

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

WRIT PETITION NO. 487 OF 2018

Ms.Gayatri Priyam Jhaveri & Anr.

...Petitioners

Vs.

The Collector, Mumbai & Ors.

...Respondents

Mr.Chetan Kapadia with Mayur Bhojwani, Vivek Dwivedi I/b. Manilal Kher
Ambalal & Co. for Petitioners.

Mr.Mahindra B. Deshmukh for Respondent No.5.

Mr.Nitin R. Shah for Respondent No.6.

CORAM : S.C. GUPTE, J.

DATE : 11 JUNE 2018

P.C. :

Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith, by consent of counsel.

2 This petition challenges an order passed by the Labour Court at Mumbai on an application made to it by the fifth Respondent employee under Section 33C(2) of the Industrial Disputes Act, 1947. The impugned order directs the predecessor-in-title of the Petitioners herein, one Ajay Yogendra Mafatlal, who was a director of Mafatlal Gagalbhai Textiles Ltd. (in Liquidation) represented before the court by the Official Liquidator, to pay the amount of dues of the employee owed by Mafatlal Gagalbhai Textiles Ltd., who was his employer.

3 This court has already made it clear in the case of **Association of Engineering Workers vs. The Super Tool Co. (P) Ltd.**¹ that the

1 2016 SCC OnLine Bom 8030

industrial adjudicator has no authority to direct directors of an employer company personally to pay wages of workers. The dues for which the Respondent employee made an application under Section 33C(2) arise out of a VRS scheme announced by the Respondent company, namely, Mafatlal Gagalbhai Textiles Ltd. Under this scheme, the company agreed to make payment of gratuity at a rate of 15 days for every year of service under the Payment of Gratuity Act together with payment at the rate of 50 days' salary per year of service as VRS compensation to its 12 employees listed in the minutes. The fifth Respondent employee was listed in this list. He was entitled to a sum of Rs.1,64,184/- towards gratuity and VRS compensation in the sum of Rs.5,47,278/-. The company agreed to make this payment in three instalments. The Applicant employee received first instalment of Rs.1,82,426/- on 19 March 1997. The company thereafter failed to make payment of the remaining two instalments. The Applicant employee, accordingly, applied for payment of the balance outstanding amount from the employer under Section 33C(2) of the Industrial Disputes Act, 1947. The directors of the company, including Ajay Yogendra Mafatlal, were arraigned as parties to this application. Without any discussion as to how the directors of the company could be held liable for making this payment, the Labour Court appears to have proceeded to pass a decree or direction against all the opponents, including the employer company and its three directors, for payment of balance dues of gratuity and VRS to the Applicant employee along with interest. This order is challenged only on behalf of Ajay Yogendra Mafatlal, one of the three directors, who died on 22 August 2015. (The present petition is filed by the sisters of the deceased.) The impugned order, insofar as it directs Ajay Yogendra Mafatlal to pay the dues of the Applicant employee, is clearly unsustainable on the ground of a jurisdictional error on the part of the Labour Court. The order, accordingly,

deserves to be quashed and set aside.

4 Rule is, accordingly, made absolute by quashing and setting aside the impugned orders dated 25 November 2014 and 6 April 2015 insofar as they direct Opponent No.4, Ajay Yogendra Mafatlal, to pay the amount of Rs.3,64,852/- along with interest.

5 Since the original order under Section 33C(2) cannot be sustained against Opponent No.4, Ajay Yogendra Mafatlal, consequential orders passed in execution against him, namely, Recovery Certificate dated 7 October 2015 (Exhibit D-2 to the petition) and order dated 5 October 2016 for recovery passed by Tahsildar, Labour Dues Recovery (Exhibit E to the petition) also are quashed and set aside.

(S.C. GUPTE, J.)