

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

WRIT PETITION NO.14142 OF 2016

Akhil Bhartiya Asanghatit Shramik
General Kamgar Union

.. Petitioner

vs.

Nitco Limited & Ors.

.. Respondents

Mrs.Nisrin Shinde i/b M/s.NKS Legal for the petitioner

Mr.A.K.Jalisatgi with Mr.T.R.Yadav for the respondent nos.1 to 3

CORAM : K. K. TATED, J.
DATE : JANUARY 4, 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 plaintiff challenges the order dated 18.12.2015 passed by Industrial Court, Maharashtra, Mumbai below Exhibit-U-2 in complaint (ULP) No.462 of 2015 rejecting petitioner's application for interim relief.

3 In the present proceeding, the petitioner filed complaint (ULP) No.462 of 2015 on behalf of their members before the Industrial Court at Mumbai under items 1(a), (b), 5 and 6 of Schedule II and item

no.1(a), 3, 9 and 10 of Schedule IV read with section 28 (1) and 30(2) of the MRTU & PULP Act, 1971. In that complaint, the petitioner made following prayers:

“(a) Hold and declare that the Respondents have engaged in and are engaging in unfair labour practices under items 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P Act, 1971.

(b) Direct the Respondents to cease and desist from engaging in the unfair labour practices complained of hereinabove.

(c) That this Hon'ble Court be pleased to restrain the Respondents from forcing the workers mentioned in Annexure “A” to shift from Kanjurmarg Unit to Alibag or Silvasa or any other place of the Respondent No.1 company.

(d) That this Hon'ble Court be pleased to restrain the Respondents from disposing of, shifting, alienating the raw material which will include all kind of marble, tiles, metal, etc. of the Respondent No.1 Company situated at Kanjurmarg Unit.

(e) That this Hon'ble Court be pleased to restrain the Respondents from disposing of, shifting, alienating, creating third party rights in any manner whatsoever in the property of Respondent No.1 Company situated at Kanjur Village or any other place.

(f) That pending the hearing and final disposal of the main complaint, this Hon'ble Court be pleased to direct the Respondents to provide entry, work and wages to the Complainants.

(g) That pending the hearing and final disposal of the main complaint, this Hon'ble Court be pleased to direct the Respondents not to force the Complainants to work at Alibag, or Silvasa Unit under the guise of shifting.

(h) That pending the hearing and final disposal of the main complaint, this Hon'ble Court be pleased to direct the

Respondents not to force the workers to resign from the employment of Respondent No.1 Company.

(i) Interim/ad-interim reliefs in terms of prayer clause (e), (f), (g) and (h) above be granted.

(j) Cost of this complaint be provided for.

(k) Any other and further reliefs which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

4 The petitioner preferred application for interim relief below Exhibit-U-2 during the pendency of the complaint with following prayers:

“(a) That pending and hearing and final disposal of the main complaint, this Hon'ble Court be pleased to direct the Respondents to provide entry, work and wages to the Complainants.

(b) That pending the hearing and final disposal of the main complaint, this Hon'ble Court be pleased to direct the Respondents not to force the Complainants to work at Alibag, Silvassa division or any other place of the Respondent Company under the guise of shifting.

(c) That pending the hearing and final disposal of the main complaint, this Hon'ble Court be pleased to direct the Respondents not to force the Complainants to resign from the employment of Respondent No.1 Company.

(d) That pending the hearing and final disposal of the main complaint, this Hon'ble Court be pleased to direct the Respondents not to shift raw material which includes all kind of marble, tiles, metal, etc. of the Respondent No.1 Company situated at Kanjurmarg Unit.

(e) That pending the hearing and final disposal of the

main complaint, this Hon'ble Court be pleased to direct the Respondents not to shift plant and machinery to Alibag, Silvasa or any other place of the Respondent Company.

(f) Interim/ad-interim reliefs in terms of prayer clauses (a) to (e) above be granted.

(g) Cost of this complaint be provided for.

(h) Any other and further reliefs which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

5 Interim application filed by the petitioner was rejected by the Industrial Court. Hence, the present petition.

6 The learned Counsel for the petitioner submits that the Trial Court failed to consider the fact that petitioners were doing the skilled work with the respondent Company and to put them in the list of unskilled worker, the respondent Company directed them to work in other unit which is contrary to law. He further submits that as soon as the petitioner union filed the complaint, the respondent Company issued notice of transfer dated 11.12.2015 directing 17 workers engaged in Mosaico Division to work in marble division at Kanjurmarg or NITCO Biz Park, Thane or Company office / showroom, Worli. She submits that at the time of deciding the petitioner's interim application the Industrial Court failed to consider the fact that the respondent Company without following due process of law as required under section 9A issued transfer notice dated 11.12.2015. She further submits that without deciding the status of the petitioner whether they were working as skilled or unskilled worker, the Industrial court dismissed their interim application.

7 The learned Counsel for the petitioner submits that the Industrial Court failed to consider the relevant provisions of Memorandum of Settlement dated 19.4.2012 particularly Annexure B which shows that the petitioners were engaged as a skilled worker. She further submits that during the pendency of the interim application, respondent Company shifted machinery to other places. She further submits that the petitioners' members are reporting for work but the same is not provided for by the respondent company nor paid their wages. Hence, the impugned order is required to be set aside allowing the petitioner's interim application below Exhibit-U-2.

8 On the other hand, the learned Counsel for the respondent vehemently opposed the present Writ Petition. He submits that the Industrial Court considered the pleading on record and decided the Interim application. He submits that the Trial Court specifically recorded in paragraph 8 of that the respondent Company is ready and willing to provide them work but the petitioners are not reporting. Therefore, there is no question of payment of wages. He submits that in any case, main complaint is pending for hearing on merits. Therefore, at present, there is no question of entertaining the present Writ Petition.

9 I have heard both the sides. It is to be noted that the main grievance of the petitioner is that the respondent Company wants to define them as unskilled labourer. Neither the petitioner nor the respondent placed on record appointment letter. Therefore, whether the petitioners were working as skilled or unskilled worker, is required to be decided at the time of final hearing of complaint by leading evidence.

10 Apart from that, the petitioner in interim application below Exhibit (U-2) prayed to direct the respondent to provide their members entry, work and wages. The Trial Court in paragraph 8 of the impugned order recorded that the respondent Company has not prevented them from doing the work as per transfer order dated 11.12.2015. Apart from that the Trial Court in paragraph 7 (1) recorded that the members of the petitioner Union earlier filed complaint (ULP) No.294 of 2011 through another Union Bharatiya Kamgar Sena for the same cause of action.

11 Considering these facts, impugned order, as the complaint is pending for hearing on its own merits and whether the petitioners' members were working as skilled or unskilled labourer, is required to be decided at the time of final hearing, I do not find any substance in the present Writ Petition.

12 Writ Petition stands rejected.

JUDGE