

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

WRIT PETITION NO.3321 OF 2016

Shri Keshav Ram Varma .. Petitioner

vs.

M/s. Oriental Rubber Industries Ltd. .. Respondent

Mr.N.M.Ganguli for the petitioner

Mr.K.M.Naik, Sr.Counsel with Mr.A.K.Gopalan i/b M/s.Haresh Mehta
and Co. for the respondent

CORAM : K. K. TATED, J.
DATE : MARCH 27, 2017

PC.:

- 1 Heard the learned counsel for the parties.
- 2 By this petition under Article 226 and 227 of the Constitution of India the Petitioner 2nd party challenges the award dated 22.4.2014 passed by 4th Labour Court, Pune in reference (IDA) No.291 of 2015 answering the reference in the negative.
- 3 In the present proceeding, the petitioner filed statement of claim dated 15.9.2005 with following prayers:

“11. The 2nd Party workman prays that the Hon'ble court may be pleased to pass an Award directing the 1st Party company to reinstate him in service with full back wages,

continuity of service and all attendant benefits w.e.f. 27.10.1980

12. The 2nd Party workman prays that the Hon'ble Court may please direct pass all the benefits to the 2nd party, since the balance of conveniences is in favour of the 2nd Party.

13. The 2nd Party workmen prays that all the consequential benefits may please be pass in favour of the 2nd party.

14. The cost of the litigation incurred may pleased be granted to the 2nd party.”

4 At the time of answering the reference in the negative, Labour Court recorded in paragraph 19 of the impugned judgment that Association of Engineering Workers union had filed Complaint (ULP) No.257 of 1980 before the Industrial Court, Thane for same cause of action as in case in hand. Same was dismissed on 8.3.1982. After lapse of 5 years, one more complaint (ULP) No.1006 of 1987 was filed before the Industrial Court and the same was also dismissed on 20.6.1988. That order was challenged by the worker in Writ Petition No.263 of 1988. The said Writ Petition stand dismissed by order dated 20.6.1993. Thereafter the Union preferred Appeal No.653 of 1993. Same was dismissed on 9.3.1995. The Union had then filed Special Leave Petition No.21513 of 1995. The said Special Leave Petition was dismissed by the Apex Court on 21.7.1997.

5 In spite of these previous litigations for same cause of action, the petitioner made complaint with the Deputy Commissioner of Labour, Pune. In turn Deputy Commissioner of Labour made a reference under Clause-C of Sub-section (1) of section 10 read with sub-section 5 of section 12 of Industrial Disputes Act 1947, Labour Court framed following issues:

	Issues	Findings
1.	Does the Second party prove that there was employer-employee relationship with First party?	In the negative
2.	Does the Second party prove that First party terminated his services illegally w.e.f.27/10/1980?	In the negative
3.	Does the Second party prove that he is entitled to reliefs claimed for?	In the negative
4.	What order?	As per final order

6 The Labour Court considering the previous litigation between the parties answered the reference in the negative by order dated 22.4.2014. Hence, the present Writ Petition.

7 The learned counsel for the petitioner submits that the issue in the present Writ Petition is whether closure declared by the Respondent Company was according to law or not. He submits that after declaration of the closure respondent Company started their Unit at Pune. Therefore, the earlier closure declared by the Company was contrary to law. In support of this contention, he relies on the judgment of the Division Bench of this court in the matter of *Biddle Sawyer Ltd. vs. Chemical Employees Union & Ors., 2007(3) BCR 586*. On the basis of these submissions, the learned counsel for the petitioner submits that the impugned award passed by the Labour Court is required to be set aside.

8 It is to be noted that in the present proceedings, earlier the Union and Association of Engineering Workers filed complaint for same cause of action. That was disposed off. Later on, they went before the Apex Court. In Apex court the Union / Worker lost their case. These facts

were recorded by the Labour Court in paragraph 19 of the impugned award. Paragraph 19 reads thus:

“19. It has come in the evidence of Mr. Shrivastava of the First party that he is working as Head of H.R. and Commercial Department of Koregaon-Bhima factory. He deposed that First party co. had a factory at Bhandup and the said undertaking was closed down permanently w.e.f. 05/01/1981 due to its bad financial position. A closure notice dtd. 03/11/1980 was issued u/s.25(FFA) of the Industrial Disputes Act, 1947. Thereafter, Association of Engineering Workers union had filed Complaint (ULP) No.257 of 1980 before the Industrial Court, Thane which came to be dismissed on 08/03/1982. After a lapse of 5 yrs. One more Complaint (ULP) No.1006 of 1987 was filed before the Industrial Court and the same was also dismissed on 20.06.1988. It was challenged in Writ Petition No.263 of 1988 which also came to be dismissed on 20/06/1993. Thereafter, Appeal No.653 of 1993 was preferred by the union which was also dismissed on 09/03/1995. Union had then filed Special Leave Petition No.21513 of 1995 and the same came to be dismissed on 21/07/1997. Despite the clear verdict of holding the closure as legal and valid 65 workmen had filed another complaint before the Industrial Court, Mumbai bearing Complaint (ULP) No.651 of 1998 alleging that First party co. had started its another unit at Koregaon-Bhima in the year 1992 and in terms of Sec.25(H) of I.D.Act they were entitled to be offered employment in Koregaon-Bhima factor, Dist. Pune. The said complaint came to be allowed against which Writ Petition was filed and it was allowed. Thereafter, Appeal bearing No.517 of 2007 was filed by the workmen and it was dismissed finally on 24/06/2010.”

9 Considering the fact that petitioner after losing the matter thrice upto Supreme Court, made a fresh reference I do not find any substance in the present reference. Writ Petition stands rejected.

JUDGE