the original Petitioners. The above Writ Petition has been filed by the Petitioners challenging the Award dated 9-10-2014 passed by the Learned Presiding Officer, 3rd Labour Court, Thane. By the said Award, the reference in question being Reference IDA No.241 of 2009, came to be partly allowed . The Respondent No.1 herein i.e. the original Petitioner No.1 was directed to reinstate the Applicant with continuity of service with 40% back wages w.e.f. 5-4-2008. The above Writ Petition has been admitted on 5-5-2015 and interim relief in terms of prayer clause (b) came to be granted thereby staying the Award passed by the Labour Court.

2 In terms of the mandate of Section 17B of the said Act, the Applicant has averred in the application that he is unemployed and therefore requires the amount by way of the last drawn wages for his sustenance. In reply to the above Civil Application an affidavit has been filed on behalf of the Respondent No.4 who it seems was impleaded in the reference proceedings. In the said reply in paragraph 3 it has been averred that the Applicant is employed with one M/s. Shrirup Textile Pvt Ltd. having its address at Plot No.24, Bhiwandi, National Highway Road, Bhogav, Bhiwandi District Thane. It is further averred that the Applicant is registered under the Employment Provident Fund and Misc Provisions Act and has a code number. In support of which the annual statement of accounts issued by the provident fund authorities is annexed to the said affidavit. To the said affidavit is also annexed the E Pehchan Card issued by the ESIC which also indicates that the Applicant is employed with the said M/s. Shrirup Textile Pvt Ltd. The Applicant has filed his affidavit in rejoinder to which is annexed a certificate dated 20-7-2016 issued by one Sujata Textile Engineers which certificate is to the effect that the Applicant is working with the said Sujata Textile Engineers as and when work is to be done for the said entity. Hence the case of the Respondents that the Applicant is gainfully employed is sought to be controverted on the basis of the said certificate.

3 It is required to be noted that in the application as originally filed there is not a whisper as regards the Applicant even working intermittently

with either said M/s. Shrirup Textil Pvt Ltd. or the said Sujata Textile Engineers. In fact as indicated above, the statement in the Civil Application as filed is to the effect that the Applicant is unemployed. In the context of the relief sought vide the said application filed under Section 17B it was expected of the Applicant that there was a certain amount of candour and the Applicant ought to have approached this Court with a true and full disclosure. However, since the above Civil Application is bereft of any particulars as regards the nature of the Applicant's employment or his earnings from the said employment, the application can be said to be suffering from suppressio veri. It is only after the Applicant was confronted with facts relating to his employment with the said M/s. Shrirup Textile Pvt Ltd that the Applicant has chosen to obtain a certificate from one Sujata Textile Engineers of his alleged intermittent employment with the said Sujata Textile Engineers. Having regard to the provident fund registration as also the E Pehchan Card under the ESIC Act showing that the Applicant is employed with the said M/s. Shrirup Textile Pvt Ltd, how the said Sujata Textile Engineers could issue a certificate therefore begs an answer. The said certificate therefore does not inspire confidence and adds to the facts already existing which disentitle the Applicant from any relief being granted in the above Civil Application. The Civil Application is accordingly rejected.

[R.M.SAVANT, J]