

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

***NOTICE OF MOTION NO. 452 OF 2015
IN
WRIT PETITION NO. 664 OF 2015***

Mr.Ansari Meraj Husain, Mumbai.

... Applicant
(Ori. Resp.No.1)

In the matter between -

M/s.Architect Hafiz Contractor,
Mumbai.

... Petitioner

v/s

1 Shri Ansari Meraj Husain, Mumbai.

2 Shri D.T. Vasave,
Presiding Officer, 2nd Labour Court,
Mumbai.

... Respondents

Mr.Rakesh Sawant for the applicant/original respondent No.1.

Mr.R.S. Pai i/by T.R.Yadav for the respondent/original petitioner.

CORAM: N.M. JAMDAR, J.

DATED : 24 FEBRUARY 2016

P.C.:

This notice of motion is taken out by the original Respondent No.1 in the writ petition for the following reliefs:

(i) That, this Hon'ble Court be pleased to direct the

Respondent to pay to the Applicant wages as per Section 17B of the Industrial Disputes Act, 1947 from the date of the Award.

(ii) That, this Hon'ble Court be pleased to direct the Respondent by appropriate order or direction to grant wages at the rate of wages payable to an Interior Designer in the establishment of the Respondent.

(iii) To grant such other and further reliefs as this Hon'ble Court may deem just and proper.

2 The Applicant/original Respondent No.1 has invoked provisions of Section 17B of the Industrial Disputes Act, 1947 and the equity jurisdiction of this Court and has claimed that he be paid Rs.35,000/- as wages during the pendency of the petition. The Labour Court answered the Reference in affirmative in favour of the Applicant and has directed the Respondent/original Petitioner to reinstate the Applicant with 50% back wages and continuity of service from the date of termination. Reference was made to the Labour Court, Mumbai, in respect of termination of the Applicant. The Labour Court found that the Applicant was appointed to do the work of architectural drafting with the original Petitioner. He was paid Rs.35,000/- and his salary was reduced by the original Petitioner arbitrarily and termination was effected without following due process of law and consequently the Applicant was entitled to be reinstated with 50% back wages.

3 While opposing the relief prayed for by the Applicant, Mr.Pai, learned advocate for the original Petitioner submitted that the Applicant has not taken necessary pleadings in his Notice of Motion and the affidavit in support of Notice of Motion as regard his gainful employment and efforts made by him. He relied on the decision of the Division Bench of this Court in the case of ***U.P. State Bridge Corporation Ltd. v/s Maharashtra General Kamgar Union***¹. He submitted that the Applicant is an interior decorator and has stated nothing about his self-employment. This argument cannot be accepted. The Appellant has clearly stated that the original Petitioner has seen to it that the Applicant does not get any employment or work of interior designer. The pleadings regarding both, employment as well as self-employment by him, are made on oath. The burden thereafter shifted upon the original Petitioner to demonstrate that the Applicant is gainfully employed or is self-employed. The original Petitioner is in the same line of profession as the Applicant and would have easily found out if the Applicant is in employment. Nothing has been stated that the Applicant has any employment or had any assignment on freelance basis. The Applicant had discharged his burden by making adequate pleadings and the original Petitioner has pleaded nothing in rebuttal. The assertion of the Applicant that, after having been thrown out from the employment by the original Petitioner, due to the damage to his reputation the Applicant is not getting any employment, cannot be stated to be far-fetched one.

1 2008(4) Mh.L.J. 297

4 Mr.Pai then submitted that, assuming the Applicant is entitled to the wages under Section 17B of the Act, it can be only Rs.9,000/- which were his last drawn wages. As stated earlier, the Applicant has invoked not only the provisions of Section 17B, but equity jurisdiction of this Court. It was the case of the Applicant before the Labour Court that he was getting Rs.35,000/- as a salary which was reduced to Rs.9,000/- arbitrarily at the time of his termination. It was the case of the original Petitioner that the wages were reduced due to recession with consent of the staff. The Labour Court specifically framed that issue as to the reduction in wages and answered the issue in affirmative holding thereby that the wages were arbitrarily reduced from Rs.35,000/-. Though Mr.Pai has contended that the Award is under consideration of this Court and interim relief is granted, I am of the opinion that, in view of answering the issue regarding arbitrary reduction of wages in affirmative by the Labour Court, it will be grossly unfair to peg the wages of the Applicant to Rs.9,000/-. If such course of action is adopted and the employer would dismiss the employee, arbitrarily and illegally reducing his wages, just prior to his termination, keeping in mind the future litigation and implications of Section 17B, and then argue that the amount under Section 17B shall be as per the actual wages given to him last. Section 17B is a piece of beneficial legislation and cannot be defeated in this manner. There is a clear finding in favour of the Applicant in this regard. Mr.Pai submitted that, if this is permitted, then many employees who have

taken reduced salary would file claim against the original petitioner. Such apprehension is unwarranted. Nobody else has yet approached the Court of law in like manner. Further more, the observations are in the context of Section 17B of the Act and are restricted to facts of the present case. If and when others ever file any proceedings in the Court, their case will be considered on its own merits.

5 In the circumstances, I am of the opinion that, the Notice of Motion deserves to be allowed and the original Petitioner be directed to pay Rs.35,000/- to the Applicant per month, as prayed for. Order accordingly. Notice of motion is disposed of in above terms.

(N. M. JAMDAR, J.)