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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.192 OF 2007

Wonderpack Industries Pvt. Ltd.	... Appellant
V/s.	
Mr. Jangbahadur Ramjit Yadav and Anr.	... Respondents

Mr. Vinod Tayade i/b. Mr. Piyush Shah for the Appellant.

CORAM : A.S.OKA AND M.S. SONAK, JJ.
DATE : 23rd AUGUST 2018.

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ORAL JUDGMENT (Per A.S. Oka, J.)

1 Called out for final hearing. By this Letters Patent Appeal, the appellant has impugned the judgment and order dated 4th July 2007 passed by the learned Single Judge of this Court in Writ Petition No.1565 of 2007. By the said order, the learned Single Judge dismissed the petition filed by the petitioner under Article 226 and 227 of the Constitution of India for challenging the concurrent orders passed by the learned Judge of the Labour Court as well as the learned Member of the Industrial Court at Nashik.

2 With a view to appreciate the submissions made across the bar, a brief reference to the factual aspects of the case will be necessary. The respondents in this Letters Patent Appeal were the complainants who filed a complaint alleging that the present appellant is guilty of committing Unfair Labour Practices covering item 1(a), (b), (c), (d) and

(f) of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (“M.R.T.U. & P.U.L.P. Act”). The first and second respondents were appointed on 4th August 1990 and 1st September 1988 respectively in the employment of the appellant at Igatpuri Unit. The allegation in the complaint is that in the third week of February 1993, the appellant asked all its employees to tender resignation and they were told that their future employment will be continued by Widem Machine Private Limited. It is alleged that due to pressure exerted by the employer, all the workers except one tendered their resignations and thereafter, they were employed by M/s. Widem Machine Private Limited on the ground that the appellant has closed their Igatpuri Unit in District Nashik w.e.f. 24th January 1994. By letter dated 14th February 1994, the employment of the respondents was terminated by the appellant.

3 The contention in the complaint was that the appellant and Widem Machine Private Limited were in fact the same entities and this change of business was shown only to deprive the benefits of permanency to the respondents. It is contended that the respondents continued to work in the Igatpuri plant of the appellant.

4 The contention of the appellant was that the respondents while in the employment at Igatpuri plant forwarded their resignations which were accepted and legal dues were paid by them. It is further contended by the appellant that their factory was closed due to practical reasons and the appellant has no relation with Widem Machine Private Limited. The learned Judge of the Labour Court held that the allegations

of unfair practice were proved. While issuing a declaration that the appellant has indulged in unfair labour practice, an order of reinstatement was passed directing the appellant to pay 50% of back-wages from 24th January 1994 after deducting the amount sent to the respondents by way of Demand Draft along with letter dated 14th February 1994. A revision application under section 44 of the said Act was preferred by the appellant before the learned Member of the Industrial Court. By Judgment and Order dated 19th December 2006, the revision application was dismissed by the learned Member of the Industrial Court. Being aggrieved by the aforesaid Judgments that the appellant preferred Writ Petition No.1565 of 2005. From the memorandum of writ petition and from the impugned order, it is revealed that the only contention raised in the petition was that the appellant has proved that it had closed down its establishment and that the business of the factory was carried on by Widem Machine Private Limited. By the impugned order, the learned Single Judge observed that there is a concurrent finding that the appellant had not produced the record to prove that the Nashik /Igatpuri plant where the respondents were working has been closed down. The learned Judge relied upon the admission of the witness examined by the appellant in the cross-examination and after finding that there was no perversity in the concurrent findings recorded by the Court below, the learned Single Judge proceeded to dismiss the petition.

5 The learned counsel appearing for the appellant has taken us through the impugned judgments of the Labour Court and Industrial Court as well as the impugned order passed by the learned Single Judge. He pointed out that the notice of retrenchment on account of closure of the

unit was duly served to the respondents in which it was specifically stated that the appellant had occupied the premises in M.I.D.C., Satpur at Nashik on rental basis and the appellant was required to surrender the premises. He submitted that there was more than sufficient evidence on record to show the closure of the factory of the appellant at the aforesaid place. He submitted that the material on record was not considered by the learned Single Judge as the learned Single Judge has dismissed the petition summarily.

6 He invited our attention to the affidavit of one Shri Amit Shah, a Director of the appellant. In the affidavit, it is stated that as per the interim order passed by this Court in the present appeal, 50% of the wages have been deposited in the Court. He stated that the appellant was under the process of closing down its business carried out on the plot in Satpur M.I.D.C. in Nashik and that the business has been sold to a company M/s. Rajoo Engineers Ltd. A certificate of registration is relied upon in the affidavit. The learned counsel for the appellant submitted that in the light of this affidavit, a proposal for settlement was given to the respondents who have not responded.

7 We have given careful consideration to the submissions. We have perused the impugned judgments of the Labour Court and Industrial Court. The learned Single Judge has relied upon an admission in paragraph 6 of the cross-examination of Shri Nivrutirao Gurule, Personal Manager of the appellant. In paragraph 6 he has stated thus :-

“6. I am shown with Ex.U-6 for the address of plot No.25/2/2, C Road, M.I.D.C. Satpur. It is true that presently Wonderpack Industries is working on this

address of Plot No.25/2/2. The complainants were not called for work in the factory plot No.25/8/2 Nashik. Wonderpack Industries Pvt. Ltd. Nashik and Igatpuri is same company. It is not true that business of both the factories is same. Witness volunteers that both companies manufacture different machines. It is not true that, in factory at Nashik & Igatpuri, similar machines are manufacturers.”

8 The learned Single Judge in the impugned order has relied upon the said admission on the part of the witness examined on behalf of the appellant. Moreover, in paragraph 4 of the impugned judgment of the learned Member of the Industrial Court, there is a finding recorded that the appellant apart from examining the said witness has not produced any document and has not discharged the burden by producing the documents relating to closure, retrenchment, shifting of company, etc. He further observed that the reason for closure stated in the retrenchment notice was that the appellant was required to surrender the premises to the landlord. However, no document is produced on record to show such a surrender. The learned Judge of the Labour Court has also considered the factual aspects on record. Again the finding recorded by him is that there was a failure on the part of the appellant to produce documentary evidence. An admission which is considered by the the learned Single Judge has been also noted by the learned Judge of the Labour Court in paragraph 6 of the judgment.

9 We find that concurrent findings recorded by the Labour Court and Industrial Court are supported by the material on record and there is no perversity in the said findings. That is precisely the view taken by the learned Single Judge. In fact, considering the admission which we

have reproduced above, the learned Single Judge was fully justified in summarily dismissing the writ petition filed by the petitioner. Hence, there is no merit in the appeal and the same is accordingly dismissed. No order as to costs.

(M.S. SONAK, J.)

(A.S.OKA, J.)