

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.982 OF 2016

Linde India Limited ... Petitioner

Versus

Raigad Mazdoor Sangh And Others ... Respondents

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Dr. Birendera Saraf a/w Mr. Vaisakh Shaji i/b Khaitan & Co., for the
Petitioner.

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CORAM : S.C.GUPTE, J.

DATE : 12 AUGUST 2016.

P.C. :

Heard learned Counsel for the Petitioner.

2 The Petition challenges an order passed by the Industrial Court at Thane on an application made by the Petitioner herein (Respondent No.5 in the pending complaint before the Industrial Court) for permission to dismantle and remove its storage vessels lying at the factory premises of Respondent No.2 herein.

3 The complaint before the Industrial Court is made by Respondent No.1-union, representing the workmen of Respondent No.2 herein. The complaint alleges an unfair labour practice on the part of Respondent No.2 by way of non-payment of wages. By an order dated 8 August 2013, Respondent No.2 was restrained by the Industrial Court from removing any plant, machinery, instrument etc. or creating any third party interest in any

form in respect of the premises and machineries at the factory of Respondent No.2. The grievance of the Petitioner herein is that as per the agreement executed between the Petitioner and Respondent No.2, two tanks of liquid nitrogen were supplied by the former to the latter, and which were installed in the premises of the latter. The agreement between the parties *inter alia* provided that the installations and equipments supplied by the Petitioner to Respondent No.2 in terms of the agreement would remain property of the Petitioner. After this agreement, Respondent No.2 surrendered its liquid nitrogen storage licence and did not require these storage tanks for any further storage. Since these storage tanks were no more required for the use of Respondent No.2, the Petitioner proposed to dismantle and take away the storage tanks, which any-way were its own property. This act is, however, opposed by Respondent No.1-union purportedly on the ground of the injunction order referred to above. The Petitioner, in the premises, applied for their impleadment to the complaint and a permission to dismantle and remove the storage tanks from the premises of Respondent No.2. Whilst the Industrial Court allowed the impleadment application, it rejected the Petitioner's application for permission to dismantle and remove the storage tanks. This order is impugned in the present Petition.

4 The record of the case clearly indicates that the storage tanks installed in the premises of Respondent No.2 for storage of liquid nitrogen belong to the Petitioner. After surrender of the liquid nitrogen storage licence, the tanks are no longer required by Respondent No.2 and in accordance with the agreement between the parties, which provides for continued ownership of the Petitioner of the storage tanks, the Petitioner is

well within its rights to dismantle and remove the storage tanks. The storage tanks do not form part of the property of Respondent No.2. The application of the Petitioner for permission to dismantle and remove these tanks was rejected by the Industrial Court on the grounds : (a) that there is a specific order against removal of any instruments in the factory of Respondent No.2 and that would include the liquid nitrogen tanks, and (b) even assuming that the tanks belong to the Petitioner, the Petitioner is only entitled to receive charges from Respondent No.2 for the tanks and since these charges are payable for the period during which the tanks remain with Respondent No.1, no hardship would be caused to the Petitioner, if it is not permitted to remove the tanks from the premises. None of these grounds considered by the Industrial Court is germane to the controversy at hand.

5 The order of injunction restrains Respondent No.2 from removing its plant, machinery, raw material or instrument. This injunction obviously cannot apply to any instrument that does not belong to Respondent No.2. The injunction clearly operates in respect of the plants, machineries, raw materials, instruments, etc. belonging to Respondent No.2. After expiration of the agreement for supply and storage of liquid nitrogen, and particularly after even licence for such storage is surrendered by Respondent No.2, there is no restriction or embargo on the Petitioner for removing its own property from the premises of Respondent No.2. The question of hardship that may be or may not be caused to the Petitioner is besides the point. The fact of the matter is that the property belongs to the Petitioner and there is no impediment if the property is removed by it. This aspect, which was most germane for the consideration of the interim application made by

the Petitioner, is completely lost sight of by the Industrial Court.

6 The order of the Industrial Court, in the premises, cannot be sustained. Rule is accordingly made absolute and the impugned order of the Industrial Court dated 6 April 2015 is quashed and set aside. The application of the Petitioner being Exhibit **CA-2** before the Industrial Court at Thane (Exhibit '**G**' to the Petition) is allowed in terms of prayer clause-(a) thereof. No order as to costs.

(S.C.GUPTE, J.)