

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8407 OF 2016

Tuljabhavani Cold Storage Pvt. Ltd. ... Petitioner
Vs.
Amit Ramchandra Dalavi and others ... Respondents

Mr. Rahul S. Kate for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 16, 2017

P.C. :

Heard Mr. Kate, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 05.10.2015 passed by the learned Joint Civil Judge, Junior Division, Baramati below exhibit-5 in Regular Civil Suit No.283 of 2015 as also the judgment and order dated 23.03.2016 passed by the learned Ad-hoc District Judge-1, Baramati in Miscellaneous Civil Appeal No.68 of 2015. By these orders, the Courts below rejected the application made by the plaintiff under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for injunction restraining defendants No.2 to 9 from entering into its campus and causing any sort of obstruction to it while doing work of loading and unloading.

3. In support of this Petition, Mr. Kate invited my attention to the prayers made in the application at exhibit-5. He also invited my attention to the letter dated 04.02.2015 addressed by Pune Mathadi, Hamal & Other Manual Workers Board (for short 'Board') to the plaintiff.

4. Mr. Kate submitted that on 27.02.2015, plaintiff made application under Section 5 of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (for short 'Act') to the Secretary Labour and Energy Department, Mantralaya, Mumbai disputing applicability of the said Act and for deciding the application made by the plaintiff after hearing them. Mr. Kate further submitted that in fact on 08.11.2015, workers attached to gang No.2665 raised grievance as regards non-payment of their seven months salary. He also invited my attention to Sections 2(9), 5 and 14 of the Act to contend that the provisions of the Act are not applicable to the plaintiff's establishment. Mr. Kate further submitted that by order dated 22.09.2016 passed by this Court in Writ Petition No.8118 of 2016, State Government was directed to decide petitioner's application filed under Section 5 of the Act. In pursuance thereof, hearing of that application was concluded. However, till date, no decision is taken by the State Government. He further states that plaintiff has filed Contempt Petition for not complying the said order. Mr. Kate submitted that basically, the Act itself is not applicable, and therefore, the Courts below were not justified in rejecting the application for interim relief made by the plaintiff.

5. I have considered the submissions advanced by Mr. Kate. I have also perused the material on record. Section 2(9) of the Act defines the expression 'scheduled employment' to mean any employment specified in the schedule hereto or any process or branch of work forming part of such employment. Item No.5 of the Schedule is to the following effect:

“5. Employment in markets, and factories and other establishments, in connection with loading, unloading, stacking, carrying, weighing, measuring, filing, stitching, sorting, cleaning or such other work including work preparatory or incidental to such operations carried on by workers not covered by any other entries in this Schedule.”

6. Section 5 of the Act deals with disputes regarding application of the scheme framed by the State Government made under the Act. It provides that if any question arises whether any scheme applies to any class of unprotected workers or employers, the matter has to be referred to the State Government and the decision of the State Government on that question which has to be taken after consulting the Advisory Committee constituted under Section 14 is final. Section 14 provides for constitution of the advisory committee to advise upon matters arising out of the administration of the Act or any scheme made under the Act or relating to the application of the provision of the Act to any particular class of unprotected workers and employers.

7. While rejecting the application filed by the plaintiff, the Courts below have considered the documents placed on record. In paragraph 14, the learned trial Judge has referred to the list of documents at exhibit-28 and observed that documents at Sr. No.1 to 8 are the payslips of defendants No.2 to 9. Perusal of the payslips of defendants No.2 to 9 shows that payment as to the work done by them was deposited by the plaintiff company with the Board. From that, it can be seen that defendants No.2 to 9 are registered with the Board. Defendants No.2 to 9 also placed on record photo identity card issued to each of them by the Board. In paragraph 18, the learned trial Judge dealt with the contentions advanced on behalf of the plaintiff that the Act does not apply to it. The learned trial Judge referred to Section 2(9) and item 5 of the Schedule. In paragraph 19, the learned trial Judge referred to the notice dated 19.02.2015 addressed by the Board to the plaintiff. After considering the material on record, in paragraph 20, the learned trial Judge observed that the work of loading and unloading done by the plaintiff comes under the purview of the Scheme framed under the Act.

8. As far as the appellate Court is concerned, in paragraph 13, the learned District Judge has referred to the documents at exhibit-36 dated 30.07.2015 issued by the Board in respect of Provident Fund of defendants No.2 to 9. The learned District Judge also referred to 24 documents as per the list at exhibit-28 produced before the trial Court and in particular, inspection report dated 20.01.2014, document No.23 and Mathadi Board found that defendants No.2 to 9 are working in the plaintiff company as per the Act. The Courts below, after considering the material on record, have declined to grant injunction in favour of the plaintiff. In view thereof, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India.

9. Mr. Kate submitted that till date, the State Government has not decided the application filed by the plaintiff under Section 5 of the Act. In view thereof, in the event of State Government deciding the application in favour of the plaintiff company, liberty is reserved to the plaintiff to file application under the second proviso to Order XXXIX, Rule 4 of C.P.C. The learned trial Judge will decide such application uninfluenced by the observations made in the orders passed by the Courts below as also this Court. Subject to this, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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