

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

WRIT PETITION NO.10109 OF 2017

The Kolhapur Municipal Transport	...	Petitioner
versus		
Revji Rujaba Vishvasrao and Anr.	...	Respondents

Mr. Aniket Nikam for Petitioner.

Mr. Satyajeet Rajeshirke, for Respondent.

Mr. Sanjay Inamdar, Labour Officer, Kolhapur Municipal Corporation, present.

Mr. Revji Rujaba Vishvasrao, Respondent No.1 present.

CORAM: S.J. KATHAWALLA, J.

**DATE: 23rd NOVEMBER, 2017
(In Chambers)**

P.C.:

1. This is a matter where the Respondent No.1 Revji Rujaba Vishvasrao, who has worked as a Bus Conductor for 25 years, has been since about a decade made to run from pillar to post by the Kolhapur Municipal Transport, an Undertaking of the Kolhapur Municipal Corporation, to receive his Dearness Allowance, House Rent and City Local allowance and other benefits, despite orders being passed in his favour by the Industrial Court, Kolhapur and confirmed by this Court as well as by the Hon'ble Supreme Court of India.

2. As stated earlier, the Petitioner – Kolhapur Municipal Transport, is an undertaking of the Kolhapur Municipal Corporation. The Respondent worked as a

Bus Conductor with the Petitioner from 1st April, 1979 until he retired on 31st December, 2003. The Respondent had filed a Complaint before the Industrial Court, Kolhapur being Complaint (ULP) No.184 of 2008 under Section 28 read with Items 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 (the Act) stating that the Petitioner had not paid him the dearness allowance, house rent and city local allowance and other benefits. The Petitioner opposed the said Complaint inter alia on the ground that the same was barred by the law of limitation and that the Respondent has not mentioned any particular amount required to be paid to him by the Petitioner. The said Complaint was disposed of after four years by a detailed order dated 20th April, 2012 by the Industrial Court, Kolhapur in favour of the Respondent. Infact, on internal page 11 of the said order, the Industrial Court has observed that the conduct of the Petitioner is dishonest.

3. The Petitioner filed a Civil Writ Petition bearing No.9692 of 2012 before this Court challenging the order passed by the Industrial Court, Kolhapur in Complaint (ULP) No.184 of 2008. The said Writ Petition was also dismissed by a speaking order dated 26th June, 2013.

4. In the meantime, the Respondent had filed an Application being Misc. Application No.13 of 2012 under Section 50 of the Act seeking issuance of recovery certificate against the Petitioner claiming an amount of Rs.1,32,650/- with 10% interest thereon from January, 2009. Though the said Application was pending before the

Industrial Court, Kolhapur for two years, the Petitioner failed to appear and oppose the said Misc. Application No.13 of 2012. In view thereof and in the absence of any contest by the Petitioner, an ex-parte order was passed in the said Misc. Application on 20th March, 2014 directing issuance of recovery certificate for an amount of Rs.1,32,650/- with 10% interest thereon from January, 2009, against the Petitioner.

5. Infact, after waiting for almost two years, the Petitioner filed SLP No.15930 of 2015 before the Hon'ble Supreme Court of India challenging the order passed by this Court dated 26th June, 2013 dismissing the challenge to the order dated 20th April, 2012 passed by the Industrial Court, Kolhapur in Complaint (ULP) No.184 of 2008. By an order dated 7th September, 2015 the Hon'ble Supreme Court of India condoned the delay and dismissed the said SLP.

6. On 19th December, 2015 the Petitioner filed a Misc. Application (ULP) No.7 of 2015 under Regulation 44(6) of the Industrial Court Regulations 1975 and prayed that the amount mentioned in the order dated 20th March, 2014 should be altered. The said Misc. Application (ULP) No.7 of 2015 filed by the Petitioner was rejected by the Industrial Court, Kolhapur by an order dated 15th November, 2016 on the ground that it was not maintainable. The Petitioner thereafter filed a Review Application being Misc. Application (Review) (ULP) No.2 of 2016 which was also dismissed by an order dated 25th November, 2016.

7. The Petitioner has by the above Writ Petition challenged the order dated

20th March, 2014 passed in Misc. Application (ULP) No.13 of 2012 filed by the Respondent and the order dated 15th November, 2016 rejecting the Misc. Application (ULP) No.7 of 2015 filed by the Petitioner seeking alteration of the order dated 20th March, 2014 and have prayed that Misc. Application (ULP) No.7 of 2015 be allowed. The reason given for not attending Misc. Application (ULP) No.13 of 2012 for a period of two years, in which an ex-parte order was passed on 20th March, 2014 directing the Respondent to be paid an amount of Rs.1,32,650/- along with 10% interest thereon from January, 2009 is that the Petitioner was prosecuting Writ Petition No.9692 of 2012 in the High Court and thereafter the SLP filed therefrom being SLP No.15930 of 2015 before the Hon'ble Supreme Court of India and the concerned officers of the Petitioner being involved in pursuing the matters in the Apex Court, due to oversight and inadvertence, could not attend Misc. Application (ULP) No.13 of 2012, resulting in the same being decided ex-parte. As stated hereinabove, Complaint (ULP) No.184 of 2008 was disposed of by the Industrial Court by its order dated 20th April, 2012. Writ Petition No.9692 of 2012 filed by the Petitioner before this Court impugning the order dated 20th April, 2012, was dismissed by an order dated 26th June, 2013. The Petitioner moved the Hon'ble Supreme Court of India impugning the said order only in the year 2015. The Misc. Application (ULP) No.13 of 2012 filed by the Respondent was pending before the Industrial Court, Kolhapur for a period of two years and was disposed of ex-parte only on 20th March, 2014. Therefore

between June 2013 to September 2015, the Petitioner were not pursuing any proceedings before any Court and the explanation given by the Petitioner, which is recorded hereinabove, is false and incorrect to their own knowledge. Even otherwise, it cannot be accepted that the Petitioner who have throughout aggressively pursued all the remedies available to them and have not left any stone unturned in contesting the claim of the Petitioner as stated above, would not pursue the Misc. Application (ULP) No.13 of 2012 filed by the Respondent seeking recovery certificate against the Petitioner due to oversight or inadvertence. It is obvious that the Petitioner did not attend Misc. Application (ULP) No.13 of 2012 because they intended to challenge the order dated 26th June, 2013 passed by this Court in Writ Petition No.9692 of 2012 by filing SLP before the Supreme Court of India, which they ultimately did only in the year 2015 and it is only after the SLP was dismissed by an order dated 7th September, 2015, that they moved the Industrial Court, Kolhapur seeking setting aside/modification of the order dated 20th March, 2014 in Misc. Application (ULP) No.13 of 2012. The reasons given by the Petitioner for not attending/contesting the Misc. Application (ULP) No.13 of 2012 for almost two years which was ultimately disposed off by an ex-parte order dated 20th March, 2014 are false and dishonest. I am therefore, of the view that as observed by the Industrial Court, Kolhapur in its first order itself dated 20th April, 2012, the conduct of the Petitioner is dishonest. I am therefore, also convinced that the Petitioner is only interested in harassing the

Respondent No.1 by depriving him of his legitimate dues. The orders passed by the Industrial Court, Kolhapur, which are impugned herein, therefore, does not need any interference. The Writ Petition is dismissed with costs quantified at Rs.25,000/-.

(S.J.KATHAWALLA, J.)