

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8314 OF 2016

Sanjay Samual Makasare,
Age : 53 years, Occupation : Labour,
R/o New Bethel Colony,
Station Road, Ahmeangar.

...PETITIONER

-VERSUS-

Atri Sales Corporation.
MG Road, Ahmednagar.
Through Kamalkumar Harbansraj Atri,
since deceased through L.Rs.:-
1A) Pramila Kamalkumar Atri,
Age : Major, Occupation : Business.

1B) Amit Kamalkumar Atri,
Age : Major, Occupation : Business.

1C) Nitin Kamalkumar Atri,
Age : Major, Occupation : Business.

All R/o 8, Govindpura,
Ahmednagar, District Ahmednagar.

...RESPONDENTS

...
Advocate for Petitioner : Shri Barde Parag Vijay
Advocate for Respondents : Shri Gawali Amol K..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th February, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner is aggrieved by the award dated 05.10.2015 by which the first Labour Court, Ahmednagar has answered Reference (IDA) No.5/2007 in the negative for the reason that there was no evidence adduced in the proceedings to indicate that the Petitioner had “employer-employee relationship” with the Respondent/ Employer.

3 Shri Barde, learned Advocate for the Petitioner, has strenuously criticized the impugned award. He submits that in the proceedings being STC No.1492/1994 before the Chief Judicial Magistrate, Ahmednagar, the Petitioner as well as the co-worker had deposed before the concerned Court to support the contention that the Petitioner was working as a Sales Man of the Respondent. He, therefore, submits that the Petitioner had produced the copy of the said deposition in xerox form before the Labour Court, which was not considered only for the reason that the same was xerox copy. Had the Labour Court considered the said documents which were undisputed, the Labour Court would not have rejected the Reference.

4 Shri Gawali, learned Advocate for the Respondent/

Management, submits that a detailed award has been delivered by the Labour Court. The oral and documentary evidence adduced has been considered. The Petitioner did not produce any evidence to indicate that there was “employer-employee relationship” with the Respondent. A finding on facts cannot be upset by this Court in its supervisory jurisdiction. He, therefore, prays for the dismissal of this petition.

5 There can be no dispute that in the face of a denial of relationship in the reference proceedings under the Industrial Disputes Act, 1947, the workman has to establish the said aspect with documentary evidence. A mere oral statement, in the absence of documentary evidence, would not be sufficient to conclude that there is employer-employee relationship.

6 In the proceedings before the Chief Judicial Magistrate, Ahmednagar, it was the deposition of the Petitioner wherein he claimed that he was a Sales Man. Another witness along with him stated that he was working as a Sales Man. The issue before the concerned Court was not with regard to the relationship shared by the Petitioner with the Respondent. It is also not the case that the Respondent/ Establishment produced the Petitioner as a witness to depose in the said proceedings. In short, in the said proceedings before the learned Chief Judicial Magistrate,

the issue of employer-employee relationship was not addressed and therefore, not decided.

7 Shri Barde submits that in the matter of *Ratnam Kandaswami vs. Atri Sales Corporation (present Respondent)* in **Writ Petition Nos.7647/2016 and 7931/2016** decided on 02.08.2016, wherein the present Respondent was a party, this Court had sustained the directions of payment of compensation to Ratnam Kandaswami.

8 The said judgment dated 02.08.2016 in *Ratnam Kandaswami case (supra)*, would be of no assistance to the Petitioner since this Court has concluded therein that there was employer-employee relationship between Ratnam and the present Respondent.

9 In the light of the above, I do not find that there is any merit in this petition. The Writ Petition is, therefore, dismissed. Rule is discharged.