

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2031 OF 2017

M/s.Chumilal Mulchand & Co.

...Petitioner

Vs.

Smt.Vatsala Venugopal Menon

...Respondent

Mr.Avinash S. Patil for Petitioner.

Ms.Karuna Yadav I/b. N.M. Ganguli for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 6 JUNE 2018

P.C. :

Heard learned Counsel for the parties.

2 This petition challenges an order passed by the Labour Court at Mumbai in a reference under the Industrial Disputes Act. The controversy concerns the right of the Petitioner herein, who is the employer of the Respondent workman, to be represented by a legal practitioner. The impugned order allows the objection of the Respondent to the Petitioner being permitted to be represented by an advocate.

3 It is the case of the Respondent that the Respondent never consented to the representation of the Petitioner by a legal practitioner. It is her case that on the very date, when vakalatnama was tendered on behalf of the Petitioner, she objected to the Petitioner's right to be represented by a legal practitioner. It is her case that the court asked her to mention her objection in her statement of claim. It is submitted that, accordingly, she included this objection in her statement of claim. The

court, on these facts, found substance in the Respondent's case that she had never given consent for representation of the Petitioner by an advocate, whether implied or express. Section 36(4) of the Industrial Disputes Act allows representation to a party to a dispute by a legal practitioner only with the consent of other parties to the proceeding and also with the leave of the court. On the basis that there is no consent of the Respondent, the legal representation was denied to the Petitioner herein.

4 Learned Counsel for the Petitioner submits that the Respondent did not object when appearance of the Petitioner was tendered before the court and taken on record by it and it was impermissible to object to the appearance at a later date. Learned Counsel relies on a judgment of our court in the case of **Salvation Army vs. Sunil J. Ingle**¹. A learned Single Judge of our court in this case has held that if no objection is raised to the filing of the appearance of the other side and the appearance is taken on record, it is indicative of the facts that there was an implied consent to the appearance and also that leave was granted by the Labour Court. It is submitted that accordingly both ingredients under Section 36(4) of the Industrial Disputes Act, namely, consent of the other party and leave of the court, are satisfied in the present case. It is true that if at the time of filing of appearance, no objection is raised by the other side, at a subsequent stage, the other side cannot object to the appearance of the advocate. In the present case, however, learned Judge of the Labour Court found substance in the submission of the Respondent that she had always objected to the representation of the Petitioner by a legal practitioner. There is on record a document in the present case, which is the Respondent's say in the matter, which annexes a written application of

1 2006 (2) L.L.N. 625

the Respondent of 4 March 2014 raising objection on the very first day to the appearance of a legal practitioner on behalf of the Petitioner. It is the Petitioner's case that the court asked her to raise this objection in her claim statement. She claimed to have accordingly mentioned the objection in her claim statement of 1 November 2014. On these facts, the learned Judge of the Labour Court has come to a conclusion that there is substance in her statement that she had never given any consent for representation of the Petitioner by an advocate, whether impliedly or by express consent. The court did note the decision of our court in the case of **Engineering Mazdoor Sabha vs. Meher (M.R.)**², which was considered by our court in the case of **Salvation Army** to reject the objection to legal representation. Distinguishing that case, however, the learned Judge has held that in the present case, there was no reason to believe that there was an implied consent by the Respondent for appearance of an advocate on behalf of the Petitioner. The learned Judge has come to the conclusion that in the facts of the case, engagement of an advocate by the Petitioner would prolong the controversy. No fault, in the premises, can be found with the impugned order of the Labour Court.

5 Ordinarily, whenever there is no objection to the filing of vakalatnama on behalf the other side and the latter is allowed to be represented by an advocate after taking on record the vakalatnama, subsequently no objection can be raised to such legal representation. If at the time of filing of the vakalatnama, no objection is raised and the vakalatnama is taken on record, that would imply a consent on the part of the other party as also leave of the court for such legal representation. That is a case of implied consent and implied leave. If, on the other hand, there

2 1966 I L.L.J.580

are circumstances, which indicate that there is a credible case of objection raised to the legal representation at the very outset, then the fact that there is no documentary evidence to establish such objection cannot lead to an inference of implied consent. If circumstances indicate that there is strong likelihood of there being an objection from the very outset to allow legal representation, the opponent must make out a case of express consent. He cannot then rely on a case of implied consent based on want of documentary evidence to indicate such objection.

6 The trial court has, after hearing the parties, taken a particular view which finds merit with the Respondent's case that she always objected from day one to the Petitioner being allowed legal representation. In matters such as this, the writ court would ordinarily go by the observations of the trial court and not be expected to go behind the observations which are represented as matters of fact.

7 In the premises, there is no substance in the challenge. The lower court has obviously taken a possible view based on material on record. There is no consideration of irrelevant material or disregard of relevant material. Accordingly, there is no case for interference in the writ jurisdiction of this court.

8 The writ petition is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)