IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6631 OF 2016

M/s. Konark Infrastructure Ltd. ...Petitioner
Versus
Shri Kumod R. Verma ...Respondent

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Mr.Pramod Anaokar, Advocate for the Petitioner.
Mr. Rajesh S. Datar, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 07th JUNE, 2017

P.C.

1. Heard Mr.Pramod Anaokar, learned counsel for the petitioner and Mr.R.S. Datar, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 19.10.2015 passed by the learned Presiding Officer, First Labour Court, Thane in Reference (IAD) No.178/2013. By that order, the trial Judge partly answered the reference in affirmative and directed the petitioner/first party to pay legal dues i.e. notice pay of one month, retrenchment compensation,

bonus, gratuity and provident fund to the second party with 6% interest from the date of the complaint to Assistant Labour Commissioner, Kalyan till realization.

3. In support of this petition, Mr. Anaokar submitted that the second party is not a workman. He invited my attention to the cross-examination of the second party. During the course of cross-examination, the second party admitted that the nature of work allotted to him was supervisory in nature. He submitted that the learned trial Judge has not considered this aspect at all. He has taken me through the written statement filed by the first party and in particular paragraph-1(a) wherein the first party specifically asserted that the second party was lastly working as a in-charge.

4. On the other hand Mr. Datar supported the impugned order. He submitted that in the cross-examination the second party deposed that he was doing writing work, receiving the leave applications, receiving the job applications and putting up the applications before the first party and other miscellaneous work. He submitted that in fact no evidence was adduced by the first party disclosing the nature of work done by the second

party. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the evidence adduced by the first party does not remotely indicate that the witness of the first party deposed about the nature of the duties performed by the second party. The witness of the first party merely stated in paragraph-6 that the second party was lastly working as a in-charge for the purpose of collection of octroi with effect from 2007. In fact the witness of the first party is having special knowledge about the nature of duties performed by the second party. A perusal of the cross-examination and in particular paragraph-11 shows that the first party did not give offer letter to the workers that the octroi is closed and their service will be terminated or they will be transferred. In paragraph-13, the witness also admitted that no prior notice was given to the workers for termination. The learned trial Judge has considered this aspect and in paragraph-12 it was observed thus :

> "12. After going through the arguments advanced by the parties and the evidence

> on record. It is pertinent to note that the services of the second party was terminated on 30.6.2012. There is no documentary evidence on record that notice was given to the second party at the time of termination of the service. There is no documentary evidence on record that alternate employment was offered to the second party. Under such circumstances, it cannot be safely said that notice of termination of service and notice of alternate arrangement was not given to the second party workman therefore it is illegal termination. It is pertinent to note that second party workman in his statement of claim has not pleaded that he has tried for alternate employment and he has not got any job. He has not deposed in his evidence to that effect."

6. In view thereof, I do not find any case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)