

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**LETTERS PATENT APPEAL NO.397 OF 2008
IN
WRIT PETITION NO.8099 OF 2007**

M/s. Araine Orgachem Pvt. Ltd.
Road No.1, Runwal Chambers,
Chembur, Mumbai 400 071

..Appellant

Versus

1] Wyeth Employees Union,
C/o 5, Vandana CHS,
Road No.4, Pestom Sagar,
Chembur, Mumbai 400 089

2] M/s Wyeth Limited
4th Floor, RBC Mahindra
Towers, G. M. Bhosale Road,
Worli, Mumbai 400 018

..Respondents

**WITH
LETTERS PATENT APPEAL NO.396 OF 2008
IN
WRIT PETITION NO.8099 OF 2007**

M/s Wyeth Limited
4th Floor, RBC Mahindra
Towers, G. M. Bhosale Road,
Worli, Mumbai 400 018

..Appellant

Versus

1] Wyeth Employees Union,
C/o 5, Vandana CHS,
Road No.4, Pestom Sagar,
Chembur, Mumbai 400 089

2] M/s. Araine Orgachem Pvt. Ltd.
Road No.1, Runwal Chambers,
Chembur Mumbai 400 071

..Respondents

Mr. A. V. Bukhari, Senior Advocate with Mrs. Nutan R. Patankar,
Mr. B. V. Bukhari and Ms. Tanaya Patankar, Advocate for the
Appellant in LPA No.397 of 2008.

Mr. Vishwajeet P. Sawant a/w Mrs. Nutan R. Patankar and Mr.
Prabhakar Jadhav, Advocate for the Appellant in LPA No.396 of
2008.

Mr. Bennet D'costa with Ms. Jignasha Pandya, Advocate for the
Respondent No.1 – Wyeth Employees Union in both the Appeals.

**CORAM : B. R. GAVAI &
RIYAZ I. CHAGLA, JJ.
DATE : 29th NOVEMBER, 2018**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Letters Patent Appeal No.397 of 2008 is filed by the Appellant being aggrieved by the judgment and order dated 24th September 2008, passed by the learned Single Judge of this Court in Writ Petition No.8099 of 2007, which was filed by the Respondent No.1 herein, thereby allowing the Writ Petition and remanding the Complaint (ULP) No.534 of 2004 to the learned Industrial Court to decide the same afresh. Letters Patent Appeal No.396 of 2008 is filed by M/s. Wyeth Limited, who was predecessor in interest of the Appellant in Letters Patent Appeal No.397 of 2008.

2] The facts which are not disputed are as under :-

For the sake of convenience, facts in the present case are taken as they appear in Letters Patent No.397 of 2008. At the relevant time, the Respondent No.2 was manufacturing drugs and pharmaceuticals at its Ghatkopar unit. The Respondent No.1 is an union of the employees, who were working on the establishment of the Respondent No.2. An agreement was entered into by the Appellant herein and the Respondent No.2 on 25th June 2004, vide which the Unit No.1 and Unit No.2 of the Respondent No.2 at Ghatkopar were agreed to be sold to the Appellant herein. The deed of sale came to be executed between the Appellant and the Respondent No.2 on 30th August 2004. On the said date, the Appellant also acquired from Respondent No.2 its factory at Ghatkopar. On 31st August 2004, the Appellant as well as Respondent No.2 addressed letters to all its workmen under Section 25FF of the Industrial Disputes Act, 1947 (hereinafter referred to as “the said Act”). The workmen received letters from the Appellant as well as Respondent No.2 under protest.

3] The Respondent No.1 filed a Complaint (ULP) No.534 of

2004 under the provisions of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as “the MRTU & PULP Act”) against the Appellant as well as Respondent No.2 challenging transfer of undertaking and sought declaration that they should be continued in the employment of Respondent No.2. Undisputedly after Appellant took over, the salaries of the workmen were being paid by the present Appellant. In pursuance to the transfer, the Appellant had applied for fresh Provident Fund number, which was allotted to the Appellant in November 2004. In November – December 2004, the Respondent No.2 transferred Gratuity Corpus of the workmen from Wyeth Employees' Group Gratuity Fund maintained by LIC. On 10th December 2004, the Respondent No.1 again filed another complaint being Complaint (ULP) No.714 of 2004 being aggrieved by the disciplinary action initiated by the present Appellant. There were other proceedings initiated by the Respondent No.1, however, reference to them would not be necessary for the adjudication of the present Appeals.

4] In the month of March – April 2004, undisputedly, all

the 140 employees working with the Appellant had signed various documents with regard to voluntary retirement, upon Appellant making them one time payment. No doubt that, now it is the case of the Respondent No.1 that the said signatures and the receipt of payment were not voluntary. On 26th April 2005, all the complaints i.e. Complaint (ULP) Nos.534 of 2004, 714 of 2004 and 771 of 2004 were withdrawn by the Respondent No.1 under the signature of Mr. Joseph Monteiro, the then General Secretary of the Respondent No.1. It appears that thereafter elections of the office bearers of the Respondent No.1 took place on 31st July 2005, in which election Mr. Joseph Monterio stepped down and Mr. U. N. Karapurkar was elected as General Secretary. The said Mr. U. N. Karapurkar addressed a communication to the Appellant on 14th November 2005, therein alleging force, coercion etc. for opting Voluntary Retirement Scheme ("VRS" for short) and raised demand for reinstatement in service of M/s. Wyeth Limited. The said communication addressed by the Respondent No.1 was replied by the Appellant on 28th November 2005, thereby denying all the allegations made by the Respondent No.1. The Respondent No.1 thereafter filed an application in Complaint (ULP) No.534 of 2004

for reviving the matter by recalling the order dated 26th April 2005. The learned Industrial Court vide order dated 5th May 2007 rejected the said application holding that the Court had no power to review its own order. Being aggrieved thereby, the present Petitioners filed Writ Petition No.8099 of 2007. The learned Single Judge by the impugned order allowed the said Writ Petition, thereby remanding the matter to the learned Industrial Court. Being aggrieved thereby , the present Appeals.

5] Though directly not concerned, a reference to the collateral proceedings would also be necessary. On 12th December 2005, the Respondent No.1 had sent a letter to the Assistant Commissioner for intervention in their demand for reinstatement in the Respondent No.2. In the said proceedings, an effort was made for conciliation. However, the Conciliation Officer submitted his failure report on 3rd August 2006. The Labour Commissioner vide order dated 14th August 2006, refused the said reference. The said order came to be challenged by the Respondent No.1 before this Court by filing Writ Petition No.444 of 2007. The Division Bench of this Court vide order dated 16th August 2007 allowed the Petition

filed by the Respondent No.1 and directed the appropriate Government to refer the dispute to the learned Industrial Tribunal. The said order came to be challenged by the present Appellant before the Hon'ble Apex Court. Initially on 21st September 2007, the Hon'ble Apex Court had granted stay to the order of the Division Bench. However, by subsequent order dated 29th April 2015, the Hon'ble Apex Court dismissed the SLP filed by the Appellant. As such, as per the order passed by the Division Bench of this Court dated 16th August 2007, appropriate Government referred the following demands of the Respondent No.1 for adjudication to the Industrial Tribunal :-

“All the workers who were working in the Ghatkopar establishment of M/s. Ariane Orgachem (P) Ltd. (Which is the Sham Successor of M/s. Wyeth Ltd) whose names are mentioned in the Annexure 'A' hereto should be reinstated in the servious of M/s. Wyeth Ltd. At the Ghatkopar plant on the said terms and conditions as before with full back wages and continuity of service from the date when they have allegedly voluntarily resigned.”

6] After considering the evidence led on behalf of both the parties, learned Industrial Tribunal answered the reference in the negative vide Award dated 13th December 2016. The said order is

challenged by the Respondent No.1 by way of Writ Petition No.2887 of 2017. Undisputedly, the said Writ Petition is pending for admission before the learned Single Judge of this Court.

7] Mr. A. V. Bukhari, learned Senior Counsel appearing on behalf of the Appellant submits that the order passed by the learned Single Judge is not sustainable in law. It is submitted that in view of provisions of Sub Section (2) of Section 30 of the MRTU & PULP Act, Industrial Court has power to review only interim orders. It is submitted that when the entire complaint was disposed of as withdrawn, application for recalling amounted to nothing but reviewing the order, which is not permissible. Learned counsel submits that the learned Single Judge of this Court in the case of **Kalavati Bharsingh Thapa Vs. Maharashtra Plastic Industries**¹ upon interpreting Section 30 (2) of the MRTU & PULP Act, in unequivocal terms has held that power to review would not be available to a Tribunal, unless the statute under which such a Tribunal is created, provides for such a power. Mr. Bukhari further submitted that the learned Single Judge has observed that the case of the Respondent No.1 for recalling the order dated 26th April 2005

1 2004 (6) Bom.C.R. 600.

was on the ground of fraud. He however submits that perusal of application filed for recalling the order would reveal that there is not even a whisper with regard to fraud. He submits that unless the party is in a position to at least prima-facie satisfy that a case of fraud is made out, it will not be possible for the Tribunal to exercise power of review. It is therefore submitted that when the learned Industrial Court, upon correct interpretation of statutory provisions has rejected the application, the learned Single Judge has erred in interfering with the same and directing restoration of the application, which was not tenable in law. Mr. Bukhari further relies on the judgment of Hon'ble Apex Court in the case of **Bishnudeo Narain & Anr. Vs. Seogeni Rai**² in support of the proposition that unless there are specific pleadings and averments with regard to fraud, the allegations regarding fraud cannot be taken into consideration.

8] Mr. Bukhari further submits that conduct of the members of the Respondent No.1, including that of Mr. U. N. Karapurkar, under whose signature the application for recalling the order has been made, itself dis-entitles them to any equitable relief.

² AIR (38) 1951 SC 280.

It is submitted that all the employees have signed as many as nine documents for taking benefit of the VRS. He submits that those documents are (a) VRS application (b) AOPL's Acceptance Letter (c) Application to AOPL Trust (d) Letter of relieving (e) Accepting VRS cheque (f) Receipts for VRS amount (g) Receipt of amount (h) Receipt of amount (Overtime, leave etc.) (h) Indemnification Letter. It is submitted that after receipt of the entire amount and after signing all the relevant documents, by way of after thought, the Respondent No.1 has filed an application for restoration of the complaint, which was validly withdrawn. Learned counsel further submits that the decision to accept VRS has also been ratified by the Respondent No.1 in its meeting dated 28th April 2005. It is submitted that thereafter almost for a period of six months, when the process of the Voluntary Retirement scheme was going on, neither the Respondent No.1 nor any of its members have raised objection even on a single occasion. It is submitted that only after encashment of entire amount, after almost a period of six months, a letter was addressed to the Appellant in the month of December 2005 for the first time. It is therefore submitted that the attempt to revive complaint is nothing else, but by way of after thought. It is

further submitted that conduct of the Respondent No.1 in not producing minutes of the meeting dated 28th April 2005, until an application was made by the present Appellant and on which application a direction was issued by the learned Tribunal, would show that the conduct is of suppressing material fact, which would dis-entitle them to equitable relief.

9] Mr. Bennet D'costa, learned counsel appearing on behalf of the Respondent No.1, on the contrary submits that the entire material placed on record would reveal that the Appellant in collusion with the Respondent No.2 and one Mr. Joseph Monteiro had misrepresented not only members of the Respondent No.1 union, but also the learned Industrial Court while withdrawing Complaint (ULP) No.534 of 2014. He submits that the VRS was also not notified by the Appellant. However, all the workmen were hurriedly called by the Appellant and forced to accept whatever paltry amounts were offered by the Appellant. He submits that as per the constitution of the Respondent No.1, if any settlement has to be arrived, it can be done only after approval of such settlement by the general body. It is submitted that in the present case, so called

settlement has been done by Mr. Joseph Monteiro, unilaterally, without there being proper authorization by the general body of the Respondent No.1. He further submits that the minutes of the meeting dated 28th April 2005 would show that there is no ratification to the VRS, but only a discussion with regard thereto.

10] Learned counsel submits that in the application for recalling the order dated 26th April 2005, the Respondent No.1 has clearly stated that the members of the Respondent No.1 were misrepresented and on account of collusion between the Appellant and the Respondent No.2 and the said Mr. Joseph Monteiro, a scheme which was not at all beneficial to the interest of the workmen, but was substantially prejudicial to their interest came to be implemented. Learned counsel therefore submits that though in the application the word 'fraud' is not exactly used, but in view of the judgment of the Hon'ble Apex Court in the case of **Bhaurao Dagdu Paralkar Vs. State of Maharashtra and others**³, the factum of misrepresentation and collusion would lead to an inference of a fraud and therefore interference with the order passed by the learned Single Judge would not be warranted.

³ (2005) 7 SCC 605.

11] Mr. Bennet D'costa, learned counsel further relies on the judgment of the Hon'ble Apex Court in the case of **Grindlyays Bank Ltd. Vs Central Government Industrial Tribunal and others**⁴ in support of his contention that though a substantial review may not be tenable in the absence of specific provisions providing therefor, however, a procedural review is not barred. He submits that in the present case, said Mr. Joseph Monteiro had withdrawn the complaint without authority and as such what was sought to be done by the application, which is allowed by the learned Single Judge was to restore the application, which on account of wrong procedure, came to be rejected by the learned Industrial Court. Learned counsel further relies on the judgment of the Hon'ble Apex Court in the case of **Brooke Bond India Ltd. Vs. The Workmen**⁵ in support of the submission that if the constitution of union requires a settlement to be approved by the general body, then it will not be effective unless it is approved by the general body.

12] With the assistance of the learned counsel for the parties, we have scrutinized the entire material on record.

⁴ 1980 (Supp) SCC 420.

⁵ (1981) 3 SCC 493.

13] Perusal of material placed on record would reveal that a Complaint (ULP) No.534 of 2004 came to be filed by the Respondent No.1 against the present Appellant as well as Respondent No.2 claiming unfair labour practice under Item 5 of Schedule II and Items 5, 9 and 10 of Schedule IV of the MRTU & PULP Act. Perusal of the complaint would reveal that the complaint was filed immediately after the Respondent No.2 had sold its manufacturing unit at Ghatkopar to the present Appellant and the workmen were issued letters by the present Appellant as well as Respondent No.2 informing the workmen that from that date onwards the workmen of the Respondent No.2 were continued to be the workmen of the Appellant. The workmen had received said letters under protest on 1st September 2004. Immediately on the next date, a complaint came to be filed. However, it is to be noted that though various interim reliefs were prayed in the said complaint, neither the complainant had pressed for interim reliefs, nor the learned Tribunal had granted any interim relief. It appears that in the meantime, there was certain progress with regard to the implementation of VRS for the members of the Respondent No.1. Under the VRS, 140 employees working on the establishment of the

Appellant were paid various amounts. It further appears that immediately after the payment of dues, a communication was addressed on 21st April 2005 to the Hon'ble Minister for Labour and Industries by the office bearers of the Respondent No.1 association, recording the settlement. After payments were made to the employees, the Respondent No.1 under the signature of Mr. Joseph Monteiro filed a pursis before the learned Industrial Court in the proceedings pending before it. It will be relevant to refer to the said pursis :-

“The workmen concerned in the above Complaint have voluntarily opted for VRS and have ceased to be in the employment of the Respondent No.1. The workmen and the Complainant have thus finally settled all the claims and disputes against M/s. Ariane Orgachem Pvt. Ltd. as well as M/s. Wyeth Ltd. including the disputes, demands, claims, etc. raised in the above Complaint. The Complainant, therefore, does not wish to pursue the Complaint and prays that the same may be disposed off accordingly.”

14] A similar pursis came to be filed in other two complaints i.e. Complaint (ULP) Nos.714 of 2004 and 771 of 2004. Learned member of the Industrial Court after verifying contents of the pursis from the Secretary of the complainant union, who was identified by Ms. Zagade, advocate, disposed of the said complaint for want of

prosecution. It further appears that after the complaint was withdrawn, various workmen including office bearers of the Respondent No.1, submitted forms to the Provident Fund Commissioner for withdrawal of the amount. The Appellant had also forwarded to the Provident Fund authorities withdrawal forms in respect of all the workmen. During intervening period, Appellant had also paid gratuity to the workmen after withdrawing the same from M/s. Wyeth Employees Group Gratuity Fund handled by LIC. The last of the installments, to which the workmen were entitled was paid in the month of June 2005 or before that. Thereafter also for a period of almost five months, there was not even a whisper by any of the office bearers of the Respondent No.1 or any single workman. In the intervening period, election for office bearers of the Respondent No.1 came to be conducted on 31st July 2005 and in which election, Mr. U. N. Karapurkar was elected as General Secretary. After a period of about three and half months, said Mr. U. N. Karapurkar addressed a communication to the Appellant contending therein that the Appellant has used force, coercion etc. for opting VRS. Immediately after the receipt thereof, reply was addressed by the Appellant to Respondent No.1 denying all the

allegations. In the meantime, an application was also made by the Respondent No.1 on 12th December 2005 to the Assistant Commissioner for intervention in their demand. Thereafter the application was filed for recalling the order dated 26th April 2005, somewhere in 2006.

15] For considering rival submissions, it will be relevant to refer to provisions of Sub Section (2) of Section 30 of the MRTU & PULP Act :-

“30. Powers of Industrial and Labour Courts.-

(1)

(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision:

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.”

16] It could thus be seen that though the review is provided against the interim order, review has not been provided against the final order. In any case, the issue is no more res-integra. Learned

Single Judge of this Court in the case of *Kalavati Bharsingh Thapa* (*supra*) had an occasion to consider the provisions of Sub Section (2) of Section 30 of the MRTU & PULP Act. It will be relevant to refer to paragraphs 4 and 5 of the said judgment, which reads thus :-

“4. It is well settled law that the power of review can be exercised only in cases where the statute, which governs the Court proceedings, permits the exercise of such power. The power to review has always been a creature of statute. Unless such power is provided by the statute, the Court cannot review its judgment. Of course, the order passed inadvertently or the one obtained by fraud or on false representation could be an exception to the said rule. Nevertheless, the review cannot be ordered on the ground of the judgment being wrong on merits. Such a power can never be allowed to be exercised as substitute for the Appellant Court's powers not it can be exercised to rehear and correct an erroneous decision on merits. The object behind such power is not to enable the Judge to write his second judgment on the ground that the first judgment was wrong.

5. If one peruses the provisions of MRTU & PULP Act, 1971, it is apparent that a Court disposing the matters under the said Act is not empowered to review its judgment. Undoubtedly, proviso to sub-section (2) of section 30 speaks of review of interim orders. However, the same is restricted to the cases of interim orders. Secondly the expression “review” used in the said provision of law is to be understood bearing in mind the nature of the orders which are contemplated under sub-section (2) of section 30 itself. Considering the same, the review contemplated under the said proviso is in the

nature of the review provided under Order XXXIX of the Code of Civil Procedure in relation to the ex-parte temporary injunction orders or interim orders passed thereunder. Sub-section (2) of section 30 clearly speaks of interim orders during the pendency of the main proceedings under the said Act. Proviso clearly specifies the review of “interim order”. Being so, merely because the courts acting under the said Act are empowered to review the interim order under the said proviso that would not entitle the Court to exercise such power in relation to the final orders passed at the conclusion of the proceedings under the said Act. Once the Court disposes the proceedings before it with final order, it renders itself functus officio in relation to such proceedings, and being so, in the absence of specific power to review, the order passed finally disposing of the matter, the courts under the said Act do not enjoy inherent power like the one available in the courts with plenary jurisdiction and, therefore, cannot review such final orders.”

17] It could thus be seen that the learned Single Judge upon consideration of the provisions of Sub Section (2) of Section 30 of the MRTU & PULP Act, has held that the Industrial Court or the Labour Court does not have inherent powers of review. Though the said judgment is of the learned Single Judge and as such does not have binding effect, but in view of the settled legal position as held by the Hon'ble Apex Court in catena of cases, that unless a statute provides power of review, Tribunal cannot exercise power of review, we are in complete agreement with the view taken by the learned

Single Judge of this Court.

18] No doubt that as held by Their Lordships of the Hon'ble Apex Court where there is case of procedural review, party would be entitled to approach the Court. The bar of review would come when review is sought, on the merits of the matter. However, in the facts of the present case, we are of the considered view that entire conduct of the parties will have to be taken into consideration. No doubt that if a case of fraud has been made out, the entire proceedings would be liable to be vitiated, since it goes to the very root of the matter. In this respect, it will be relevant to refer to the observations of the Hon'ble Apex Court in the case of *Bishnudeo (supra)*. It will be relevant to refer to paragraphs 24, 25, 26 and 27 of the said judgment :-

“24] We turn next to the questions of undue influence & coercion. Now it is to be observed that these have not been separately pleaded. It is true they may overlap in part in some cases but they are separate & separable categories in law & must be separately pleaded.

“25] It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence & coercion, the parties pleading it

must set forth full particulars & the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however strong the language in which they are couched may be, & the same applies to undue influence & coercion. See Order 6, Rule 4, Civil Procedure Code.

26] The allegations in the plaint regarding this part of the case are as follows. In paragraph 13 the plaintiffs say : -

"That the said Firangi Rai being infuriated by the filing of the said suit, put such a pressure upon the father of the plaintiffs that the father of the plaintiffs under fear of his threatened death filed a compromise in the said suit before any written statement was filed by Firangi Rai & other defendants."

In paragraph 15 they say :-

"That the said compromise was nothing but a dictated mandate of Firangi Rai which the father of plaintiffs, out of sheer fear of Firangi Rai submitted against his own free will and signed under compulsion & coercion & undue influence of the said Firangi Rai"

Then, in paragraph 17 & 18 the plaintiffs state:-

"17. That plaintiffs, father being a man of weak intellect & finding no help & succour from the people of residential village or neighbourhood & being also unaware of the details of properties of the family could not but submit meekly & quietly to the dictates of Firangi Rai who taking advantage of his fearful supremacy wanted to have everything according to his own sweet wish.

18. That even after the compromise plaintiffs' father could not get any income of the family properties & Firangi Rai remained the sole master of the family appropriating every pice to himself."

27] We will deal with the case of coercion first. It will be seen that the plaintiffs' case regarding that is grounded on the single allegation that their father was threatened with death. When all the verbiage is cleared away, that remains as the only foundation. The rest & in particular the facts set out in paragraphs 8 to 12 about the ferocious appearance of Firangi Rai & his allegedly high-handed & criminal activities & his character, are only there to lend colour to the genuineness of the belief said to have been engendered in Ghughuli Rai's mind that the threat of death administered to him was real & imminent. But as regards the threat itself, there is not a single particular. We do not know the nature of the threat. We do not know the date, time & place in which it was administered. We do not know the circumstances. We do not even know who did the threatening. Now, when a court is asked to find that a person was threatened with death, it is necessary to know these particulars, otherwise, it is impossible to reach a proper conclusion."

19] It could thus be seen that Their Lordships have clearly held that in case of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. It has also been held that there can be no departure from them in evidence. It has also been held that general allegations are insufficient even to amount to an

avermment of fraud, which any Court ought to take notice. It has also been held that, same equally applies to undue influence and coercion. In the light of the aforesaid observations of the Hon'ble Apex Court, it will be relevant to refer to the averments made in the application (Paragraphs 3, 4, 5, 6 and 7) for recalling the order :-

“3) On 20th April 2005, the union was called by the Respondent No.3 to its office. Respondent No.3 told the union officials that now less than a 100 workers remained and told them to take the Rs.7,11,000 (Rupees Seven Lakh Eleven Thousand only) in Exchange for their resignations. The workers in the factory received a phone call from some union officials informing them that they had also resigned and there was no alternative.

4) On the same day, all the workers were called to the head office of Respondent No.3 some from their homes, till midnight and were given the said amount of Rs.7,11,000 (Rupees Seven Lakhs and Eleven Thousand only). This signature of the workers were obtained on performa formats of letters of resignation etc.

5) Subsequently, on 26th April, an application was filed in this Hon'ble Court on behalf of the Complainant that the matter may be disposed of as the workers did not wish to pursue the matter. This Application purported to have been signed by the then General Secretary of the Complainant union on 20th April 2005, a copy whereof is annexed herewith and marked as Exhibit '1'. Upon this application, this Hon'ble Court was pleased to pass an order disposing of the complaint for want of prosecution. A copy of this orders is annexed herewith and marked as Exhibit '2'.

6) Being left high and dry, the workers were thrown into disarray. However, little by little they recognized and a General Body meeting of the union was held on 31st July 2005. In this General Body meeting, reference was made to an Earlier General Body meeting held on 31st March 2004. In that meeting, the then General Secretary of the union had stated that this matter and other cases would not be withdrawn without first reaching a satisfactory V.R.S. amount with the management and then calling another General Body meeting. A copy for the relevant portion of the minutes of this earlier General Body is enclosed herewith and marked as Exhibit '3'. In view of this earlier assurance, the General Body of the union decided that the General Secretary had acted in violation of his assurance to the General Body of 31st March 2004 by signing the application for disposal of this matter and of the other matters on 20th April 2005.

7) The General Body of the Complainant Union then accepted the resignation of the earlier Committee and elected a new Committee. It passed a resolution that the new committee should pursue the matter of the wrongful termination of the services of the workers in April 2005 and should also take appropriate steps to revive the matters which had been wrongly disposed of. Copies of the relevant resolutions are annexed herewith and marked as Exhibit '4'.

20] It will also be relevant to refer to paragraph 12 of the said application :-

“12) The Complainant submits that this matter was disposed of on the basis of an application signed by the General Secretary of the Union that he was authorized to sign. As such the Complainant submits that the matter was disposed of on the basis of a misrepresentation made

to this Hon'ble Court by the Respondents in collusion with the then General Secretary upon a document which he was not authorized to sign.”

21] It could thus be seen that in effect, the main allegation made by the Respondent No.1 is that on 20th April 2005, the office bearers of the union were called by the Appellant in its office and were told that only less than 100 workers had remained and asked them to take an amount of Rs.7,11,000/-. Perusal of the entire averments would reveal that there is not even a whisper as to what fraud was committed by the Appellant or the Respondent No.2. The only allegation is that the General Secretary had acted in violation of his assurance to the general body of 31st March 2004, while disposing of the matters on 20th April 2005. However, it is to be noted that the present Appellant became the employer of the workmen only on 1st September 2005 and as such, there was no case which was pending against the present Appellant as on 31st March 2004.

22] It is further to be noted that all the 149 employees had received amount from the Appellant in the month of April 2005. Not only that but the dues were being paid as late as upto July 2005. It

appears that the Respondent No.1 made allegations for the first time only in November 2005 i.e. after all the payments were received by them. It is pertinent to note that all the employees had signed as many as ten documents including the documents, which were necessary for releasing Provident Fund and gratuity. The person under whose signature the application for restoration was filed, Mr. U. N. Karapurkar had himself signed all the documents, reference to which has been made herein-above. It could thus be seen that this conduct clearly shows that having taken the entire benefit under the VRS, the Respondent No.1 decided to turn around and filed proceedings for restoration of the complaint, which was withdrawn in pursuance to the settlement arrived with the Appellant.

23] In so far as the contention that said Mr. Joseph Monteiro had no authority to compromise the matter with the Appellant and to withdraw the proceedings is concerned, the same is devoid of substance. It will be relevant to refer to the translated version of the minutes of the meeting of the Respondent No.1 dated 28th April 2005, which reads thus :-

“Shri. Nar

- Sd/-

Shri. Joe Montero	-	Sd/-
Shri. Khetal	-	Sd/-
Shri. Pravin Bhatkar	-	Sd/-
Shri. Sameer Chawarkar	-	Sd/-
Shri. Manohar Sawant	-	Sd/-
Shri. Rane	-	Sd/-
Shri. Parab	-	Sd/-
Shri. Thatte	-	Sd/-
Shri. Raut	-	Sd/-
Shri. Lad	-	Sd/-
Shri. Shirke	-	Sd/-

- 1) Shri. Nar began with meeting. Shri. Khetal was asked to conduct further meeting.
- 2) Shri. Khetal gave information about V.S.S. which was put up on the date 20. It was told that as all the workers opted for V.S.S., all the cases were withdrawn and letters to that effect have been given to the Management by the Union.
- 3) Shri. Kulkarni told that as regards withdrawing the case from the Court, the amount of Rs. 1,40,000 has been asked for withdrawal and asked the Committee's opinion in that regard and further told about having given the threat to file individual case against the Core Committee if failed to do so.
- 4) Khetal told that the information about the case withdrawal was given to Shri. Badra by visiting Mahindra Towers.

- 5) Shri. Bhatkar told that no additional money of any kind should be given.
- 6) The entire committee unanimously supported the aforesaid representation.”

24] It could thus be seen that the meeting had ratified the proceedings initiated by the said Mr. Joseph Monteiro for withdrawal of the complaints. It is further pertinent to note that though total four proceedings were withdrawn by Mr. Joseph Monteiro, application for restoration of only one proceeding was taken. It could thus be seen that entire conduct of office bearers of the Respondent No.1 speaks volumes.

25] As discussed herein-above, there were another collateral proceedings by way of reference to the learned Industrial Court. Learned Industrial Court vide Award dated 13th December 2016, has already answered the reference in the negative and rejected the contention of the Respondent No.1 that on account of duress, coercion and undue influence on the part of the Appellant all the workmen submitted application for resignations. Learned Industrial Court has held that though the situation under which the workmen submitted the applications was hasty, but at the same time, there

was no duress, coercion and undue influence on the part of the present Appellant. It has been held by the learned Industrial Court that past conduct of both the parties between the period 12 April 2005 to 21st April 2005 and in the subsequent events after 21st April 2005 to June 2005 are consistent and corroborative as well as co-operative to the past instances and events, so there was conclusiveness to their contract. Learned Industrial Court has further held that later action of deciding to initiate proceedings, since 31st July 2005, was after thought on the part of the Respondent No.1 herein. The said award of the Industrial Court is already challenged by the Respondent No.1 by way of Writ Petition before this Court. In that view of the matter, it will not be appropriate on our part to comment with regard to correctness or otherwise of the findings given by the learned Industrial Court.

26] However, upon independent appreciation of the material, we have come to a considered conclusion that the application for restoration could have been entertained by the learned Industrial Court only in the event the Applicants were in a position to prima-facie satisfy the learned Industrial Court that the

present Appellant had played any fraud, coercion or misrepresentation upon the employees, while seeking their voluntary resignations. Insofar as the fraud is concerned, there is not even a whisper in the application. Insofar as the allegation regarding collusion and misrepresentation is concerned, except making generalistic allegations, no particulars of any sort are given. As already discussed herein-above, in view of the law laid down by Their Lordships of the Hon'ble Apex Court in the case of *Bishnudeo (supra)*, unless there are specific allegations giving particulars regarding fraud etc., the application for restoration could not have been entertained.

27] We are therefore of the considered view that the Learned Industrial Court was justified in rejecting the application filed by the Respondent No.1. However, learned Single Judge while reversing the order has only observed that since there were allegations regarding fraud, the Industrial Court ought to have entertained the application for restoration. At the cost of repetition, we observe that there is not even a whisper with regard to fraud. We are unable to understand as to on what basis the learned Single

Judge could have arrived at a finding that since the Petitioner before the learned Single Judge had made out a case of fraud, a matter was fit for remand. We are of the considered view that the finding of the learned Single Judge are contrary to the material placed on record. In that view of the matter, we find that the learned Single Judge has erred in reversing the order passed by the learned Industrial Court, which was passed in accordance with the legal position.

28] In the result, we pass the following order :-

ORDER

- I] The Appeals are allowed.
- II) The judgment and order passed by the learned Single Judge in WP No.8099 of 2007 is quashed and set aside.
- III) The orders passed by the learned Industrial Court dated 26th April 2005 in Complaint (ULP) No.534/2004 and dated 5th May 2007 in Misc. Application No.1/2006 are confirmed.

[RIYAZ I. CHAGLA, J.]

[B. R. GAVAI, J.]