IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.782 OF 2019

Mr. Conrad Menezes,
S/o of late Baptista E. Menezes,
Age 58 years, Businessman,
Having Office at 4th floor,
Elvina Building,
Rua Isidora Emilio Baptista,
Margao, Goa 403 601. … Petitioner

V e r s u s

1. The Labour Commissioner of Goa,
   Government of Goa,
   Sharam Shakti Bhavan,
   Patto, Panaj, Goa.

2. The Mamlatdar of Ponda,
   Ponda, Goa.

3. Gomantak Mazdoor Sangh,
   Through its General Secretary,
   Mr. Putti Gaonkar,
   Tisk, Ponda, Goa.

4. The Collector of South Goa,
   Mathany Saldanha Administrative Complex,
   Margao,
   (Fatorda Post) -Goa 403 602. …. Respondents

Mr. Carlos Alvares Ferreira, Advocate for the Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondent nos.1, 2 and 4.

Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.
Date:- 5th September, 2019.

ORDER:

Heard Mr. C. A. Ferreira, the learned counsel for the petitioner and Mr. M. Salkar, the learned Government Advocate for the respondent nos.1, 2 and 4.

2. The challenge in this petition is to the recovery certificate dated 25/9/2018 issued by the respondent no.1, in relation to the recovery of dues in terms of wages by the Labour Court. In term of the wages about 34 workmen are required to be paid an amount of approximately 2,48,00,000/-.

3. Mr. Ferreira, the learned counsel for the petitioner submits that the award is against the company M/s. Menezes Chemical (Goa) Pvt. Ltd. which is a private company and therefore no recovery certificate could have been issued against Mr. Conrad Menezes, the Managing Director of the said company. He submits that that property which is sought to be attached is the personal property of the Managing Director and has no nexus whatsoever with the company. He, therefore, submits that the recovery certificate is in excess of jurisdiction and is required to be quashed. He relies upon the following decisions in support of his contention:

(i) Delhi Development Authority and anr. Vs. UEE Electricals Engg. (P) Ltd. and anr. (2004) 11 SCC 213.

(ii) Tristar Consultants Vs. Customer Services Indian P. Ltd. (2007) 4 ALL LJ (NOC 722) 253.

(iii) WP (C) No.37031 of 2008 (H) (Joji Paul s/o N. P. Paul Vs. The District Collector and ors.

(iv) Mukesh Hans and anr. Vs. Smt. Uma Bhasin and Ors., 2010 SCC Online Del 2776.

(v) Madhusudan Zumbarilal Sarda Vs. State of Maharashtra and others 2018 (6) M.L.J.

4. Mr. Salkar defends the recovery certificate by pointing out that the recovery is in terms of the award of the Labour Court, which though challenged, as yet has not been stayed.

5. The record in the present case indicates that in terms of the award made by the Labour Court almost 34 workmen are required to be paid an amount in excess of Rs,2,48,00,000/-. The issue as to whether the property which is attached is the exclusive property of the petitioner and whether the same has no nexus whatsoever with the company, is a disputed question of fact which cannot be gone in the exercise of the extraordinary jurisdiction of this Court. Besides a Division Bench decision of this Court in **Madhusudan Zumbarlal Sarda Vs. State of Maharashtra 2018 (6) Mh.L.J,** upon which reliance was placed by the petitioner has observed that normally the dues of

the company cannot be recovered from property of the Director except to the extent of the shares held by him. In this petition, there are no details of shareholding disclosed. The petitioner is admittedly the Managing Director of the company.

6. The petitioner, has also stated that the property which is attached in pursuance to the recovery certificate is already mortgaged by the bank. Mr. Ferreira, the learned counsel for the petitioner states that even the dues of the bank have not been paid. If this is so, then this is an issue between the bank and the workers, who are armed with an award of the Labour Court. The petitioner in such circumstances, cannot seek to invoke the extraordinary and equatable jurisdiction of this Court in order to deprive the workmen of their dues.

7. The jurisdiction of this Court under Article 226 of the Constitution of India is to promote substantial justice. This is a case where the workers' dues have been determined by the Labour Court. The petitioner, who is the Managing Director of the company seeks to obstruct such recovery. The issue as raised by the petitioner cannot be adjudicated in extraordinary jurisdiction under Article 226 of the Constitution of India. Besides, the conduct of the petitioner is also such, as would dis-entitle the petitioner from any equitable

relief from this Court. Even if justice is the byproduct of possibly an erroneous view, the same is not to be set aside by taking some hyper legalistic view, thereby thwarting substantial justice.

8. The decisions relied upon by Mr. Ferreira turn on their own facts. In the case of **Mahusudan Sarda (supra),** this Court interfered with the warrant of arrest against the Managing Director. In the present case, we are not dealing with any proceedings for arrest of the petitioner.

9. In **Tristar Consultants and Mukesh Hans (supra)** the issue involved was of a breach of a simple contract where no personal guarantee was given by the petitioner. The issue involved was whether the Directors can be regarded as agents of the company. This is again not the issue in the present case.

10. In **Delhi Development Authority and anr (supra)**, in fact the Hon'ble Apex Court has observed that though in a legalistic sense an incorporated body like a company and its directors are separate entities for certain purposes, in many companies they act as alter ego. For the acts of the Director, the concept of vicarious and constructive liabilities operates so far as the company is concerned. The acts of the company are done primarily

through the directors or the employees.

11. The decision in **Joji Paul (supra)** was also on a slightly different context. Even there, the Court was concerned with the interpretation of the provisions of the Kerala Revenue Recovery Act.

12. We inquired with the petitioner whether the petitioner was willing to deposit any amount in the Court. Mr. Ferreira, on the basis of instructions stated that the petitioner is not in a position to deposit any amount. Mr. Fereira, also stated that the company is though not wound up, is not doing any business and has several liabilities.

13. In the aforesaid circumstances, we do not deem it appropriate to exercise our equitable jurisdiction to assist the petitioner to attempt to thwart the workers to recover their dues for which they are pursuing their legal remedies since last several years. Upon cumulative consideration of all the aforesaid circumstances, we do not deem it appropriate to exercise our extraordinary and equitable jurisdiction in the peculiar facts of the present case, in favour of the petitioner and against the attempts of part of the workers to recover their dues.

14. The petition is therefore dismissed. There shall be no order as to costs.

NUTAN D. SARDESSAI, J **M. S. SONAK, J.**

ap/-