

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.647 OF 2017

Shri Venkatnarsu Rajesham Manchikatla

.. Petitioner

vs.

Shri Vijayakant Rameshwar Zha

.. Respondent

Mr.Niranjan A. Mogre for the petitioner

Mr.Prashant Kamble i/b Mr.A.S.Rao for the respondent

CORAM : K. K. TATED, J.

DATE : FEBRUARY 9, 2017

P.C.:

1 This court by order dated 3.2.2017 after hearing both the sides placed the matter today for final hearing at the stage of admission itself.

2 Heard the learned counsel for the parties.

3 By this petition under Article 227 of the Constitution of India, the Petitioner original second party challenges the award dated 24.11.2015 passed by Fourth Labour Court, Thane in Reference (IDA) No.239 of 2006 directing petitioner to reinstate the respondent second party in employment with full back wages and continuity in service from 10.9.2005.

4 The learned counsel for the petitioner submits that the courts

below erred in coming to the conclusion that the respondent is entitled to relief in the Reference. He submits that it is the case of the respondent that he was working with the petitioner since 7.8.2002 and he was getting per month Rs.4200/-. He submits that the respondent has not placed on record any documentary evidence to show that he was working with the petitioner. In spite of these facts, impugned order passed by the Labour Court in his favour.

5 The learned counsel for the petitioner submits that the respondent mainly relied on P.W.No.1 i.e. Arun Ram Lochan who filed affidavit in support of respondent case. The learned counsel for the petitioner submits that the said witness Arun Ram Lochan in his cross-examination specifically admitted that he does not know the contents of the affidavit. He does not remember whether the same was signed by him. He submits that in spite of these facts, Labour Court passed impugned award dated 24.11.2015.

6 The learned counsel for the petitioner submits that the Labour Court failed to decide the main issue about the relationship of employer and employee between petitioner and respondent. He submits that the respondent failed to establish the relationship of employer and employee and therefore, there is no question of granting any relief in his affidavit.

7 On the basis of these submissions, the learned counsel for the petitioner submits that award dated 24.11.2015 passed by Fourth Labour Court, Thane in Reference (IDA) No.239 of 2006 is required to be set aside.

8 On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He submits that the Labour Court after considering the evidence on record and particularly witness Mr.Arun Ram Lochan held that the respondent was working in the petitioner's powerloom which was located in house no.242 at Bhivandi and was getting salary of Rs.4200/- per month. He submits that the Labour Court in paragraph 11 of the impugned order specifically gave finding about the witness Mr.Arun Ram Lochan that he was uneducated and therefore, the statement made by the said witness in his cross-examination cannot be considered. He submits that there is no substance in the present petition to set aside the well reasoned order dated 24.11.2015 passed by the 4th Labour Court. Hence, Writ Petition is required to be dismissed with costs.

9 I have heard both the sides at length. It is to be noted that though the respondent pleaded before the Labour Court that he was working with the petitioner since 7.8.2002 and he was getting monthly salary of Rs.4200/-, he failed to produce on record any documentary evidence to that effect. Not only that respondent examined Arun Ram Lochan, Co-worker, who filed his affidavit of evidence. The said witness Arun Ram Lochan admitted in his cross-examination that he does not know the contents of his own affidavit. He further admitted that he does not remember whether he signed the said affidavit. His cross-examination reads thus:

“1. I have received summons from the court. I again say that I have not received summons from the court. Vijaykant asked me to attend court. He did not tell me anything else. I do not know Marathi. I do not know what is written in Marathi.

I do not know about the contents of my affidavit. I do not remember when I have put my signature on it. I might have put my signature on it at Bhiwandi. I do not know Gokul Patil. I do not know who has got typed it. I was only asked to sign it.

No re-examination.”

10 Though the respondent's witness admitted in his cross-examination that he does not have any knowledge about signing of the said affidavit, Labour court considered the same at the time of passing final order. It is to be noted that once the witness in his cross-examination has admitted that he does know what is written in affidavit of evidence, there is no question of considering the contents of the said affidavit. Considering these facts, it is crystal clear that the respondent failed to establish the relationship of employer and employee. Therefore there is no question of directing the petitioner to reinstate him and pay back wages.

11 These facts were not considered by the Labour Court at the time of passing impugned order. Hence, I am of the opinion that petitioner has made out a case for allowing the Writ Petition. Hence, following order is passed:

- a) Order dated 24.11.2015 passed by Fourth Labour Court, Thane in Reference (IDA) No.239 of 2006 is set aside.
- b) Reference (IDA) No.239 of 2006 stands dismissed.
- c) No order as to costs.

JUDGE