

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
REVIEW PETITION [STAMP] NO.25833 OF 2018
IN
WRIT PETITION NO.6722 OF 2000

R.A. Hange	]	Petitioner
Vs.		
M/s. Carbon Everflow Ltd.	]	Respondent

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Mr. Yogendra Pendse, Advocate for the Applicant.
Ms. Leena Patil, Advocate for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 16th AUGUST, 2019.

P.C:

Heard Mr. Pendse, learned Counsel for the applicant and Ms. Patil, learned Counsel for the respondent. By consent, Review Petition is taken up for admission.

2. By this Petition under section 114 r/w Order-XLVII, Rule-1 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the petitioner is seeking review of the order dated 22nd June, 2017 passed in Writ Petition No.6722 of 2000. By that order, judgment and award dated 20th July, 2000 made by the learned Presiding Officer, Labour Court, Nashik in Reference (I.D.A) No. 19 of 1989 was set aside and the Petition was allowed in terms of prayer clause (a).

3. In support of this Petition, Mr. Pendse invited my attention to paragraph 19 of the order under review. In paragraph 19, submission of Mr. Mahadeshwar that no action was taken against Shri Shahane was recorded. The submission was negated after observing that Shahane was a semi-skilled workman and the second party is a skilled workman. The said aspect was considered by the Labour Court.

4. Mr. Pendse submitted that Shahane and second party workman were working as Fitter and, therefore, second party is also semi-skilled workman. In support of this submission, Mr. Pendse invited my attention to paragraph 21 of the order of the Labour Court dated 20th July, 2000 wherein it is observed thus;

“Though the charges are proved, it is necessary to appreciate the actual allegations held as proved. The guilt proved was breaking some part of the instrument or the job. The cost of the job was Rs.1,30,000/- but then it was the costs of the entire article, when finished. The mistake, intentional or otherwise, occurred at the duty place, and during duty hours. It was not only the workman alone. But one other fitter Shahane who was also held responsible for the damage. What happened to the action against said Shahane is not on record. Now, although, the workman had not honestly confessed his mistake, it appears that the workman did not intend to cause willful damage and get away this could not be possible because he could not have successfully suppressed (wrongly typed as surpriced) the mistake or the fault in work. It was bound to be noticed sometime during the shift. This aspect has to be taken into account while appreciating the gravity of the misconduct”.

He submitted that the order under review deserves to be recalled.

5. I have considered the submissions advanced by Mr. Pendse. I have also perused the order passed by the Labour Court. In paragraph 17, the Labour Court has observed thus;

“The witnesses are both engineers and being experts, their statements cannot be ignored. The statements indicate that ordinarily if the care was taken and uneven tightening was avoided, the job would not break. Having held that the job was broken at the hands of the workman, a skilled workman and Shahane (semi skilled) it is for the workman to give some explanation for the damage or breakage caused. Had he given any explanation, it might have been accepted also. However, he chose to take a defence of total denial. The said defence is not proved and therefore, the inference drawn by the company about the intentional act on the part of the workman gets corroboration”.

6. In view thereof, I do not find that any case is made out for review of the order dated 22nd June, 2017 passed in Writ Petition No.6722 of 2000. Hence, Review Petition fails and the same is dismissed.

[R.G. KETKAR, J.]