

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

**WRIT PETITION NO. 6760 OF 2016**

Mr.Jayant Jagtap and Ors.

...Petitioners

vs.

Srinivas Chemicals Industries Ltd. & Ors.

...Respondents

Ms.Jane Cox I/b. Rajmohan A. Amonkar for Petitioners.

Mr.Kamran Sheikh I/b. Pallavi A. Kulkarni for Respondents.

**CORAM : PRASANNA B. VARALE, J.**

**DATE : 18 SEPTEMBER 2017**

**P.C. :**

Heard learned Counsel, Ms.Cox, for the Petitioners.

2           Perusal of the material placed on record shows that the Petitioners before this court approached the learned Industrial Court, Thane by filing the complaint (ULP) under Items 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. It is submitted before the learned Industrial Court that the complainants (Petitioners herein) are espousing the cause on behalf of them as well as on behalf of these co-employees, who have authorised them to do so in writing. It was the case of these complainants before the Industrial Court that the complainants were party to the agreement dated 13/11/2008 being the members of union and were assigned the jobwork for a long period. It may not be necessary to give all the details of the complaint. Suffice to say that the prayers in the complaint are for grant of full backwages and benefits, including statutory contribution such as Provident Fund for the period from 21 July 2012 till the date of

filing of complaint with interest and other prayers seeking directions to provide the work and directions to the Respondents restraining either from disposal of the property or creating third party rights over the property. By way of an application, the complainants / Petitioners approached the Industrial Court for ad-interim reliefs under Section 32 of the MRTU and PULP Act, 1971. The material prayers in the said application were prayer clause (b) : pending the hearing and final disposal of the complaint, direct the Respondents to pay to the workmen listed in Annexure B (Part 1) their full wages and benefits, including all statutory contributions such as Provident Fund on the 7<sup>th</sup> day of each proceeding month; prayer clause (c) : pending the hearing and final disposal of the complaint, direct the Respondents to provide the workmen listed in Annexure B (Part1) with work; and prayer clause (d): pending the hearing and final disposal of the complaint, restrain the Respondents from selling mortgaging, alienating or creating any third party rights whatsoever therein or / and any portion thereof of the factory land on which the factory is situated at Plot No. E-5, M.I.D.C. Tarapur, Palghar, District Thane and / or the building and flats situated at Plot No.E-5, M.I.D.C. Tarapur, Palghar, District Thane, and from removing, selling, mortgaging, alienating or creating any third party rights whatsoever in the plant and machinery, semi finished and unfinished goods and raw material lying in the factory at Plot No.E-5, M.I.D.C. Tarapur, Palghar, Dist.Thane and listed at Annexure B. The material placed on record shows that the application was opposed by filing reply to the said application. By order dated 7 November 2015, the learned Member of the Industrial Court could not find favour with the prayer in respect of the interim relief regarding directions to pay unpaid wages since August 2012 but the learned Member protected the interest of the workers. The application was partly allowed and the opponents were directed not to

remove plant and machinery, finished goods, raw material and not to create third party interest on the property, which is not under mortgage with any bank till disposal of the complaint.

3            Learned Counsel for the Petitioners, Ms.Cox, submitted that though in the reply to the application statement was made that the manufacturing activities are closed, the Petitioners came to know about a notice issued on 1 August 2013. Learned Counsel, Ms.Cox, submits that an attempt is made by the Respondents to take shelter of the closure notice. Learned Counsel then submits that in the opinion of the Petitioners, the stand of the Respondents of closure is unsustainable as no necessary compliance is followed. It was the submission of learned Counsel for the Petitioners that the closure made a *de facto* closure but it cannot be termed as a *de jure* closure as it fails to comply any legal provision. It was the attempt of learned Counsel for the Petitioners to submit before this court that the Petitioners apprehended of the disposal of the property by the Respondents, which is mortgaged with the financial institute and the Petitioners apprehended that the Respondents might have initiated parallel proceedings and if the property is disposed of, the Petitioners may be deprived of their legal entitlements. The apprehension of learned Counsel for the Petitioners was based on a notice, which is placed on record at page 94 Exhibit K dated 6 February 2016. Learned Counsel for the Petitioners submitted that the Petitioners' apprehension that by one way or the other the Respondents may only prolong the proceedings. Learned Counsel submitted that though notice dated 6 February 2016 was served, no application was filed before the learned Industrial Court.

4            On perusal of the record, it revealed that on certain occasions, it

was submitted before this court that the parties are trying to explore the possibility of settlement. Learned Counsel appearing for the Respondents today submitted that though the Respondents were ready for exploring the possibility of settlement, due to one of the group of workers opposing the settlement it was not possible. Learned Counsel for the Petitioners vehemently opposes the said submission on the ground that the Petitioners were though ready to co-operate in the settlement process and the Petitioners approached the Respondents, there was no positive response from the Respondents. This court is not going into this aspect of the matter whether there was really a positive response or not or whether offer was made and could not be materialised because of one of the group. Considering the material fact that the learned Member of the Industrial Court by order dated 7 November 2015 protected the interest of the Petitioners by way of restraining the Respondents not to remove plant and machinery, finished goods, raw material and not to create third party interest on the property, which is not under mortgage with any bank till disposal of the complaint, it would be certain for the competent forum, namely, the member, to assess the material and consider the aspect of the claim for wages. Learned Counsel for the Petitioners submitted that the Petitioners be permitted to amend the complaint by raising the grounds of challenge to the closure notice and also additional prayers for the legal entitlements such as the retrenchment compensation, gratuity, notice pay as some of the Petitioners are working from 1981, 1982 and 1983 onwards. The interference in the order impugned wherein the interest of the Petitioners is protected may not be justified in the opinion of this court. The submission of learned Counsel that the Petitioners be permitted to amend the complaint and the learned Member of the Industrial Court be directed to decide the complaint itself within the stipulated period certainly needs

consideration. Learned Counsel for the Respondents fairly submits that for such directions the Respondents having no objection, the interest of both the parties can certainly be protected by directing the learned Member of the Industrial Court to decide the complaint within stipulated period and by permitting the Petitioners to amend the complaint. Needless to state that if the complaint is amended and certain additional prayers are incorporated, the Respondent must have an opportunity to oppose the additional prayers, if so advised.

5           In the result, the petition is disposed of with directions to the learned Member of the Industrial Court to decide the complaint as early as possible and not later than 30 April 2018. If the Petitioners approached the learned Member of the Industrial court for amendment to the complaint and additional prayers in the complaint by way of an application, the same be decided on its merits. Needless to state by giving an opportunity of hearing to the other side, if the Petitioners are exploring the exercise of amendment of the complaint and additional prayers, the same be undertaken within two weeks from today.

6           With the above referred directions, the petition is disposed of.

**(PRASANNA B. VARALE, J.)**