

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6487 of 2016

Ugamraj V. Jain] Petitioner

Vs.

Damodar Laxmayya Gunderi] Respondent

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Mr. V.P. Vaidya i/b Mr. M.M. Agavekar, for petitioner.
 Mr. Shaikh Mohammed Aslam, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 21st JULY, 2017.

P.C.

Heard Mr. Vaidya, learned Counsel for the petitioner and Mr. Shaikh, learned Counsel for the respondent at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 17th July, 2015 passed by the learned Presiding Officer 3rd Labour Court, Thane in Reference (IDA) No. 10 of 2012. By that order, the Labour Court answered the Reference in the affirmative and ordered reinstatement of the respondent, hereinafter referred to as 'second party' with full back wages and continuity of service with effect from 17th April, 2011.

3. In support of this Petition, Mr. Vaidya submitted that by order dated 27th January, 2012, Deputy Commissioner of Labour, Thane had referred the Reference to the Labour Court Thane for adjudication of dispute on second party's demand for reinstatement in service with full back wages and continuity in service with effect from 17th April, 2011. Second party filed statement of claim on 4th April, 2012. On the same day, second party filed application Exhibit-U-2 u/s 36 of the Industrial Disputes Act, 1947 [for short 'Act'] raising objection to the petitioner hereinafter referred to as 'first party' from engaging Advocate/Labour Law Consultant. On 28th September, 2012, first party filed application Exhibit-C-3 u/s 36 (4) of the Act seeking leave to engage services of legal practitioner. First party filed reply dated 5th August, 2013 opposing application Exhibit-U-2. In the meantime, By order dated 3rd June, 2014, Labour Court disposed of the application Exhibit-U-2 and Exhibit-C-3. The Labour Court allowed application Exhibit-U-2 filed by the second party and rejected application Exhibit-C-3 filed by the first party. First party was prevented from engaging services of legal practitioner to defend his case.

4. Mr. Vaidya invited my attention to Roznama of the proceedings. He submitted that the first party was present on 20th July, 2012. On 7th September, 2012, Advocate Shri Shivkar appeared on behalf of the first party. On 28.09.2012, 07.01.2013, 28.06.2013, 15.07.2013, 05.08.2013, 23.09.2013, 22.10.2013 and 07.04.2014 both the parties were present along with their Advocates. On

03.06.2014, after the applications were decided by the Labour Court, first party did not appear before the Labour Court. He submitted that after the application filed by the second party was allowed and the application filed by the first party was rejected, the Labour Court should have issued notice to the first party intimating rejection of the application filed by the first party for engaging Advocate as also attending the proceedings . He submitted that Roznama of the proceedings reveal that the first party remain un-represented in the proceedings. Advocate representing the first party also did not inform the first party as he was discharged from the proceedings by order dated 3rd June, 2014.

5. Mr. Vaidya further submitted that Award, however, shows that first party was represented by Advocate though he was discharged in pursuance of order dated 3rd June, 2014. Mr. Vaidya submitted that at any rate, Labour Court was not justified in awarding back wages. He submitted that second party was employed with M/s. Gree Tex Establishment run by one Mr. Jain. He invited my attention to the report dated 29th November, 2011 which shows that second party was employed in the said establishment. He submitted that the report also bears signature of the second party. Mr. Vaidya submitted that second party made a false statement that he is not gainfully employed. For all these reasons, he submitted that Petition requires consideration.

6. Mr. Vaidya relied upon decision of the Apex Court in the

case of **Grindlays Bank Ltd Vs. Central Government Industrial Tribunal and others, 1980 (Supp) Supreme Court Cases 420**, wherein Apex Court held that Industrial Tribunal is competent to set aside its ex-parte Award if it is satisfied that the aggrieved party was prevented from appearing by sufficient cause. He also relied upon decision in the case of **Tahil Ram Issardas Sadarangani and others Vs. Ramchand Issardas Sadarangani, 1993 Supp (3) Supreme Court 256** to contend that when appearance of Advocate is withdrawn, it is the duty of the Court to issue fresh notice to the parties after first party's Advocate was discharged.

7. On the other hand, Mr. Shaikh supported the impugned order. He invited my attention to the affidavit in reply filed by second party and in particular paragraph 5 thereof. Second party denied that he ever worked with M/s. Gree Tex. He submitted that that inspection report at Exhibit H was not produced before the trial Court and proved with corroborative evidence by the first party and, therefore, cannot be taken into consideration. In paragraph 7, second party specifically asserted that he is unemployed in spite of best efforts and surviving on help from relative and family.

8. I have considered the rival submissions of the learned Counsel appearing for the parties. I have also considered material on record. It is not in dispute that after service of Statement of Claim, first party filed written statement at Exhibit-C-2 on 28th September, 2012. In other words, first party was duly served with the

proceedings of Reference in question and in pursuance thereof, had filed written statement. A perusal of Roznama shows that on various dates indicated hereinabove, both the parties along with their Advocates were present. On 3rd June, 2014, Labour Court disposed of the application made by the first party as also second party. Labour Court refused permission for engaging Advocate to the first party. A perusal of the Roznama shows that even thereafter Advocate representing first party was present on various dates viz: 19.09.2014, 07.10.2014, 07.11.2014, 16.01.2015 and 27.02.2015 and thereafter, first party did not appear. In the Petition, first party has merely made a statement that after passing of the order on 3rd June, 2015, his Advocate did not intimate that he was discharged from the proceedings on 3rd June, 2014. In other words, he has blamed his Advocate. In the entire Petition, there is no whisper as to whether, first party has made inquiry by contacting the Advocate for knowing the fate of proceeding pending before the Labour Court. The Petition also does not disclose any attempts/efforts made by the first party for attending the proceeding. It cannot be ignored that first party is a businessman. He is not a rustic villager who can claim ignorance of the Court proceedings. He was aware of the proceedings. He had filed written statement. In the case of **Salil Dutta Vs. T.M. & M.C. Private Ltd.**, JT 1993 (4) S.C. 528, the Apex Court has observed thus:

“The Advocate is the agent of the party. His acts and Statements, made within the limits of authority given to him, are the acts and statements of the principal i.e the party who engaged him. It is true that in certain

situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear – they chose to non-cooperate with the court. Having adopted such a stand towards the Court, the defendant has no right to ask its indulgence. Putting the entire blame upon the Advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.

9. Applying tests laid down by the Apex Court in the above para to the facts of the present case, it cannot be said that the first party is innocent litigant. I do not find any fault on the part of the Labour Court in not issuing notice to the first party. First party has not disclosed any efforts made by it for keeping track of the matter before the Labour Court. That apart, decision in **Grindlays Bank Ltd.** (supra), specifically lays down that Industrial Tribunal has

power of setting aside ex-parte Award if it is satisfied that aggrieved party was prevented from appearing by sufficient cause. No efforts were made by the first party for setting aside ex-parte Award by showing sufficient cause.

10. Mr. Vaidya submitted that the Labour Court was not justified in awarding full back wages. He relied on inspection report Exhibit H, Page 43 as also affidavit in rejoinder filed by the first party to contend that second party was gainfully employed and, therefore, is not entitled to back wages. As noted earlier, second party has filed affidavit in reply denying that he ever worked with M/s. Gree Tex as claimed by the first party. Said inspection report was not produced before the Labour Court and is also not proved with corroborative evidence. In paragraph 7, second party has contended that he remained unemployed in spite of great efforts and surviving on help from relatives and family. In view hereof, I do not find that the Labour Court committed any error in awarding back wages.

11. Before parting, it has to be placed on record that suggestion was given to the first party to consider reinstating the second party so that second party will give up his claim of back wages or in the alternative subject to payment of 100% back wages to the second party, he will give up claim of reinstatement and lastly impugned order will be set aside and matter will be remitted to the Labour Court subject to first party paying 50% back wages to the second party unconditionally and regardless of decision of the Labour Court

remaining 50% amount will be invested in a nationalized Bank. Upon taking instructions, from the First Party, Mr. Vaidya submitted that first party is not agreeable to any of the suggestion. In view thereof also, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. Petition fails and the same is dismissed.

12. At this stage, Mr. Vaidya prays for continuation of ad-interim order dated 27th June, 2016 for four weeks from today. He assures that he will not apply for further extension of time. In view thereof, notwithstanding dismissal of the Writ Petition, ad-interim order dated 27th June, 2016 shall remain in force for the period of 4 weeks and shall automatically stand dissolved. It is expressly made clear that no application for further extension of time shall be made and entertained by this Court. Order accordingly.

[R.G. KETKAR, J.]