

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

WRIT PETITION NO.5599 OF 2017

M/s. Ipca Laboratories Ltd.

.. Petitioner

Vs.

Krantikari Kamgar Union

.. Respondent

Mr. Sudhir Talsania, Senior Advocate, i/b. Mr. Ravindra V. Paranjape for the petitioner.

Mr. Sanjay Singhvi, Senior Advocate, i/b. Ms. Karishma Rao for the respondent.

CORAM : A.K. MENON, J.

DATED : 13TH DECEMBER, 2017

P.C. :

1. By this writ petition, the petitioner challenges an order dated 4th January, 2017 passed by the Industrial Court on an application seeking to raise a preliminary issue on maintainability of the reference. It is the case of the petitioner company that the reference was misconceived and not maintainable on the ground that the earlier reference in respect of which several challenges resulted in a Special Leave Petition being filed. By order dated 21st November, 2011 the Supreme Court has issued notice in the applications before it and directed in the case of the petitioner (SLP CC no.18168 of 2011) as follows:-

“Notice may be served dasti as well.

The proceedings before the Industrial Tribunal, Dadra and Nagar Haveli shall continue but the final award shall not be passed until further orders."

2. The essence of the challenge today is that Pending the disposal of the Civil Appeal, the Tribunal has been directed not to pass an award till further orders of the Supreme Court, the second reference is not maintainable and therefore the impugned order rejecting the application was not justified. The Civil Appeals are now pending and on 24th January, 2013, a further order has been passed whereby without prejudice to the rights and contentions of the parties, the petitioner herein was permitted to arrive at settlements with individual workmen.
3. Mr. Talsania, the learned Senior Counsel appearing on behalf of the petitioner submitted that the present writ petition raises an important question as to whether during the pendency of the earlier reference and the order passed by the Supreme Court in effect restraining the Tribunal declaring an award, the second reference could not be made for a subsequent period.
4. The petition is opposed by Mr. Singhvi on behalf of the respondent

on the ground that there is no legal bar to a second reference being made and in fact the second reference is merely in relation to demands forming part of the first reference but for a subsequent period. In support of his contention he relied upon the decision of the Supreme Court in the case of *State of Maharashtra v/s. Kamani Employees' Union and others (1975) 4 SCC 841* and submitted that in that case the earlier reference of December 1962 was pending in respect of which the award came to be passed in February 1964. However, in the meantime, in January 1964 one reference came to be made. The Supreme Court had considered a submission that the second reference would lead to supersession of the earlier reference and held that the supersession would result if the second reference was clearly different and unconnected.

5. In the present case, although according to Mr. Talsania the second reference is unconnected to the first reference, I find that the application on which the impugned order has been passed does not proceed on the basis that the second reference is unconnected. It appears from the record that the second reference is merely for a subsequent period as evident from Annexure-A to the letter dated 18th July, 2010 (Exhibit E). The petitioner has already filed its written statement dated 8th March, 2017 raising all defences and dealing with

this second reference on merits. This submission is being urged for the first time in this Court. In the circumstances, I find no reason to interfere in the writ jurisdiction of this Court. Accordingly, I pass the following order:-

- (i) Writ petition is rejected.
- (ii) No orders as to costs.

(A.K. MENON,J.)