IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1759 OF 2018

1. Vinit Nandkishor Bhatiya,
Age: 56 years, Occu: Chief Manager,
Authorized Officer, Allahabad Bank,
Mosaik Commercial Complex,
CTS No.1261/1, Final Plot No.576/1,
In front of Shivaji Nagar,
Fergusan College, PUNE-04.

2. Dhiraj Poonamsing Kushvah,
Age: 37 years, Occu: Senior Manager,
Authorized Officer, Allahabad Bank,
Shani Chowk, In front of
Shripad Granth Bhandar,
Ahmednagar, Dist. Ahmednagar. … **PETITIONERS**

Versus

1. Vijay s/o Eknath Nimbalkar,
Age: 31 years, Occu. Service,
R/o At post Nimbodi, Tq. Nagar,
Dist. Ahmednagar.

2. Sharad s/o Vishnu Vaidya,
Age Major, Executive Director,
D.A.T.C. (India) Pvt. Ltd,
28, Shriniketan Society,
128/2, Kothrud, J.P. Naik Road,
Pune, Dist. PUNE – 38. … **RESPONDENTS**

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Advocate for Petitioner : Ms. Bodke Patil Poonam V.
Advocate for Respondent No.1 : Mr. P.V. Barde

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CORAM : MANGESH S. PATIL, J.
DATE : 19.09.2019

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. P.V. Barde waives service for respondent no.1. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioners are the authorised officers of the Allahabad Bank. The respondent is an employee and representative of the other employees of D.A.T.C. India Private Limited (hereinafter the Company) having one of its unit at Ahmednagar. The respondent no.2 is the Executive Director of that company having the head office at Pune.

3. The respondent no.1 filed Complaint (ULP) No. 61 of 2016 against the Executive Director and the Manager of the Company alleging that the employees were not paid increments and wages as per the agreements and even the contribution towards the Employees Provident Fund were not deposited and thereby they had indulged in Unfair Labour Practices. By the judgment and order dated 13.02.2017 the learned Member of the Industrial Court, Ahmednagar ordered the respondent no.2 to pay the arrears and further injuncted the Company from disposing of the Company's unit at Ahmednagar.

4. The respondent no.1 filed another Complaint (ULP)No. 103 of 2017 against the present respondent no.2 and the petitioners. The respondent no.2 did not contest the matter. The petitioners appeared in the matter and filed their say and contended that they were not impleaded in the earlier complaint Complaint (ULP) No. 61 of 2016 and the order passed therein was not binding on them. They contended that since their bank is a secured creditor from whom the company had borrowed money, they had proceeded against the company under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter the 'SARFAESI Act'). It is only pursuant to a proceeding under Section 13-1 of the SARFAESI Act that they were proceeding to recover the dues. The order passed in Complaint (ULP)No. 61 of 2016 to which they were not parties was not binding on them.

5. The respondent no.1 then filed criminal Complaint (ULP)No. 38 of 2017 against the petitioners and the respondent no.2 alleging that they had failed to comply the order dated 13.02.2017 passed in Complaint (ULP) No. 61 of 2016. The petitioners appeared in the matter filed their say and pointed out that they were not parties to the Complaint (ULP)No. 61 of 2016 and they were merely prosecuting their remedies under the SARFAESI Act. Still the

learned Labour Court directed the process to be issued against them under Section 48 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter the MRTU and PULP Act). Hence this Writ Petition.

6. The learned advocate for the petitioner submits that the provision of Section 48 of the MRTU and PULP Act only enables the Industrial or Labour Court to proceed for contempt of its orders. Since the respondent no1. is making a grievance about the petitioners having not obeyed the order in Complaint (ULP)No. 61 of 2016 to which they were not the parties, the Labour Court has grossly erred in directing the process to be issued. She would submit that no proceeding under Section 48 of the MRTP and PULP Act was sought to be initiated for any violation by the petitioners in respect of the order passed in Complaint (ULP)No. 103 of 2017. Although the petitioners were the parties in the latter proceedings, the process could not have been issued in the present complaint for violation of the order passed in Complaint (ULP) No. 61 of 2016.

7. The learned advocate for the petitioners would further submit that the petitioners are still in the process of realising the assets by resorting to auction and the process is still underway and they are ever ready and

bound to obey the order passed in Complaint (ULP) No. 103 of 2017 whereby they were directed to go ahead with the sale but were asked to earmark Rupees Seventy Eight Lakhs from the sale proceeds towards the liability in respect of the employees' dues. The impugned order therefore suffers from gross illegality and may be quashed and set aside.

8. The learned advocate for the respondent no.1 submits that in fact there is an alternate and efficacious remedy in the form of revision under Section 44 of the MRTU and PULP Act and the Writ Petition is not maintainable on that count since the petitioners have not availed of it. The learned advocate for the respondents in support of his submission places reliance on couple of decisions of this Court in the case of **Engineering Employees Union V/s. Devidayal Rolling & Refineris Pvt. Ltd.; 1986 Mh.L.J. 331** and in the case of **Clifford Rebello V/s. Hotel Oberoi Towers** passed in **Writ Petition No.2360 of 2001 on 03.10.2001**.

9. The learned advocate for the respondent no.1 would further submit that by virtue of Section 48 a power has been conferred on the Industrial and Labour Court to initiate a proceeding against the person who fails to comply with any of the orders of the Court passed under Section 30. Pursuant to such powers the Labour Court has initiated and issued the

process. Though the respondent no.1 in his complaint has only pointed out that the petitioners have not obeyed the order passed in Complaint (ULP) No. 61 of 2016 to which the petitioners were not the parties, in the impugned order the Labour Court has rightly considered and taken into account that the petitioners have even disobeyed the order passed in Complaint (ULP) No. 103 of 2017. Therefore merely for this reason, the complaint cannot be dismissed at this juncture when merely a process is directed to be issued. The learned advocate would further refer to the decision of this Court in the case of **I.H. Mehta V/s. Ashok Bhargav Jadhav & Ors; 2013 ALL MR (Cri) 530** wherein, in similar state of affairs, this Court had refused to quash the complaint by invoking Section 482 of the Cr.P.C. merely because the applicant was not a party to the complaint proceeding.

10. I have carefully gone through the papers. As far as availability of the alternate and efficacious remedy is concerned, Sectino 44 of the MRTU & PULP Act reads as under:

> "44. The Industrial Court shall have superintendence over all Labour Courts and may-
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> *(a) call for returns;*
>
> *(b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and in particular, for securing the expeditious disposal of cases;*

> *(c) prescribe form in which boks, entries and accounts shall be kept by officers of any such Courts; and*
>
> *(d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court."*

11. Since the impugned order has been passed by the Labour Court, certainly the Industrial Court has such power of superintendence over the Labour Court to call for the record and examine it. In the cases of **Engineering Employees Union** & **Clifford Rebello (supra)** this Court has consistently held that in view of availability of such a remedy under Section 44, the Writ Petition would not be maintainable. I find no justifiable reason but to concur with such findings. When there is a remedy of revision available under Section 44 wherein the petitioner could have challenged the impugned order passed by the Labour Court, the present Writ Petition is not maintainable.

12. Now turning to the merits, it is apparent that the impugned order has been passed after extending an opportunity of being heard to the Petitioners. True it is that in the Complaint (ULP) No. 61 of 2016, for the breach of the order passed wherein the present complaint has been filed they were not the parties. However, simultaneously they were clearly alive that a grievance was simultaneously being made also in respect of non-compliance of

the direction issued against them in Complaint (ULP) No. 103 of 2017 wherein they were granted liberty to dispose of the plant, machinery, material and everything belonging to the Company with a rider that they should earmark an amount of Rupees Seventy Eight Lakhs from the sale proceeds after recovering the cost of auction. Therefore it cannot be said that the Petitioners were not aware that apart from the Complaint (ULP) No. 61 of 2016, the respondent no.1 was also making a grievance and even the Labour Court was inquiring into non-compliance of the order passed in Complaint (ULP) No. 103 of 2017.

13. Besides, as has been held in a similar fact scenario, this Court in the case of **I.H. Mehta** (supra) has specifically held that merely because the applicant was not a party to the proceeding under Section 30, a proceeding initiated under Section 48 cannot be quashed. Obviously it would depend upon the facts and circumstances of each ease. The instant case presents one such instance. The Petitioners cannot derive any advantage from the arguments that they were not parties to Complaint (ULP) No. 61 of 2016. Admittedly, they were parties to the Complaint (ULP) No. 103 of 2017 wherein they were directed to go ahead with the auction pursuant to the provisions of the SARFAESI Act but were further directed to earmark an amount of Rupees Seventy Eight Lakhs and it was further directed that only

the cost of the auction was to be recovered first from the sale proceeds. In spite of such allegations, there is absolutely no material to show that the petitioners in their say filed before the Labour Court in the present complaint had made it clear that either they have disposed of the assets or were in the process of disposing the assets and how much were the sale proceeds. Their such evasive reply simply insisting that they were not parties to the Complaint (ULP) No. 61 of 2016 and that they have not disobeyed the order in Complaint (ULP) No. 103 of 2017 can only be said to be evasive. They should have come out with a specific and clear stand as to the stage of the auction. In the absence of such specific stand, at the stage of issuance of process, the material before the Labour Court was sufficient enough to enable it to take cognizance and direct the process to be issued. There is no apparent error or illegality committed by the Labour Court in passing the impugned order.

14. The Writ Petition is dismissed. The interim order stands vacated. The rule is discharged.

[MANGESH S. PATIL, J.]

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