

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

WRIT PETITION NO.13239 OF 2017

M/s.Modi Dyeing and Bleaching Works .. Petitioner
Vs.
Mr.Madhav Chouhan & Ors. .. Respondents

Mr.Sourabh Pakale i/b Mr.S.M.Katkar for the petitioner.
Mr.Amit A. Ghate for the respondent No.1.

**CORAM : A.K. MENON, J.
DATED : 16TH APRIL, 2018.**

P.C. :

1. By this petition, the petitioner a partnership firm seeks to challenge attachment of property pursuant to notice dated 13th June, 2017 and the impugned recovery certificate dated 16th January, 2017 issued by the Additional Commissioner of Labour awarding a sum of Rs.2,80,000/- to respondent no.1 on the basis of the impugned award. The award was passed on 30th April, 2012.

2. The writ petition is filed on 1st November, 2017. The only defence of the petitioner is that after the award was passed, a settlement was allegedly arrived at out of the Court under which the respondent no.1 agreed to receive a sum of Rs.50,000/- in full and final settlement. The said amount of Rs.50,000/-is said to have been paid in cash.

3. Mr.Pakale, learned counsel appearing in support of the petition submitted that the award is also now being challenged in this petition, in view of the fact that the recovery certificate has been issued despite the fact entire dispute has been settled. He invited my attention to a deed of settlement/memorandum of understanding dated 18th February, 2013, a copy of which is at Exhibit-E to the petition. He submitted that by virtue of settlement the amount now sought to be recovered is not payable and although the award directed reinstatement and payment of 60% back wages along with continuity of service hence nothing is now payable.

4. The award was passed after hearing both parties. The petitioner was represented by an Advocate and I find that although the petitioner has contended that the respondent no.1 was not an employee, the Labour Court concluded that there was an employer-employee relationship between the parties. The impugned award records that the petitioner has not been able to establish that the respondent no.1 was not employed. On the contrary it was found that an employer-employee relationship was established by the oral as well as documentary evidence and hence the Reference was found maintainable. Since there was no challenge to this aspect of the matter, it is now not possible to consider challenge to the award especially since it is petitioner's case that the relief granted in the award was substituted by the settlement agreement. The award thus stands unassailed.

5. The only question that arises is whether the settlement

was accepted by the respondent as contended by the petitioner. Mr. Gharte, on behalf of the respondent no.1 submitted that the case of the petitioner is incorrect inasmuch as no valid settlement has been arrived at. In an affidavit in reply, the respondent has stated that on 18th February, 2013 after attending the Court proceedings, the respondent was returning to Bhiwandi from Thane when he was accosted by two motorcycle borne persons, who forcibly took him in a Maruti Van where he was forced to sign on a stamp paper. When the respondent told them that he could not sign, his thumb impression was fixed on the stamp paper by those persons. He was manhandled and then once again forced to affix his signature on the settlement deed. Feeling threatened he affixed signature on the stamp paper. According to him no monies were paid to him as contemplated in the said document. Subsequently, he attempted to file a complaint at local police station at Bhiwandi but said police station did not register the complaint. As a result he was forced to complain to the Commissioner of Police on 2nd April, 2013.

6. It is stated that on 14th November, 2017 two persons of the petitioner organisation visited his house and asked him to sign a document which he refused to sign. That the said document was got signed by force on that date. Thereafter, he immediately contacted his Advocate and narrated the incident to him and a complaint was lodged by the respondent no.1 on 15th November, 2017 a copy of which is at Exhibit-B to the affidavit in

reply.

7. In the affidavit in rejoinder filed by the petitioner, the contents of reply have been denied in general. The petitioner has reiterated that the full and final compensation of Rs.50,000/- was paid in the presence of a Notary Public. There is nothing to show that the said amount was paid, since the Memorandum of Understanding does not disclose that the petitioner had agreed to pay the settlement amount and that the respondent no.1 had “accepted the same” at the time of execution of an agreement. There is no receipt clause in the agreement. The petitioner relied upon a debit voucher in which a sum of Rs.50,000/- is mentioned. However, this voucher merely authorises payment of the aforesaid amount. No receipt is seen to be issued by the respondent no.1. Even otherwise the case of the petitioner is difficult to believe.

8. The record indicates that so called settlement agreement dated 18th February, 2013 was executed, if at all, after a period of 10 months after the award was passed. The award was passed on 30th April, 2012. In the interregnum, the petitioner filed an application Exhibit-C-1 seeking to set aside the award on the ground that it was exparte. In the application for setting aside the award it is stated that Mr.Naresh Mittal, the Manager of the petitioner left the services of the company and did not inform the partners about the Court cases. As such they were unaware of pendency of the Court cases. However, I find that the award records the appearance of an

Advocate on behalf of the petitioner/first party. In the circumstances it transpires that even thereafter the applicant failed to appear and argue the application and hence a “no argument of order” was passed. Later, on 15th March, 2015 the matter was closed. Once again the petitioner filed an application Exhibit-C-2 on or about 21st July, 2012 seeking stay of execution of the award. A third application was filed Exhibit-C-3 in support of the application for restoration and seeking stay through same Advocate whose appearance is shown at the time of passing an award.

9. It is not the case of the petitioner that the petitioner's Advocate did not appear at the stage of the award. Thus, it seems that the petitioner has not come to the Court with clean hands. Meanwhile, the application to set aside award was decided against the petitioner. The award is valid and binding. If in fact the settlement had been arrived at this would have been one of the main contentions in the application for setting aside the award. However, the case now sought to be made out is that the parties arrived at settlement but in the application made for setting aside the award and stay of implementation of the award, there is no whisper about alleged settlement. In the circumstances it is evident that there is no substance in the petitioner's case. No case is made out calling for interference with the impugned order which is neither perverse nor illegal.

10. The impugned award now stands confirmed and it would be appropriate that the petitioner is given a chance to remedy the situation. In

the circumstances I pass the following order :

- (a) The petitioner shall deposit before the IInd Labour Court, Thane to the credit of the respondent no.1 a sum of Rs.2,80,000/- on or before 7th May, 2018.
- (b) In the event such deposit is made, the respondent nos.2 and 3 shall not proceed with coercive steps to execute the award. If the deposit is not made on or before 7th May, 2018, this order shall stand vacated and the respondent nos.2 and 3 shall be entitled to proceed further in execution of the award.
- (c) If deposit is made, liberty is granted to the respondent no.1 to withdraw the same from the IInd Labour Court.
- (d) Writ petition is disposed of in the above terms.

(A.K. MENON,J.)