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

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 13224 OF 2017**

Mr. Mehmood Ali ... Petitioner
Bhiwandi, Thane

vs.

M/s. Mihir Tex & Ors. ... Respondents

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Mr. Shaikh Mohammed Aslam for the Petitioner.
None for the Respondents.

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**CORAM : A.K. MENON, J.**

**DATE : 16th JANUARY, 2018**

**P. C.**

**1.** This petition seeks to impugn an order dated 16th December, 2016 whereby the reference was answered in the negative. The petitioner herein sought reinstatement of services, payment of full back wages and continuation of services from 7th June, 2009. It is his case that the respondents is a partnership firm which employed 12 workmen. They have 20 Powerlooms, 1 Kandi Machine and one Warping Machine. According to the petitioner, the respondents did not maintain any record as required by law and the petitioner was made to work 12 hours without payment of overtime. He was been paid Rs.8000/- per month for 12 hours.

It is the petitioner's case that on 7th June, 2009 when he reported for duty he was not allowed to resume duty and on 7th January, 2010 i.e. about 6 months after he was prevented from resuming duty, he wrote a letter asking for him to be permitted to continue in services and back wages with effect from 7th June, 2009. The respondents failed to comply and therefore he had to resort to legal measures by approaching the Government Labour Officer. The petitioner's contention is that the respondents did not issue any termination letter or Show Cause Notice, no inquiry was held, the respondents failed to comply with the provision of Section 25F of the Industrial Disputes Act and therefore he is entitled to relief of reinstatement and full back wages. The Reference was sent for adjudication on 7th May, 2010.

2. The respondents contended that there was no employer-employee relationship. The learned Counsel for the petitioner Mr. Shaikh stated that the finding in the impugned order that there is no employer-employee relationship is incorrect. According to him the respondents being a Warper and there being only one machine in the respondents factory, he was regularly attending to his duty from the year 1989 and continued to work there till his services were discontinued. He submitted that the payments of monthly emoluments were made by cheque. Save and except for this bare statement there was no record that the petitioner had produced before the Tribunal. According to Mr. Shaikh it was not necessary to produce any document since he was admitting that the payments were received by cheque.

3. It is further contended that the respondents have created records in his names. In the course of submissions a query was put to him as to the finding in the

impugned order to the effect that the petitioner failed to produce any evidence to show that he was getting Rs.8000/- per month. In response Mr. Shaikh's response was that the petitioner admits that he was receiving payments by cheque but he had no record that payments were made by cheque for Rs.8000/- per month. He submitted that the respondents had been directed to produce various records pursuant to the application made by the petitioner in Exhibit-14, yet the documents had not been produced. The respondents had thus failed to comply with the order of the Court and therefore an adverse inference should be drawn as a result of non production of the documents which includes attendance registers, bonus registers and balance sheet for the period 1989-2009.

4. On the other hand the impugned order records that the respondents had contended that the petitioner was paid job work charges for job work carried out. Exhibit 48 (colly) was admitted by the petitioner during his cross examination as having been signed by him. The 17 pages show bills and invoices copies of which are produced along with this petition. At and from page 74 numerous invoices are seen to be annexed to this petition, all of which have been issued by the petitioner i.e. his rubber stamp and addressed to one Mihir Tex. Many of these seem to have been signed by the petitioner. They refer to quantities of beams in respect of which activity of warping was carried out. These bills are seen to be issued for different months right from the year 2004 onwards. The last of such bills is seen to be issued in June, 2009.

5. According to Mr. Shaikh these are all documents which have been created

by the respondent's as evidence against the petitioner. On a query as to whether the signature appearing on the invoice are of of the petitioner, it was admitted that the signature on the invoice are of the petitioner. Furthermore in the course of cross examination of the witness of the respondents records that the respondent's witness Mr. Chandulal J. Gada had produced documents showing that warping machine was given on contract to the contractor since April, 2004 and the petitioner is working with him as a contractor on piece rate basis. Payments were made on a piece rate basis . It is stated that the petitioner was working with the witness since 1990 and despite that the petitioner worked with the respondents from 2004 onwards.

6. The record indicates that at the instance of the respondents, summons came to be issued to the Income Tax Officer, Ward 1(2), Kalyan to produce Income Tax records in respect of the petitioner and bearing his PAN. The PAN is admitted as being that of the petitioner. Mr. Shaikh submitted that the petitioner had not filed any Income Tax returns. The summons has been answered on 21st October, 2016 by the Income Tax Officer under cover of letter of the same date enclosing cheques, documents for the period 2010-11 onwards except for Assessment year 2009-10 and 2010-11. In the meantime copies of Form 26AS for the year 2006-07 onwards were made available and were produced. The petitioner is seen to have filed form ITR-4. In the circumstances, it is not possible to accept the contention that the petitioner was employed by the respondents as contended by him in his complaint. Moreover payment made to the petitioner were subjected to TDS as evident from the extracts of Form 26AS produced by the Income Tax Department. Copies of these

extracts are certified by the Income Tax Ward (1)(2) Kalyan and are annexed to this petition from page 192 onwards. It is evident from the petitioner's case that he was employed as an employee cannot be believed. There is no reason to interfere with the impugned order. Therefore I pass the following order :

(a) Writ Petition dismissed.

(b) No order as to costs.

**(A.K. MENON, J.)**