

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11096 OF 2015

THE METCON INDIA ENGINEERS AND CONTRACTORS AND
ANOTHER
VERSUS
SOMNATH ANEBA SARWADE AND OTHERS

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Advocate for the Petitioners : Shri S. S. Rathi
Advocate for Respondent Nos. 1 and 3 : Shri S. V. Suryawanshi
Advocate for Respondent No.4 : Shri Kuldeep Patil h/f.
Shri S. S. Choudhari

WITH

CIVIL APPLICATION NO. 10857 OF 2018

MANOHAR VALJENATH GAWALI AND ANOTHER
VERSUS
THE METCON INDIA ENGINEERS AND CONTRACTORS AND
OTHERS

Advocate for the Applicants : Shri S. V. Suryawanshi
Advocate for Respondent Nos. 1 and 2 : Shri S. S. Rathi
Advocate for Respondent No.3 : Shri Kuldeep Patil h/f.
Shri S. S. Choudhari

CORAM : RAVINDRA V. GHUGE, J.

DATED : 14th DECEMBER, 2018.

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PER COURT :

1. In the Civil Application No. 10857/2018 preferred, respondent Nos. 3 and 1 in the Writ Petition, are applicant Nos. 1 and 2 respectively. Respondent No.2 Datta Prakash

Sarwade is not an applicant before this Court.

2. While considering the Civil Application, it appears that the petition could be heard at this stage itself since the issue is as to whether, the petitioner Management had the opportunity of leading evidence before the Labour Court in Application (IDA) No. 31/2009, which has been partly allowed by the Labour Court, Aurangabad vide its judgment dated 22/12/2014.

3. With the assistance of the learned Advocates for the respective sides and with their consent, this petition was heard. Two aspects need to be considered primarily. Firstly, that this petitioner Management had opposed the application filed by the employees under Section 33C(2) of the Industrial Disputes Act, 1947 by contending specifically in their written statement/say at Exhibit C-9 that all these three applicants were paid their wages, which were above the minimum wages prescribed. The contention of the Management, therefore, was that the application deserves to be rejected since there are no outstanding wages payable to the employees which they can

recover under Section 33C(2). Secondly, that the petitioner could not lead evidence since the concerned Advocate representing the petitioners was not in touch with the petitioners and after the impugned judgment was delivered, it was noticed that the concerned Advocate had passed away during the pendency of the proceeding before the Labour Court. Consequentially, these petitioners could not lead evidence and on account of lack of evidence, the Labour Court has accepted the claim of the applicants.

4. The petitioners have raised one more issue before this Court as regards the maintainability of the application under Section 33C(2) contending that unless there is an adjudication of the rights of the parties in another proceedings, the Labour Court could not have invoked its jurisdiction under Section 33C(2).

5. I find from the record that the issue of employer employee relationship between the petitioner contractor and the applicants was admitted. Payment of wages was admitted. Minimum wages applicable were equally admitted as per the

contention set out in Exhibit C-9. In this backdrop, when the claims of the applicants flowed from a pre existing right to wages as per the minimum wages prescribed, the application for recovery of money was perfectly maintainable.

6. Issue in the Civil Application is as regards withdrawal of money by two applicants. I suggested to the learned Advocates that I would permit these applicants to withdraw substantial amount and the remaining amount could be transmitted to the Labour Court by remanding the matter as the petitioners did not get an opportunity of leading oral evidence since their lawyer passed away and they were not informed about the same. The learned Advocate for the petitioners was agreeable by keeping alive all the contentions before the Labour Court to oppose the application. The learned Advocate for the applicants appearing on behalf of original respondent Nos. 1 and 3 submits that if substantial amounts are allowed to be withdrawn, they would contest the proceedings before the Labour Court from the stage of the recording of oral evidence of the petitioners herein.

7. In view of the above, this petition is allowed. The issue of maintainability of the application under Section 33C(2) stands concluded by virtue of this order. The impugned judgment and order dated 22/12/2014 is quashed and set aside and Application (IDA) No. 31/2009 is remitted to the Labour Court at Aurangabad on the following conditions ;

(a) Since two original applicants namely applicant No.1 Shafiulla s/o Sakhar Pathan and applicant No. 2 Ravindra s/o Jalindar Bansode, have settled the issue with the petitioners, they shall now be excluded from adjudication after remanding of the matter before the Labour Court.

(b) These applicants and the petitioners shall appear before the Labour Court on 04/01/2019.

(c) The Labour Court would issue notice only to Datta Prakash Sarwade.

(d) The petitioners shall furnish a list of their witnesses before the Labour Court on 04/01/2019 and thereafter proceed to record their oral evidence without seeking unnecessary adjournments.

8. The Civil Application is partly allowed by permitting

Somnath s/o Aneba Sarwade to withdraw R. 50,000/- (Rs. Fifty Thousand only) from this Court, Datta s/o Prakash Sarwade is permitted to withdraw Rs. 10,000/-(Rs.Ten Thousand only) and Manohar s/o Vaijenath Gawali would withdraw Rs. 1,00,000/- (Rs. One Lakhs only) from this Court.

9. These three persons would make applications before this Court duly identified by an Advocate alongwith an affidavit undertaking that if adverse orders are passed against any of them subject to their right to litigate, they would refund the entire amount or the excess amount assessed to have been withdrawn by them, within EIGHT WEEKS of the conclusion of the litigation. Such amounts shall be directly paid to the petitioners or could be deposited in the Court where the last verdict has been delivered.

10. They would file copies of their election commission voter's ID Card and latest address proof. A copy of the affidavit undertaking and accompanying documents would be supplied to the petitioners or the learned Advocate for the petitioners, by these applicants.

11. The Registry of this Court would transmit the remainder amount alongwith accrued interest to the Labour Court at Aurangabad in Application (IDA) No. 31/2009.

12. Needless to state, the Labour Court would decide the application on its own merits and preferably on or before 31/10/2019.

13. Record and Proceedings in Application (IDA) No. 31/2009 be sent back to the Labour Court, Aurangabad forthwith.

(RAVINDRA V. GHUGE, J.)

shp/-