

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO.25828 OF 2016**

**Movie Action Dummy Effects
Association (Madea) & Ors**

..Petitioners

Vs.

Vishal Tyagi & Ors.

..Respondents

**Mr. N. M. Ganguli for the Petitioners
Mr. Sandeep Patil for the Respondents**

**CORAM : R. M. SAVANT, J.
DATE : 26th SEPTEMBER, 2016**

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 10-8-2016 passed by the Learned Member of the Industrial Court Mumbai by which order, the application Exhibit U-2 came to be partly allowed and the directions as contained in the operative part came to be issued. The relevant extract of the operative part of the impugned order is reproduced hereinunder:

1. Application is partly allowed.

2 It is hereby prima facie held and declared that the expulsion of applicant from the ordinary membership is without any provisions of constitution.

3. Applicant is entitled for the restoration for ordinary membership of union till the disposed of application.

4. The opponent are directed to allow the applicant to act as a ordinary member.

5. The reliefs to restore the membership executive committee is rejected.

6. Both the parties to bear their own cost.

7. On the request of Mr. K. R. Shetty the order is stayed for further 4 weeks for challenging the order in Writ Petition.

2 The Respondent herein was a managing committee member of the Petitioner-Union and who was expelled by the Petitioner-Union by passing a resolution in its meeting dated 30-9-2015. This resulted in the Respondent no.1 seeking the consent of the Registrar of Trade Unions to initiate proceedings against the Petitioner in respect of his said expulsion. The said proceedings are numbered as ICTU No.6 of 2016. In the said application, the Respondent No.1 filed an application for interim relief being Exhibit U-2 and the interim relief sought was to the following effect :

A] Pending hearing and final disposal of this main application this Hon'ble Court be pleased to direct the opponents to reinstate the Applicant temporarily as a ordinary member and Executive committee member of opponent No.1 till pendency of this main application.

3 The said application for interim relief was replied to on behalf of the Petitioners. The back ground facts relating to the expulsion of the Respondent No.1 were stated. It was also contended in the said reply that the grant of interim reliefs sought vide the said application Exhibit U-2 would amount to granting final reliefs to the Respondent No.1. The Learned Member

of the Industrial Court has by the impugned order dated 10-8-2016 has partly allowed the said application by granting the reliefs which are mentioned in the operative part of the impugned order and especially clauses 2, 3 and 4 thereof. The Learned Member of the Industrial Court has taken into consideration clauses (5) and (13) of the Constitution of the Petitioner-Union and on such consideration has recorded a finding that the Respondent No.1 could not have been expelled as an ordinary member as expulsion or cancellation of the ordinary membership of the Petitioner-Union can only be in the eventualities mentioned in clause (5). The Learned Member of the Industrial Court has therefore adverted to the prejudice that would be caused to the Respondent No.1 if his ordinary membership of the Union is not reinstated. The Learned Member of the Industrial Court has observed that it would be difficult for the Respondent No.1 to get jobs from the film producers if he is not a member of the Petitioner-Union. The Learned Member of the Industrial Court was therefore of the view that the expulsion of the Respondent No.1 as ordinary member has the effect on his livelihood. In so far as the expulsion of the Respondent No.1 as member of the managing committee is concerned, the Learned Member of the Industrial Court has recorded a finding that having regard to the activities of the Respondent No.1 the same could be said to be detrimental to the interest of the Petitioner-Union and therefore deemed it appropriate not to interfere with the expulsion of the Respondent No.1 as member of the managing committee of the Petitioner-Union. The Learned

Member of the Industrial Court as can be seen from the impugned order has adjudicated upon the application U-2 from the perspective of whether a prima facie case, whether the balance of convenience is in favour of the Respondent No.1 as also whether irreparable damage would be caused to the Respondent No.1, which are well settled principles applicable whilst considering an application for interim reliefs. The Learned Member of the Industrial Court seems to be persuaded by the fact that without there being any power to expell a person from being an ordinary member other than that conferred by clause (5), the Respondent No.1 was sought to be expelled from ordinary membership of the Petitioner-Union.

4 The Learned Counsel appearing on behalf of the Petitioners Mr. Ganguli would question the impugned order on the ground of the jurisdiction of the Industrial Court to grant the relief that is granted vide the impugned order and whether in the facts and circumstances of the case such an order was warranted. The Learned Counsel sought to place reliance on the provisions of Section 28-A of the Maharashtra Amendment to the Trade Union Act.

5 In my view, there is no merit in any of the contentions raised by Mr. Ganguli. The said Section 28-A itself sets out parameters for the exercise of jurisdiction by the Industrial Court in the matter of expulsion of a member etc.

The said provision also postulates the consideration of an application for interim reliefs. Hence it cannot be said that the Industrial Court has exceeded the jurisdiction whilst considering the application for interim reliefs. In so far as other two contentions are concerned, the Learned Member of the Industrial Court has given cogent reasons as to why the relief of reinstatement of the Respondent No.1 as an ordinary member is required to be granted. This court does not deem it appropriate to interfere with the said part of the impugned order. Hence no case for interference in the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]