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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3332 OF 2016

Bhanu Cosmetics Packaging Private Limited ...Petitioner

VS

Vishnu Aaba Naik ...Respondent

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Ms. Yashashree Ashok Sutrale, for the Petitioner.

Ms. Rita K. Joshi, a/w. Mr. Swapnil P. Kamble, i/b. Ashok D. Shetty, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: JUNE 20, 2016

P.C. :

. Heard learned Counsel for the parties. The petition challenges an order passed by the Industrial Court, Mumbai on a complaint under Section 28 read with Item 9 of Schedule IV of the MRTU & PULP Act, 1971. The impugned order is passed on the footing that the Petitioner has not reinstated the Respondent, despite an award passed by the Labour Court on a reference under the Industrial Disputes Act. It appears from the record of the proceedings that on a reference by Deputy Commissioner of Labour (Conc.), an award came to be passed ex-parte against the Petitioner herein, declaring the Respondent's termination as illegal and in violation of law and directing the Petitioner to reinstate the Respondent workman with full back wages and continuity of service. After passing of that award, the Petitioner herein applied for restoration of the Reference. On the restoration application,

there is an order passed by the Labour Court Mumbai, noting the Petitioner's absence and holding that the Petitioner herein was not interested in prosecuting the proceeding, and that the restoration application deserved to be dismissed. Accordingly, the restoration application was dismissed for want of prosecution. In the premises, the award passed by the Labour Court on the reference has attained finality. Since this award was not implemented by the Petitioner herein, the Respondent workman was within his rights to apply to the Industrial Court under Section 28 read with Item 9 of Schedule IV of MRTU & PULP Act, 1971. The impugned order passed on this application does not suffer from any infirmity. Learned Counsel for the Petitioner submitted that the facts of the case clearly established that the Respondent was not a workman but was merely a casual or badli employee appointed to work with the Managing Director of the Petitioner Company. That is a matter which pertains to the merits of the reference and can be raised only before the Labour Court in challenge to the original ex-parte award. It cannot be a subject matter of the complaint under Section 28 of the MRTU & PULP Act, 1971 for non-implementation of the award. There is, thus, no merit in the petition and the same is dismissed. In case, however, the Petitioner is entitled to restoration of the reference, which culminated in the award of 31 July 2013, on any ground available to it in law, the Petitioner will be at liberty to pursue its remedies. The petition is disposed of accordingly.

(S.C. GUPTE, J.)