

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO. 242 OF 2017
IN
COMPANY PETITION NO. 642 OF 1983**

Satyanarayan Jhawar and Ors.Applicants

In the matter between :

Reliance Textile Industries Ltd. ... Petitioner
Vs.

The Official Liquidator of Shrineevas
Cotton Mills Ltd.
(In Liquidation) & Anr.Respondents

Ms.Jane Cox a/w. Ms. Karishma Rao I/b Manmohan A. Amonkar for
applicants.

Mr.Mahendhar Aithe, company prosecutor for respondent no.1-Official
Liquidator.

Mr.Janak Dwarkadas, senior advocate a/w. Mr.Cyrus Ardeshir and
Ms.Prachi Dhanani I/b Veritas Legal for respondent no.2.

**CORAM : K.R.SHRIRAM, J.
DATE : 16th JULY, 2018**

P.C.:

1 The application is made by the nine persons who were the staff employed by the respondent-company- Shrineevas Cotton Mills Limited. The core of this matter is an order dated 3rd August 2009 passed by this Court in Company Application No.1294 of 2007 and other applications. The first paragraph of this order reads as under :-

1 In the above company application (lodging) no.801 of 2009 and the unnumbered application taken out by the applicant's Advocate Mr. G.C. Singh, Mr. Dwarkadas, the learned Senior Counsel has made the following statement :-

“(1) All workmen employed with the company as on the date of closure viz. 25.7.1984, shall receive :

(a) All legal/statutory dues including unpaid wages, gratuity, retrenchment compensation, etc. upto date of closure.

(b) Interest @ 12% p.a. from 25.7.1984 to 30.5.2009.

(c) Exgratia compensation of Rs.2,00,000/ per worker.

This includes all workers of any dispensation who were with the company as on the date of closure.

2 Shri Dwarkadas, at the outset, stated that, the company had not challenged the status of the applicants claiming to be 'workmen' and therefore, the Court may proceed on the basis that applicants, though worked as staff in the head office of the company, were 'workmen'.

3 Applicants had also, following this order of 3rd August 2009, lodged their respective affidavits of proof of debt with the official liquidator. The official liquidator adjudicated their claims. Applicants were allowed Rs.2 lakhs each as ex-gratia compensation but in the adjudication order, the liquidator noted that this amount of Rs.2 lakhs has been paid as ex-gratia, were in lieu of retrenchment compensation. Aggrieved by the order, applicants filed a company application which was allowed on the concession made by the company that the ex-gratia payment should not have been shown as “in lieu of ex-gratia” and the official liquidator was directed to re-adjudicate the claims. The official liquidator re-adjudicated the claim and

each of applicant was allowed various amounts as retrenchment compensation. Applicants were paid interest @ 12% p.a. from 25th July 1984 to 30th May 2009 on this amount of retrenchment compensation. Applicants have, now approached this Court by this application, for an order directing the official liquidator to pay applicants interest @ 12 % p.a. from 30th May 2009 until the applicants received re-worked retrenchment compensation.

4 In addition, applicant Nos.5 to 9 are also claiming some unpaid wages upto 25th July 1984, which counsel for applicants, states has been missed out. Ms.Cox for applicants clarifies that applicant nos. 5 to 9 have claimed unpaid wages beyond 25th July 1984, but their claim will be restricted upto 25th July 1984. On this claim for additional wages, Shri Dwarkadas submitted that if applicant Nos.5 to 9 have been paid ex-gratia compensation on the basis that they worked upto 25th July 1984, certainly they should be paid unpaid wages upto that date and the liquidator should not insist on proof of having worked upto that date. Shri Dwarkadas also added that interest @ 12% p.a. from 25th July 1984 upto 30th May 2009 on this differential amount of unpaid wages will also be paid. The counsel for applicants is happy with that offer made by Shri Dwarkadas. The liquidator, therefore, shall re-consider and adjudicate this aspect within four weeks from today and the adjudicated amount, unless challenged by applicants, to be released within four weeks thereafter, without further reference to this

Court.

5 So far as the first point of payment of further interest at 12% p.a. beyond 30th May 2009 on the retrenchment compensation is concerned, the retrenchment compensation was not paid due to a mistake made by the liquidator. I am afraid, applicants are not entitled to the same. This is because, first of all the mistake has been made by the liquidator and not by respondent company. It is settled law that if there was an error and the Court or its officers have largely contributed to it, it is incumbent on the Court to ensure that the error is rectified. There is no higher principle for the guidance of the Court than the one that no act of Court should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: "*Actus curiae neminem gravabit*", i.e., Act of Court should do no harm. (***Jang Singh Vs. Brij Lal***)¹.

6 In the present case, the official liquidator noted that the amount of Rs.2 lakhs paid as ex-gratia was paid in lieu of retrenchment compensation and thus, made an error. This error of the official liquidator was ordered to be rectified, which he did. The official liquidator re-adjudicated the claim

1 AIR 1966 SC 1631

and retrenchment compensation was paid. Applicants were also paid interest at 12% p.a. from 25th July 1984 to 30th May 2009 on this retrenchment compensation amount. Hence, appellants were restored to the position where they would have been had the error not been made, i.e., interest was paid to them in addition to the retrenchment compensation.

Moreover, if the liquidator had not made the error, still applicants would have got interest @ 12% p.a. only from 25th July 1984 to 30th May 2009. The order of 3rd August 2009 is also very clear that interest will be paid at 12% p.a. from 25th July 1984 to 30th May 2009 of all legal/statutory dues including retrenchment compensation.

7 Therefore, applicants are not entitled to claim any further interest. Application stands disposed accordingly.

(K.R. SHRIRAM, J.)

Shraddha
Kamlesh
Talekar

Digitally signed
by Shraddha
Kamlesh
Talekar
Date:
2018.07.19
18:09:53 +0530