

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

WRIT PETITION NO.13777 OF 2016

Emerson Network Power (Pune) Pvt.Ltd. .. Petitioner

vs.

Anil Bhavar and Ors. .. Respondents

Mr.S.K.Talsania, Sr.Counsel i/b Mr.Pramod Anaokar with Mr.Rahul D. Oak for the petitioner

Mr.Meelan Topkar i/b Mr.V.R.Gaikwad for the respondent nos. 1

**CORAM : K. K. TATED, J.
DATE : APRIL 12, 2017**

P.C.:

1 Heard the learned counsel for the parties.

2 By this Petition, petitioner company challenges the order dated 22.9.2016 passed by Industrial Court, Satara below Exhibit-C-2 in Complaint (ULP) No.32 of 2016 rejecting petitioner's application to allow them to remove finished goods as well as material from the factory premises.

3 The learned Senior Counsel for the petitioner across the bar made a statement that though in the present petition they made prayer that their application below Exhibit-C-2 in complaint (ULP) No.32 of 2016 be allowed, he received instruction from the petitioner Company

that they are restricting their prayers in the present petition only in respect of removal of finished goods as per the list placed on record by them in complaint (ULP) No.15 of 2015 which was recorded in order dated 25.05.2015 below Exh. C-4.

4 The learned Senior Counsel for the petitioner submits that initially they filed complaint (ULP) No.15 of 2015. In that, they preferred application for allowing them to remove the finished goods below Exhibit-C-2. He submits that, that application was allowed by the Industrial Court by order dated 13.5.2015. He submits that thereafter one Mr.Nitin Tanaji Ghorpade filed complaint (ULP) No.16 of 2015. In that complaint, the Industrial Court passed order on 25.9.2015 directing parties to maintain status quo. He submits that the petitioner also filed complaint No.32 of 2016 of unfair labour practices under section 28(1) read with item 5 of Schedule III of the MRTU and PULP Act, 1971 before the Industrial Court at Satara with following prayers:

“a) To hold and declare that the Respondents and the other employees, guilty of unfair labour practices under items 5 of Schedule III of the Act;

b) Direct the Respondents and/or its servants and/or its agents and/or its members and/or its representatives and/or its associates and/or its hirelings and the employees from the commission of unfair labour practices alleged in the Complaint;

c) To hold and declare that the employees of the Company who are members of the Respondents and the employees have resorted to acts of unfair labour practices w.e.f. 20.07.2016.

d) That pending the hearing and final disposal of the

Complaint, the Respondents and/or its servants and/or its agents and/or its supporters and/or other the other employees of the Complainant be restrained by direction, Order and/or injunction of this Hon.Court from:

- i) Preventing, obstructing movement of plant and machineries, finished products, semi finished goods, raw materials, documents and the other materials lying inside the factory premises.
- ii) Assembling in the premises of the Complainant and/or near the gate of the factory premises or within 500 meters thereof.
- iii) Staging, conducting or participating in Meetings, Morchas, Demonstrations, gherao or indulging in slogan shouting, cat calling, boring, use of vulgar and indecent languages or squatting in and around the factory premises.
- iv) Preventing, obstructing or causing any hindrances for ingress or egress of Directors, Supervisors, Managerial Staff, Officers, Visitors, Customers, Suppliers from entering the factory premises and interfering with their normal duties;
- v) Preventing, obstructing or causing any hindrances for ingress or egress of man and material in the Complainant's premises.
- vi) From indulging in act of displaying banners, putting posters, flags, placards, etc. at the gate and or compound wall of the complainant.”

5 The learned Senior Counsel for the petitioner submits that in that complaint, the petitioner's preferred application below Exhibit-C-2 for interim relief under section 30(2) of the MRTU & PULP Act, 1971 for allowing the petitioner to remove plant and machineries, finished products, finished goods, raw materials, documents and the other materials lying inside the factory premises. He submits that the said

application was rejected by Industrial Court by order dated 22.09.2016 only on the ground that earlier order in complaint (ULP) No.15 of 2015 is already in continuance and therefore, there is no question of entertaining the application below Exhibit-C-2.

6 The learned Senior Counsel for the petitioner submits that though the Industrial Court passed order on 13.5.2015 in complaint (ULP) No.15 of 2015 allowing the management to remove the finished goods, the respondent Union restrained them from complying the said order. He submits that in the interest of Justice, they may be allowed to execute the order dated 13.5.2015 with the help of police.

7 On the other hand, the learned Counsel for the respondent vehemently opposed the for granting any permission to the petitioner to remove the finished goods with the help of Police as per order dated 13.5.2015. He submits that the Industrial Court passed order on 25.9.2015 in complaint (ULP) No.15 of 2015 directing parties to maintain status quo. He submits that unless and until the said order is challenged by the petitioner, there is no question of allowing the petitioner to remove the finished goods. He further submits that in the present proceeding, petitioner has not challenged the said order dated 25.9.2015. Therefore, there is no question to accept the request made by the petitioner. Hence, there is no substance in the present petition and same be dismissed with costs.

8 I have heard both the sides at length.

9 It is to be noted that in the present proceeding, though Industrial Court passed order on 13.5.2015 allowing the petitioner to remove the

finished goods, same was objected by the Respondent Union. Apart from that, the Industrial Court rejected the petitioner's application below Exhibit-C-2 in Complaint No.32 of 2016 only on the ground that the earlier order dated 13.5.2016 in complaint (ULP) No.15 of 2015 is in existence. Portion of paragraph 5 of order dated 22.09.2016 of Industrial Court, Satara below Exh.C-2 in Complaint (ULP) No.32 of 2016 reads thus:

“By earlier order in Complaint (ULP) No.15 of 2015, already this Court has given permission to dispose of the finished goods. I am of the opinion that the said order is required to be continued. Therefore, I hold that the complainant has not shown any prima facie case for granting interim relief. Hence, following order is passed.”

10 Considering these facts, and as the finished goods are in the nature of electronic items, I am of the opinion that the petitioner may be allowed to remove the finished goods with the assistance of the Police Authority. It is made clear that the Petitioner is permitted to approach the concerned Police Authority for executing the order dated 13.05.2015 passed by the Industrial Court for removal of finished goods, if necessary. If application is made, the Police Authority is directed to assist the Petitioner on payment of usual charges. Hence, following order is passed:

a) Petitioner is permitted to remove the finished goods as per the list placed on record by them in complaint (ULP) No.15 of 2015 and recorded in order dated 25.5.2015 passed on Exhibit-C-2 with the assistance of Police.

b) Liberty granted to the petitioner to approach the Police

Authority, if necessary for removal of finished goods. If application is made, the Police Authority is directed to assist the Petitioner on payment of usual charges.

c) It is made clear that it is not necessary to allow the respondent to remain present at the time of removing the finished goods.

d) Liberty granted to the petitioner to take out appropriate proceeding for remaining reliefs, if they so desire.

e) Writ Petition stands disposed of accordingly.

(K.K. TATED, J.)