

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

WRIT PETITION NO.13869 OF 2017

Anup Textiles & Anr.

.. Petitioners

Vs.

State of Maharashtra & Ors.

.. Respondents

Mr. Prakash V. Dhopatkar for the petitioners.

Ms. Vaishali Nimbalkar, AGP, for respondent nos.1 to 6.

Mr. A. S. Rao for respondent no.7 .

CORAM : A.K. MENON, J.

DATED : 10TH APRIL, 2018.

P.C. :

1. By this writ petition, the petitioner challenges an award dated 24th April, 2015 passed by the Third Labour Court, Thane. The impugned order directs the reinstatement of the respondent workman with full back wages and continuity of service from 27th May, 2008.
2. The only challenge in this writ petition and as canvassed before me today by the learned counsel for the petitioner is that the proceedings in the subject reference were attended by the manager appointed by the petitioner who unfortunately passed away in January 2011 and thereafter the petitioners lost track of the proceedings pending before the Labour Court.
3. It is further contended that the petitioners honestly believed that their

manager and their Advocate would have been attending the matter sincerely and therefore no inquiries were made. The petitioner contends that in the month of July 2017, a demand notice was received from the Tahsildar pursuant to Recovery Certificate from the Assistant Commissioner of Labour, Bhiwandi, under Section 33C(1) and an attachment order came to be issued on 15th September, 2017. This is when he realised that the award has been passed and the same was being executed. The learned counsel for the petitioner submitted that the proprietor of the concern who was petitioner no.1 was unaware of the proceedings before the Labour Court.

4. In my view the contentions of the petitioners cannot be accepted. The impugned award records the presence of their Advocate as on date of the award there is no doubt that the award has not an exparte award and was contested. The issues framed held in favour of the respondent on the basis of arguments advanced. However it is only on the date when the order has been passed, the petitioners and their Advocate remained absent. The impugned order records that the Advocates of the petitioners denied that they ever engaged the respondent. He further contended that they were engaging contractors to prepare beams and the contractors used to engage necessary man power for preparation of beams. It is pertinent to mention that no evidence was adduced by the respondent.

5. In the written statement, they admitted that they own warping machines. Yet they denied that there was any relationship of employer and employee between the parties. Paragraph 7 of the impugned order records that the petitioners were directed to produce the records including registers for the period from 2003 to 2011 but they failed to produce the same. Thus, it is clear that the petitioners have attempted to suppress the registers and the relevant evidence and therefore an adverse inference has been drawn against them. In these circumstances, there is nothing perverse about the impugned order. Therefore there is no reason to interfere in this writ petition. Hence, I pass the following order:-

(i) Writ petition is dismissed.

(ii) No orders as to costs.

(iii) This writ petition was tagged along with Writ Petition no.1462 of 2018, however, the same will be untagged.

(A.K. MENON,J.)