IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION

NOTICE OF MOTION NO.611 OF 2017
IN
APPEAL NO.455 OF 2015
WITH
APPEAL NO.212 OF 2017

Gaekwar Mill Kamdar Sangharsh Samiti .... Applicant/ Appellant

versus

Homi Framroze Mehta & Ors. ... Respondents

…....

- Mr.B.A. Desai, Senior Advocate a/w Mr.Bhojraj Baral, Arvind Shrivastava i/b. Kalpesh Joshi Associates, Advocate for the Applicant/Appellant.
- Mr.Navin Pahwa, Senior Advocate a/w Mr.Anuj Jhaveri a/w Yogesh Gandhi i/b. Mr.S.K. Kumbhar, Advocate for the Respondent No.1.

CORAM : R. M. SAVANT & SARANG V. KOTWAL, JJ.
DATE : 04th OCTOBER, 2017.

P.C. :

1. By the above Notice of Motion, the Applicant seeks the following relief;

> *"that the Hon'ble Court be pleased to stay the entire proceedings before the Company Court in Company Application No.316 of 2013 in Company Petition No.1048 of 2008 with Company Petition No.228 of*

1987, and direct the Parties herein to maintain Status-Quo till the Final hearing and Disposal of the above Appeal bearing No.455 of 2015."

2. As the above prayer clause discloses, said relief is sought pending consideration of the Appeal, filed by the Petitioner being Appeal No.455/15, which is pending in this Court. The learned Senior Counsel appearing for the Applicant candidly stated that by seeking the said relief the Applicant is seeking a stay to the implementation of the revival scheme.

3. In the context of the relief sought the background facts would have to be noted.

The company in question i.e. Gaekwar Mills Ltd. was under liquidation pursuant to the order of winding up, which was passed by the Company Court i.e. a learned Single Judge of this Court. It is an undisputed position that the company under liquidation and the creditors propounded a scheme for revival, which was sanctioned by a learned Single Judge of this Court (S.J. Kathawalla, J.), by order dated 10/09/2009, after going through the gamut of process as contemplated under the Companies Act which interalia included taking into consideration the views of all stake holders. At the said stage, the representative union, under the Bombay Industrial Relations Act, 1946, which was applicable to the Company in liquidation i.e. Majoor Mahajan Sangh, had participated in the process relating to the propounding of the scheme of revival. An application came to be filed by one Dakshin Gujarat Shramik Sabha purportedly espousing the cause of the workmen of the company in liquidation being Company Application No.178/10 for recall of the said order dated 10/09/2009. The learned Single Judge (Dharmadhikari, J.), adverting to the antecedents facts of the revival scheme being propounded by going through the entire gamut of process, and the precautions being taken, did not deem it appropriate to grant any relief in the said Application No.178/10 and accordingly dismissed the said Application by order dated 21/01/2011. The Dakshin Gujarat Shramik Sabha thereafter filed an Appeal being No.182/11 in this Court, the said Appeal came to be withdrawn by it on 18/04/2011.

4. Pursuant to the said scheme of revival, the company had deposited a substantial amount with the official liquidator towards the dues of the creditors as well as the workmen. In so far as the workmen are concerned, the amount of Rs.10,39,53,286/- towards payment of gratuity was deposited. The amount deposited is also disbursed. The company (in liquidation) thereafter applied vide Application No.316/13 for recall of the winding up order. Suffice it would be to state that, the said Application was allowed by the Company Court i.e. the learned Single Judge by issuing directions amongst which were directions as contained in paragraph No.4 of the said order. In so far as the workers' dues are concerned, clause (b) of the said paragraph No.4 is material and is reproduced hereinunder;

> *(b) The Official Liquidator shall retain the sum of Rs.11,00,000/- for discharge of the workers dues and towards the costs, charges and expenses of the Official Liquidator including the commission of the Central Government;*

5. In so far as amount mentioned in the said clause (b) is concerned, the said amount is the residue remaining after discharge of the liability towards the workers. The applicants herein thereafter filed an application for recall of the said order passed by the learned Single Judge dated 30/06/2015. The said application was numbered as Company Application No.560/16. Considering the nature of the relief sought vide the said Application, the Company Court, i.e. the learned Single Judge deemed it appropriate to treat the said application as an application for review and by order dated 31 January 2017 rejected the said application. In the said order, the learned Single Judge has referred to the antecedent facts in paragraph No.3 and paragraph No.4. In so far as workers dues are concerned, it is observed by the learned Judge that,

> *"there was absolutely no material placed before him to make out any case that the company (in Liqn.) owes any dues to its workmen over and above the dues provided for in the sanctioned scheme of compromise"*.

The learned Judge has further observed that,

> *"the dues determined by this Court whilst sanctioning the scheme, are, as noted above, fully discharged or secured to the satisfaction of the Court. There is no way this Court can come to the conclusion that the determination of the workmen's dues in the sanctioned scheme was in any way incorrect or needs any reassessment."*

6. By order dated 08/12/2016, the said Company Application lodging No.560/16 came be dismissed. Against the said order dated 08/12/2016, the Applicants have filed Appeal lodging No.66/17, which is pending admission. In so far as order dated 21/01/2011, passed by the learned Single Judge of this Court confirming the order dated 10/09/2009 is concerned, the Applicant has filed another Appeal being No.455/15. The said Appeal has been admitted by a Division Bench of this Court in the year 2015. However, as indicated above the scheme of revival, has been substantially implemented thus far. Hence granting of the relief sought by the Applicants by way of the above Notice of Motion, would be turning the clock back at this stage, which would not be permissible, as the same would affect

the other stake holders, who are covered by the said scheme. In the background of the representative union i.e. the Majdoor Mahajan Sangh participating in the process of the revival scheme and thereafter the Dakshin Gujarat Shramik Sabha espousing the cause of workmen by filing a Company Application and thereafter Appeal, the issue as regards the locus standi of an unregistered Association which is the Applicant also arises. Hence, no relief can be granted to the Applicant in the above Notice of Motion, the same is accordingly rejected.

7. Both the Appeals to be placed for direction after the ensuing Diwali vacation on 06/11/2017.

(SARANG V. KOTWAL, J.) (R. M. SAVANT, J.)