

Writ Petition NO. 8213 OF 2016

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Mr.D.S. Hatle i/b. J.D. Pundlik, Advocate for the Petitioner.

Mr.Bennet D'Costa, Advocate for the Respondents.

Mr.Sameer Golatkar, Secretary of respondent No.1 is present.

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CORAM : R. G. KETKAR, J.

DATE : 06th JUNE, 2017

JUDGMENT:

1. Heard Mr.D.S. Hatle, learned counsel for the petitioner and Mr.Bennet D'Costa, learned counsel for the respondents, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 26.11.2015 passed by the learned Member, Industrial

Court, Thane (for short, 'Tribunal') below Exhibit-C-21 in Complaint (U.L.P.) No.128/2011. By that order, the Tribunal rejected the application Exhibit-C-21 made by the petitioner *inter alia* praying for (a) permission to dispose of the raw materials, semi-finished goods and scrap lying in the factory premises of the petitioner; (b) permission to dispose of the machineries, spare parts, equipments, stores and consumables lying in the stores, tools and tackles and any other material, (c) permission to release the goods / equipments / machineries / empty gas cylinders belonging to the customers / suppliers / vendors of the petitioner; and (d) permission to create third party interest by way of subletting the premises / assignments to any suitable person with a view to availing the opportunity cost and the potentiality of the property so as to meet the day to day expenses. The parties will be referred hereinafter as per their status in the complaint before the Industrial Court, Thane.

3. The complainant has instituted the complaint under Section 28 read with Items No.1, 5 and 6 of Schedule II and Items No.9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,

1971 (for short, 'Act') *inter alia* praying for (a) declaration that the respondents [(1) M/s.Hurry Noth & Co. Pvt. Ltd, (2) Mr. Sunil Talwar and (3) Mr.Prabhakar Jhalse (Patil)] have engaged in unfair labour practices under Items No.1, 5 & 6 of Schedule II and Item No.10 of Schedule IV of the Act; and (b) declaration that the closure notice dated 16.4.2011 is illegal and the closure be removed.

4. During pendency of the complaint, the complainant took out application Exhibit-U-2 for interim reliefs. By order dated 17.1.2012, the Tribunal partly allowed the application and directed the respondents not to remove the plant and machinery, fixtures, assets in so far as the claim of the concerned workers and not to create third party interest in the factory premises of the company pending final disposal of main complaint on merit. The parties were given liberty to expedite the complaint within six months.

5. It appears that the respondents filed application Exhibit-C-12 *inter alia* for permission to dispose of the raw materials, semi-finished goods and finished goods lying in the factory premises of respondent No.1; for releasing the goods /

equipments of the customers / suppliers of respondent No.1 which has been brought for the purpose of processing; for creating third party interest in view of subletting of the premises / assignments to any suitable persons with a view to availing the opportunity cost and the potentiality of the property so as to meet the day to day expenses. By order dated 23.7.2013, the Tribunal disposed of the application and permitted respondent No.1 to remove the raw material and finished goods and not to create third party interest in immovable property pending the complaint.

6. The complainant filed application below Exhibit-U-28 seeking review of the order dated 23.7.2013 below Exhibit-U-12. By order dated 19.8.2013, the Tribunal partly allowed application Exhibit-U-28 and modified the order dated 23.7.2013 by restricting the relief only in respect of removal of finished goods. The respondents were directed to deposit the legal dues of the undisputed workers as mentioned in Exhibit-C-11 without prejudice to the rights and contentions of both the parties in the Court. Insofar as the relief granted under Exhibit-U-2 in respect of removal of the plant and machinery, fixtures, assets, and not to create any third party interest

pending the final disposal of the main complaint on merits, was continued. It is common ground between the parties that the respondents have not challenged the orders passed below Exhibits-U-2 and U-28.

7. Respondent No.1 thereafter filed application Exhibit-C-21 claiming the reliefs, indicated hereinabove. By the impugned order, the Tribunal rejected the application. It is against this order, present Petition is instituted. In support of this Petition Mr. Hatle submitted that the Tribunal failed to consider that the raw material / the work in process and all other material are perishable which is subject to the corrosion on account of the salty weather and the value of the goods would be diminished considerably and the petitioner would be put to financial losses on day to day basis. The Tribunal failed to consider that the plant and machinery is hypothecated to the bankers, namely, the Bank of Baroda and, therefore, the Tribunal should have allowed the petitioner to take away the raw material, semi-finished goods and the work in process with a view to realizing the amount involved thereof so as to discharge the bankers partly. The Tribunal should have allowed the petitioner to create third party interest in respect

of the premises with a view to strengthening the financial condition of the petitioner so as to meet the day to day expenses like security charges, rent, property tax and the charges towards the maintenance etc.

8. On the other hand, Mr. D'Costa supported the impugned order. He invited my attention to paragraph-5 of the impugned order.

9. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Paragraph-5 of the impugned order dated 26.11.2015 reads thus:

“5. I have heard both the sides. It appears that, the respondents were directed by passing order below Exh.U-2 not to remove plant and machinery, fixtures, assets in so far as the claim of the workers concerned and not to create third party interest in factory premises. It appears from the order below Exh.U-28 that, initially by passing order below Exh.C-12 the respondent was allowed to remove raw material and finished goods and again the order was passed on merit below application

Exh.U-28 which was for review of the order dated 23.07.2013 passed below Exh.C-12 and the relief granted below Exh.U-2 in respect of removal of plant and machinery, fixtures, assets and not to create any third party interest, pending the final disposal of the main on merits was continued. The respondent no.1 were only allowed to remove finished goods only and were directed to pay legal dues of the undisputed workers. It also appears that, the respondent no.1 has come with the case that, they have concerned with only 25 workers and contended that, their dues are paid. According to the complainant, about 172 workers are unemployed. The grounds which are mentioned in para 9 of this application were also raised in earlier application Exh.C-12 by the respondent no.1. Ld. Advocate for the respondent submitted that, this application Exh.C-21 is not at all decided by my predecessor and Exh.C-23 was decided. It appears from the common order below Exh.U-42 & Exh.C-21 dated 22.09.2015, my predecessor has discussed that, instead of challenging the order below Exh.U-2, the respondent is praying to set aside the order passed on merit by filing the application Exh.C-21 and Exh.C-23. IT was also recorded by my

predecessor to decide the matter expeditiously. According to the complainant, the affidavit of witness is already filed. They have also contended about unemployment of 172 workers. Considering these facts, it will not be desirable to allow the application. The prayer in Clause (c) in the application pertaining to relief of gas cylinders is already allowed by my predecessor by passing order below Exh.U-42 and Exh.C-21. For the reasons stated above, the application is requires to be rejected.”

10. A perusal of the above extracted paragraphs shows that the Tribunal rejected the application principally on the ground that the respondents did not challenge the order dated 17.1.2012 below Exhibit U-2 and the order dated 19.8.2013 below Exhibit U-28. In other words, the Tribunal was of the view that the order passed below Exhibit U-2 will stand set aside if the application Exhibit C-21 is allowed. For the reasons recorded in paragraph-5 of the impugned order, I do not find any fault in the approach of the Tribunal.

11. Mr. Hatle submitted that the perishable articles are lying in the factory premises of the respondents and by delaying the complaint, its value will be diminished

considerably. He submitted that though the complaint is pending since 2011 and the Tribunal has directed the parties to expedite the hearing, there is no substantial progress in the trial. He, therefore, submitted that the Tribunal may be directed to dispose of the complaint within three months from receipt of the authenticated copy of this order.

12. Mr. D'Costa submitted that the complainant has taken inspection of the documents from the respondents. He will furnish list of documents, of which inspection is taken, to be produced by the respondent. Upon taking instructions from Mr. Sameer Golatkar, Secretary of the complainant who is present in Court, Mr. D'Costa states that the complainants will examine four or five witnesses. Mr. Hatle states that respondent No.1 will examine one of the Directors of the Company. Both the parties agreed that they will extend full co-operation for expeditious disposal of the complaint before the Tribunal.

13. In the light of the aforesaid discussion, the Petition is disposed of in the following terms :

(i) Impugned order is upheld.

- (ii) The Industrial Court is requested to dispose of Complaint (U.L.P.) No. 128/2011 as early as possible and not later than six months from production of authenticated copy of this order.
- (iii) Both the parties shall co-operate for expeditious disposal of the complaint.
- (iv) It is made clear that the observations made herein are only for the purpose of finding out the correctness of the impugned order. All contentions of the parties on merits are expressly kept open.
- (v) The Industrial Court will decide the complaint uninfluenced by the observations made herein.
- (vi) Rule is discharged with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)