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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO.615 OF 2018

IN

REVIEW PETITION (I) NO. 71 OF 2018

IN

WRIT PETITION NO.487 OF 2018

Arvind Chandulal Patel

...Petitioner

vs

Gayatri Priyam Jhaveri And 6 Ors.

...Respondents

.....

Mr. Sagar A. Rane, for Applicant/Review Petitioner.

Mr. Chetan Kapadia, a/w. Mr. Mayur Bhojwani and Mr. Vivek Dwivedi,
i/b. M.K. Ambalal And Co., for Respondent Nos. 1 and 2.

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CORAM : S.C. GUPTE, J.

DATED: 19 OCTOBER, 2018

P.C. :

. The notice of motion seeks condonation of delay of 82 days in taking out the present review petition. For the reasons stated in the affidavit in support of the notice of motion, the delay is condoned. The review petition may be numbered by the office accordingly. The notice of motion is disposed of.

2. All Respondents to the present review petition have been served. The contesting Respondents are represented by Counsel. By consent of parties, the review petition itself is taken up for hearing.

3. Heard learned Counsel for the parties. This review petition

seeks review of an order passed by this Court disposing of Writ Petition No.487 of 2018. The original writ petition had challenged an order of the Labour Court at Mumbai on an application made to it by the present Petitioner (the fifth Respondent employee in the writ petition) under Section 33-C(2) of the Industrial Disputes Act, 1947. The impugned order directed the predecessor-in-title of the Petitioners in the original writ petition (Respondent Nos. 1 and 2 to the review petition), who were directors of Mafatlal Gagalbhai Textiles Ltd.(in Liquidation), to pay the amount of dues of the applicant employee, owed to him by Mafatlal Gagalbhai Textiles Ltd., who was his employer. The writ petition was allowed by this Court by the order under review *inter alia* after noticing the dictum of this Court in **Association of Engineering Workers vs. The Super Tool Co. (P) Ltd.**¹ that an industrial adjudicator had no authority to direct directors of an employer company personally to pay wages of workers. Learned Counsel for the Review Petitioner refers to the judgment of **Association of Engineering Workers** (supra) and submits that the proposition enunciated by our Court in that case was that, in ordinary circumstances, such order could not be passed against directors personally. Learned Counsel submits that our Court has nevertheless recognised in **Association of Engineering Workers** that, in a case, where money or property of a company has been secreted or swallowed by any director or person in charge of the company, any creditors, including employees of the company, may attempt to recover the money or follow the property in the hands of the director or person in charge of the company, as the case may be. Learned Counsel submits that, in the present case, there have been allegations against the director personally.

1 2016 SCC OnLine Bom 8030

Learned Counsel refers in particular to paragraph 16 of his client's reply to the original writ petition. In paragraph 16, allegations have been made by the Review Petitioner that the company and its director had strategically brought the company to liquidation and had seen to it that no assets, business affairs, books of account or bank books should fall in the hands of the official liquidator; that the directors had discreetly and secretly made their investment in order to deny the rightful claims of employees and workers.

3. In the first place, an argument, such as the one advanced by the Review Petitioner, and which is noted above, is an argument in support of his case in the original matter. The order under review does not indicate whether or not such argument was advanced when the order was passed. Anyway, there is a reference to the fact that the Labour Court had passed the impugned order without any discussion as to how the directors of the company could be held liable for making payment of the workmen's dues. Be that as it may, a new argument or an additional submission in support of one's case is no ground to seek review of the order. A review lies only when some new or important matter, which was not within the knowledge of the applicant for review when the original order was passed, is brought to the notice of the applicant, based on which the Court is persuaded to hold that had this matter been placed before the Court, it would have decided the matter otherwise. The second ground, on which a review can be made, is that the order discloses some error apparent on the face of the record. The third and residuary ground is a cause of a like nature. None of these grounds is satisfied by the present Review Petitioner. The Court, apart from the

principle applied by our Court in **Association of Engineering Workers**, has held that an industrial adjudicator had no authority to direct directors of an employer company to personally pay wages of workers. It may be that a creditor may seek to follow the property of a company in the hands of its director or other person in charge of its affairs, alleging misfeasance or malfeasance on the part of the latter. That may be for the Company Court to decide or, for that matter, for a civil court to decide in an appropriate proceeding after lifting corporate veil. But the limited jurisdiction exercised by the Labour Court under Section 33-C(2) of the Industrial Disputes Act cannot be invoked to seek such an order. Besides, this Court, at any rate following the principle in **Association of Engineering Workers**, which is pressed into service in the present review petition, has also observed that there is no discussion in the impugned order as to how the directors of the company, or any particular director, for that matter, could be held liable for making payment of the debt of the company owed under a labour statute. The order, thus, does not call for any review.

4. It is also submitted by learned Counsel for the Review Petitioner that the original order passed by the Labour Court under Section 33-C(2) was accepted by the concerned director and was not carried in challenge before any superior Court. It is submitted that, in the premises, the Writ Petitioners, as legal heirs or representatives of the deceased director, cannot seek to challenge the impugned order of the Labour Court passed under Section 33-C(2). It is submitted that the question is both of locus and merits of any such application. It is doubtful if such argument can be advanced in the present case,

considering that the concerned director actually died within a few days of that order. But, as a matter of principle, even this is an argument in support of the Review Petitioner's original case before the writ court and cannot be made the basis of a review petition. Though it is not known whether such an argument was advanced in the original writ petition by the Review Petitioner when the order was passed, whether such an argument is advanced or not, that makes no difference; it cannot be pressed before the review court.

5. Accordingly, there is no merit in the petition. The petition is dismissed.

(S.C. GUPTE, J.)