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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 12744 OF 2016**

Hiralal Vithaldas Patel

.....Petitioner

V/s.

Mr. Devmani Mohan Dubey and another

.....Respondents

WITH**CIVIL APPLICATION NO. 1042 OF 2018****IN****WRIT PETITION NO. 12744 OF 2016**

Mr. Devmani Mohan Dubey

....Applicant

V/s.

Shri. Hiralal Vithaldas Patel

.....Respondent

Mr. B. Menon for the Petitioner in Writ Petition and for respondent in Civil Application

Adv. Jignasha Pandya a/w Adv. F. R. Mishra for applicant in Civil Application and for respondent in Writ Petition

CORAM : NITIN W. SAMBRE, J.**CLOSED FOR ORDERS : AUGUST 9, 2019.****PRONOUNCED ON : JANUARY 31, 2020.**

P.C.

This petition is by an employer questioning the award delivered by Presiding Officer 9th Labour Court, Mumbai in Reference (IDA) No. 374 of 2005 preferred under Section 12(5) of Industrial Disputes Act (Hereinafter referred to as 'the Act' for the sake of brevity).

2] The facts necessary for deciding present petition are as under:

(I) Respondent claimed to be working as 'Moulder' from 1984 who suffered termination of services on 06/03/2003 without following due process of law. Respondent in a Reference claimed that his services were orally terminated by Jeevanbhai 1(3) i.e. (Parties are referred to as their status in the Reference).

(II) Respondent submitted his statement of claim praying reinstatement with full backwages and continuity of service w.e.f. 06/03/2003 in the capacity of Moulder.

(III) In the said proceedings, Party No. 1(1), M/s. G. P. Electricals through one Pankaj Shah submitted its written statement Exh. C-2

and out-rightly denied employer-employee relationship. According to him, Gala in question where business activity is going on, was given on rent to Party No. 1(3) i.e. Jeevanbhai.

(IV) Party no. 2 Hiralal i.e. present petitioner through written statement at Exh. C-17 challenged the relationship as according to him, respondent at no point of time was employed. It is the case of the petitioner that business premises are owned by Pankaj Shah and who has let out same to Jeevanbhai i.e. 1(3). It is alleged that Party No. 1(3) Jeevanbhai is employed in the capacity as Manager of the respondent.

(V) The claim of the respondent employee is that present petitioner was paying him salary and has produced document in support thereof at Exh. U-8 & U-14.

(VI) Claim of Party No. 1(3) i.e. Jeevanbhai that he offered reinstatement to employee as he has never terminated the services which the respondent no. 2 has failed to honour.

(VII) Upon appreciation of evidence of the respective parties, Presiding Officer answered reference partly in affirmative and declared that respondent-workman is entitled for reinstatement in service with 50% backwages and continuity in service. The company namely G. P. Electrical is directed to reinstate the respondent. As such, this petition by party no. 1 Hiralal Patel.

3] While questioning the order impugned, learned counsel for the petitioner would urge that M/s. G. P. Electrical is not propriety concerned of Jeevanbhai Patel. According to him, first party i.e. Pankaj shah is admitted to be an employer. In the aforesaid background, Jeevanbhai has asked the petitioner to resume his services which he has failed to, relief as claimed ought not to have been granted. A support is drawn from the Judgment of this Court in the matter of **Sonal Garments V. Trimbak Shankar Karve [2002 III CLR 488]** particularly paragraph 4. Based on aforesaid Judgment, the submissions are, respondent has failed to accept the offer given by Party No. 1(3) and has not got himself reinstated in the

employment. The employee continued to contest the proceedings, hence he is not entitled for relief of reinstatement. It is further claimed that petitioner was added after initiation of main proceedings i.e. after 7 years and that being so, claim against the petitioner is initiated at belated stage.

4] While countering the aforesaid submissions, learned counsel for respondent would urge that first party consisting of 1, 2 & 3 in the Reference proceedings have tried to shift the liability on each other by denying employer-employee relationship. According to him, party no. 1 (1) i.e. G. P. Electrical which is claimed to be owned by M/s. Pankah Shah claimed that Gala no. 6 is given on rent to Jeevanbhai i.e. party no. 1 (3). Present petitioner i.e. party no. 1 (2) is alleged to have paid wages/salary to the respondent. As such, according to him, all three parties who are acting together have tried to shirk their responsibility and that being so, Reference was persuaded on merit. He submits that Reference is appropriately answered and the petition is liable to be dismissed.

5] Considered submissions.

6] The party-Jeevanbhai has come out with a case that services of the respondent were never terminated and respondent can resume his services. His status as that of operator of G. P. Electrical in Gala no. 6 as that of tenant is not in dispute. The petitioner Hiralal claims to be proprietor of Shailesh products, as such denied relationship of employer-employee. As such, it can be inferred that first party has denied employer-employee relationship, however, Jeevanbhai has banked upon offer of reinstatement issued on 29/07/2002.

7] In the aforesaid background, what is appreciated is, responsibility and liability to honour reinstatement, payment of backwages with continuity was required to be adjudicated in the Reference. It has come on record that present petitioner was in close contact with Jeevanbhai i.e. party no. 1 (3). It is in the evidence of Pankaj, proprietor of G. P. Electrical brought on record that present petitioner Hiralal is manufacturer of moulder used in the manufacturing of electrical devices having business at Mehta

Industrial Estate, however, petitioner has not disclosed the place of his business. The said Pankaj further deposed that in Gala no. 6, Jeevanbhai is carrying out business.

8] In the evidence of present petitioner at Exh. C-20, Jeevanbhai has employed the respondent and the business premises i.e. Gala no. 6 is in possession of Jeevanbhai. It is also brought on record that he was knowing about pendency of conciliation proceedings through Jeevanbhai and he is running his business at Sainath Slums in room no. 6. He has also alleged that it is Jeevanbhai who is independent owner of business at Gala no. 6 at Mehta Industrial Estate and he is tenant of Gala no. 35 of the same industrial area. In his cross-examination, he has stated that he is in the business of manufacturing moulded electrical devices in Gala no. 31 at Mehta Industrial Estate. He has admitted that he has not issued order of appointment, attendance card, payment slips etc. to the workers who are employed with him. He has also admitted that Gala no. 35 in Mehta Industrial Estate is used by him as office and business concern. As such, analysis of aforesaid evidence demonstrates that

G. P. Electricals is being run at Mehta Industrial Estate. Petitioner and Pankaj both are in electrical moulding manufacturing business. Present petitioner is running business in the name of 'Shailesh Products' at Gala no. 35 in Mehta Industrial Estate so also Sainath Chawl. It is the petitioner and Jeevanbhai who are claiming to be in similar business and are trying to shirk liability and responsibility of employment of the respondent.

9] Evidence of workman establishes that there were 35 workers of whom 28 were moulders and Gala no. 35, 31 & 36 of the Mehta Industrial Estate were used for manufacturing activities. As such, scrutiny of evidence *prima facie* demonstrates that there was direct nexus of Pankaj and Hiralal in the business of the petitioner. Once the petitioner in his evidence admitted that he has not given any documents in favour of employees, the onus shifts on him to demonstrate that respondent was not his employee as is claimed. Respondent has categorically come out with a case that petitioner was his employer whereas Jeevanbhai/Jeevanlal was working as manager. The analysis of evidence of all three parties *prima facie*

demonstrates that they are playing game of hide and seek amongst themselves so as to twist the arm of the employee like respondent so as to deprive them of lawful benefit of employment.

10] Analysis of the evidence rather demonstrates that it is the petitioner who owns liability to comply with the order of Reference of the Labour Court in favour of respondent.

11] One more facet to the matter which this Court must take note of, but for impleading respondent-employee as party, G. P. Electrical and, M/s. Jeevan are not added as party respondent to the petition though they were party before the Tribunal which *prima facie* shows that petitioner intend to avoid their liability in the matter.

12] In the aforesaid background, reliance placed by the petitioner on alleged offer of reinstatement given by Jeevanbhai will be of hardly any consequence. As such, offer of reinstatement was without any authority.

13] In the aforesaid background, support drawn from the

Judgment of this Court in the matter of **Sonal Garments** [cited supra] will be of hardly any consequence.

14] In the aforesaid background, no case for interference is made out. Petition as such fails, stands dismissed.

15] As a consequence of dismissal of the petition, Civil Application also stands disposed of.

[NITIN W. SAMBRE, J.]