

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 300 OF 2007

Industrial Clearing Services	.. Appellant
Versus	
Shri C.M. Patil, Member,	
Industrial Court and ors	.. Respondents

...

Mr. S.P. Salkar for the appellant.
Mr. Anand R. Pai I/b Haresh Mehta & Co. for respondent no.2.
Mr. Seema Sarnaik for respondent no.3.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 15th NOVEMBER, 2019

P.C:-

1 M/s.Kirloskar Cummins Employees Union filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Practices Labour Practices Act, 1971, impleading Kirloskar Cummins Limited as Respondent No.1 and the two partners of the partnership firm – Industrial Clearing Services as Respondent Nos.1 and 2. It was mentioned that the workmen named in Exhibit-A were executing the work of cleaning with Kirloskar Cummins Limited and that Respondent Nos.1 and 2 had committed Unfair Labour Practices

by not paying full wages to the workmen. It was pleaded that wages were being received through Respondent No.2.

2 The complaint has been extremely cleverly drafted and we say so for the reason the Union did not plead that the work contract awarded by Respondent Nos.1 to Respondent No. 2 was a sham and that for said reason direct employer-employee relationship between the workmen and Respondent No.1 should be declared and corrective action be directed to be taken in the form of proper wages to be paid.

3 This led the Industrial Fora to decide who was the real employer and vide decision dated 9th November 1995 it was held that the Respondent No.2 was the employer and had indulged in Unfair Labour Practice by not paying bonus and ex-gratia to the 77 employees, names whereof were entered in Annexure-A in terms of the agreement Exhibit U-22/A for the years 1993-94 and 1994-95. It was directed the Respondent No.2 shall make the necessary payments of bonus and ex-gratia.

4 Respondent No.2 challenged the said decision by and under Writ Petition No.639/1996 and vide judgment dated 4th April 2003 the same was dismissed against which Letters Patent Appeal No.46/2003 was filed and was dismissed on 30th April 2003. Thereafter, industrial cleaning Services sought review of

the order dated 4th April 2003 which obviously was dismissed on account of the principle of merger. The Review Petition was dismissed on 2nd May 2003. The Industrial Cleaning Services Limited thereafter filed a Petition seeking Special Leave to Appeal before the Supreme Court against the decision in the LPA. On leave being granted Civil Application No.533/534/2006 was registered and was disposed of by the Supreme Court vide order dated 13th January 2006, which reads as under :-

“The dispute in the present cases are as to whether certain payments were made to the workers or not. The trial court had proceeded on the assumption that no payments were made. However, it is admitted on behalf of the workers that certain payments were made to them. It remains to be decided that whatever payments that were made, were on what account and under what head. These matters are, therefore, to be considered by an appropriate Court. Accordingly, we remand these matters to the learned Single Judge of the High Court of Bombay to enable him to go into the issue of payment including the nature of payments. The impugned orders of the learned Single Judge as well as in the Letters Patent Appeal of the High Court are set aside. The matters are remitted to the learned Single Judge for decision. Since these are old matters, the High Court should try to dispose them of as early as possible.

5 Writ Petition No.639/ 2006 was therefore re-decided by the learned Single Judge vide impugned order dated 31st October 2007 and needless to state the issue had to be decided in the remanded stage keeping in view the order passed by the

Supreme Court. Thus, the only contention which the appellant can urge in the Appeal would relate to what has been decided by the learned Single Judge at the stage of remand and as a consequence thereof we have not permitted learned counsel for the appellant to argue any other point.

6 Learned counsel for the appellant wants to re-urge the issues which it had already decided against the appellant which we decline and thus, we dismiss the Appeal for the reason relating to what could be decided by the learned Single Judge at the remanded stage in light of the decision of the Supreme Court, no contention has been advanced.

7 Appeal is dismissed.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE