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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 6736 OF 2018**

Jagdish Atmaram Padhare and others

.....Petitioners

V/s.

M/s. Estrella Batteries Ltd.
through Managing Director

.....Respondent

Mr. P. M. Palshikar a/w Ms. Shraddha Chavan i/b Mr. Mahendra
Agavekar for the PetitionerMr. Sudhir K. Talsania Senior Advocate i/b Mr. T. R. Yadav for
respondent**CORAM : NITIN W. SAMBRE, J.****DATE : JULY 5, 2019.****P.C.**

Heard.

2 Petitioners claim to be employees of the respondent-
establishment.

3 Respondent-employer entered into a settlement resulting into
passing of consent order before this Court in Appeal No. 11 of 2004

on 07/03/2007 thereby accepting the resignation of the employees other than the petitioners and by compensating them with an amount of Rs. 2,00,000/-.

4 Since the petitioner were not in agreement with the said settlement, petitioner has preferred to approach the Division Bench of this Court in the matter of permission granted by Labour Commissioner for sale of factory land through Writ Petition (Lodg) No. 802 of 2010 **Parshuram Gopal Hirlekar & Another Vs. The Labour Commissioner and Others**. Division Bench of this Court in para 2 of the order has made following observations.

“2. In our opinion, once the settlement was accepted by both the Unions, the petitioners-workers cannot now claim that they are entitled to their dues under the order made by the learned Single Judge of this Court which was substituted by the consent terms which are taken on record, in the appeal against that order before the Division Bench. It appears that the petition is nothing but an attempt to recover more money from the employer. The petition is, therefore, rejected”.

5 Petitioner, feeling aggrieved have chosen to prefer a Special Leave to Appeal being 21483 of 2011 which came to be dismissed by order dated 29/08/2013 thereby reserving liberty to petitioners to take recourse to any other remedy available to them in law. Based on this liberty, petitioners have taken recourse to the proceedings under Section 33-C (2) of the Industrial Disputes Act, 1947 ('the Act' for short) for recovery of the dues from the respondent-employer. By the order impugned the learned Labour Court on 01/11/2017 ruled against the petitioners with an observation that there is no adjudication on the entitlement of the petitioner to the wages as are claimed. As such, this petition.

6 The learned counsel for the petitioner has drawn support from the Judgment of the learned Single Judge delivered in Writ Petition No. 1740/1998 decided on 19/20th September 2003 and the liberty granted by the Apex Court in the SLP referred supra which was dismissed on 29/08/2013 so as to submit that the proceedings under Section 33-C (2) of the Act are very much maintainable. The

learned counsel then would urge in view of the liberty granted by the Apex Court, least that was expected of the learned Labour Court was to look into the grievance of the petitioner and pass an order thereby awarding wages as claimed.

7 The submissions are resisted by the learned senior counsel Shri. Talsania appearing for respondent-employer on the ground that the very basic requirement contemplated under Section 33-C (2) of the Act of the Industrial Disputes Act is not satisfied. According to him, unless there is an adjudication as to the entitlement of the petitioner to the wages, proceedings under Section 33-C (2) of the Act ought not to have been taken recourse as is rightly held by the learned Labour Court. He sought dismissal.

8 Having appreciated the submissions, what is noticed is, order passed in Writ Petition No. 1740 of 1998 was merged with a consent order passed in Appeal No. 11 of 2004 wherein certain settlement was recorded between employer and recognized Union. It is the case of the petitioner that the said settlement terms are not binding on

the petitioner as they are not members of the said Union. The petitioner thereafter instead of establishing their right to wages through an adjudicatory process has chosen to question the NOC granted by the Labour Commissioner in favour of employer in the matter of disposal of the property of the establishment. In the said proceedings before the Apex Court, liberty was granted to take recourse to such other proceedings as are permissible and available in law.

9 The cumulative effect of all these proceedings is, it was open for the petitioners to take out proceedings so as to get their rights adjudicated qua their entitlement for their wages which they have failed to.

10 In the aforesaid background, merely because the Apex Court has granted liberty in favour of the petitioner to take recourse to other remedies as are permissible in law, that by itself will not entitle the petitioner to directly invoke the provisions of Section 33-C (2) of the Act in absence of adjudication of their entitlement for

wages.

11 That being so, in my opinion, no case for interference is made out. Petition fails, stands dismissed.

12 The learned senior counsel Shri. Talsania appearing for employer is fair enough in making an offer to the petitioners to accept the compensation of Rs. 2,00,000/- as was offered to other similarly placed employees. It shall be open for the petitioner to respond to the same even if the present petition is dismissed.

[NITIN W. SAMBRE, J.]