

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 3919 OF 2016

J.I.K. Industries Co. Ltd.	... Petitioner
V/s.	
Shri. Maruti Nashik Mene & Ors.	... Respondents

Mrs. Suvarna Munshi i/b S.N. Deshpande for the Petitioner.
Mr. Avinash Gokhale for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 24/03/2017**

PC.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 06.12.2014 passed by the 3rd Labour Court, Thane below Exh. C-31 in W.C. Application No. 270/1-65/2007 rejecting petitioner's application to take action against the Respondent Maruti Nashik Mene who committed fraud to the Court.

3 In the present proceeding, Respondent No.1 filed application WCA No. 270/1-65/2007 on 03.07.2007 for compensation. There was delay on the part of the Respondent to file the said application for compensation. Hence, Respondent No.1 preferred application dated 03.07.2007 through Advocate Pradeep M. Tillu for condonation of delay in filing the Claim Petition. The said

application was opposed by the petitioner.

4 The application for condonation of delay stands dismissed for default by order dated 02.08.2008 as no one appeared on behalf of the Respondent No.1 before the Commissioner for Workmen's Compensation, Thane.

5 Thereafter, the Respondent No.1 filed application for restoration of Claim Petition on 21.05.2010 through Advocate A.S. Sakpal. He also preferred the application for condonation of delay in filing the application for restoration of the same. The same was opposed by the Petitioner.

6 Petitioner noticed that the application filed by the Respondent No.1 was not affirmed by Respondent No.1 himself. Same was affirmed by some one else in the name of Respondent No.1. Hence, petitioner filed application below Exh. C-31 for taking action against the Respondent No.1. He also obtained opinion of handwriting experts Mr. Yashwant Datay. The said application was rejected by the Labour Court. Hence, the present Writ Petition.

7 The learned counsel for the Petitioner submits that in the present proceeding, the Respondent No.1 filed application for restoration of Claim Petition on 21.05.2010. On that application Advocate Mr. A.S. Sakpal signed as Advocate for Respondent No.1. She further submits that the petitioner noticed that the said application was signed by someone else in the name of Respondent No.1. She submits that same thing was done by Respondent No.1 in

respect of application for condonation of delay dated 21.05.2010 and also Affidavit dated 26.07.2013 Exh.28.

8 The learned Counsel for the Petitioner submits that to verify the signature of Respondent No.1, Petitioner obtained the certificate from handwriting experts Mr. Yeshwant Datay dated 09.04.2012 and filed in application below Exh. C-31. She submits that that application was vehemently opposed by the Respondent No.1.

9 The learned Counsel for the Petitioner submits that Trial Court failed to consider the handwriting experts' opinion at the time of passing the impugned order. She submits that by naked eyes anybody can make out that the signature appearing on Claim Petition filed by the Respondent No.1 and application for restoration of Claim Petition dated 21.05.2010, application for condonation of delay dated 21.05.2010 and affidavit below Exh. 28 was signed by some third person in the name of Respondent No.1 and not by the respondent No.1 himself. In spite of these facts, the Trial Court rejected their application. Hence, the present Writ Petition.

10 On the other hand, the learned counsel for the Respondent No.1 filed Affidavit (in marathi) dated 23.03.2017. Same is taken on record. He submits that signatures on application for restoration of Claim Petition dated 21.05.2010, application for condonation of delay dated 21.05.2010 and affidavit dated 26.07.2013 Exh. 28 duly affirmed by the Respondent No.1 himself. He submits that because of accident, it is not possible for the Respondent No.1 to make a same signature on these documents. He submits that in the present

Affidavit dated 23.03.2017, the Respondent No.1 specifically admitted those documents duly signed by himself. Hence, there is no question of committing any fraud in the present proceeding.

11 The learned Counsel for the Respondent No.1 submits that in the present proceeding, the accident occurred on 28.07.2004. Same was registered with Wada Police Station being offence No. 14 of 2004. There was delay on his part to make application for compensation. Hence, Respondent No.1 preferred application for delay in filing the application for compensation. He submits that just to bring pressure on Respondent No.1 to withdraw all these litigation for compensation, the petitioner filed the application below Exh. C-31 before the Commissioner for Workmen Compensation at Thane and also the present petition. He submits that there is no substance in the present petition and same is required to be dismissed with costs.

12 I heard both the sides at length. The signature made by the Respondent No.1 on application for restoration of Claim Petition dated 21.05.2010, application for condonation of delay dated 21.05.2010 and affidavit below Exh. 28 dated 26.07.2013, vakalatnama filed by the Respondent No.1 before this Court (in the present Writ Petition) and affidavit dated 23.03.2017 (in marathi) prima facie shows that, the applications filed before the Trial Court were signed by some other person, other than Respondent No.1 himself. Prima facie this itself shows that Respondent No.1 has committed fraud before the Trial Court for obtaining favourable

orders.

13 Hence, this is a fit case to direct Trial Court to take action against Respondent No.1 under chapter XI of Indian Penal Code r/w Section 340 of Criminal Procedure Code after following due process of law.

14 The Apex Court in the matter of ***Kishorbhai Gandubhai Pethani V/s. State of Gujarat & Anr. reported in (2014) 13 SCC 539.*** Paragraphs 9 reads thus:

“9. Perjury is an obstruction of justice. Deliberately making false statements which are material to the case, and that too under oath, amounts to crime of perjury. Thus, perjury has always to be seen as a cause of concern for the judicial system. It strikes at the root of the system itself and disturbs the accuracy of the findings recorded by the court. Therefore, any person found guilty of causing perjury, has to be dealt with seriously as it is necessary for the working of the court as well as for the benefit of the public at large.”

15 The provisions of Section 195 read with Section 340 of Criminal Procedure Code empowers the Court to take action against those who attempt to pollute the function of justice by committing the offences in or in relation to a proceeding of the court in respect of the document produced or given in evidence in a proceeding in that court, suo moto on or application of any party. Hence, court may take the appropriate action against the parties who committed such offence and against those who appear to have abated and/or added the commission of those offences.

16 As regards the inquiry to be made in such matter to filing of a

complaint by the Court, their Lordships of the Apex Court have laid down the law in the case of ***Prithvi V/s. State of Maharashtra, AIR 2002 SC 236***. Paragraphs 8 and 9 of the said judgment, reads thus:

"8 Chapter XXVI of the Code contains provisions "as to offences affecting the administration of justice". Among the 12 sections subsumed therein we need consider only three. Section 340 consists of four Sub-sections of which only the first sub-section is relevant for the purpose of this case. Hence the said sub-section is extracted below:

"When upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate."

9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court

(before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.”

17 Considering these facts, I am of the opinion that it is necessary to direct the Trial Court to hold the detailed inquiry including calling upon the persons who identified the Respondent No.1 at the time of filing those three applications in WC Application No. 270/1-65/2007 and take action against them, if they found guilty to that effect. Apart from that, the Trial Court to consider whether action can be taken against them as per Chapter XI of the Indian Penal Code.

18 Hence, it is necessary to set aside the order dated 06.12.2014 passed by the 3rd Labour Court, Thane below Exh. C-31 directing Trial Court to hold proper inquiry as stated above.

19 Hence, following order is passed:

a) Writ Petition is allowed.

b) Order dated 06.12.2014 passed by 3rd Labour Court, Thane below Exh. C-31 in W.C. Application No. 173/1-43 of 2010 is set aside.

c) Application filed by the petitioner below Exh. C-31 in W.C. Application No. 173/1-43 of 2010 is restored on file for hearing on its own merits.

d) The Trial Court is directed to hear the application filed by the petitioner below Exh. C-31 in W.C. Application No. 173/1-43/2010 afresh by giving liberty to both the parties to file their additional pleadings, if any.

e) Till the hearing and final disposal of application below Exh. C-31, further proceeding in Application (WCA) No. 173/I-43/2010, is stayed.

f) The Trial Court is directed to consider after holding inquiry whether Respondent No.1 Mr. Maruti Nashik Mene along with other persons committed any offence punishable under Chapter XI of Indian Penal Code. If yes, action be taken against them by

following due process of law.

g) The Registry is directed to forward the certified photocopy of vakalatnama dated 23.09.2016 and affidavit dated 23.03.2017 (first two pages i.e. page Nos. 120 & 121 which are in Marathi) filed by the Respondent No.1 Maruti Nashik Mene in Writ Petition No. 3919 of 2016 to the Trial Court immediately with writ.

h) Writ Petition is disposed of accordingly.

(K.K.TATED, J.)