

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.540 OF 2017
IN
WRIT PETITION NO.10140 OF 2014**

Ranjeet Baban Dhomse .. Applicant

In the matter between :

Vighnahar Trust ... Petitioner

Versus

Ranjeet Baban Dhomse ... Respondent

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Mr. Sanjay K. Gunjkar i/b Jaydeep Deo for the Applicant/Org.
Respondent.

Mr. Anand Pai a/w Afrin Dalal i/b Hareesh Mehta and Co. for the
Respondent (Original Petitioner).

CORAM : S.C. GUPTE, J.

DATE : 13 MARCH 2020

P.C. :

. Heard learned Counsel for the parties.

2 This Civil Application is for wages under Section 17B of the Industrial Disputes Act, 1947. The application is opposed by the Respondent herein (original Petitioner) on the ground that the Applicant (original Respondent) has been gainfully employed. There is a suggestion made in the affidavit in reply filed by the Respondent

to the civil application that the Applicant was gainfully employed. Upon this court requiring a proper affidavit in this behalf from the Respondent, an additional affidavit has been filed. The additional affidavit indicates that the Applicant had purchased a car in October 2016. In support of this averment, a registration certificate issued by the registering authority for the vehicle, at Pimpri Chinchwad, Maharashtra, has been produced. There is nothing in the additional affidavit to indicate, however, how the Applicant was gainfully employed or was currently working as a contractor for Reliance Industries Limited as claimed in the affidavit. The Applicant, on his part, has explained in his reply to the additional affidavit that he was neither working as a contractor for Reliance Industries Limited nor was gainfully employed anywhere. So far as the car is concerned, it has been explained that the purchase was in his name by his joint family, since his father was not eligible for getting a loan due to his old age. It has been submitted that the Applicant's father withdrew money from a joint family bank account and bought the car in the applicant's name. The material available before the court, thus, does not indicate that the Applicant has been gainfully employed. It has been a settled law that once the Applicant, in his evidence, asserts that he has not been gainfully employed, the onus to show that he was so employed shifts to the employer. As we have noticed above, the employer in the present case has not produced any material to show that the Applicant was, or has been, gainfully employed. There is, accordingly, no defence to the application for wages under Section 17B of the Industrial Disputes Act, 1947.

3 Learned Counsel for the Respondent refers to the Supreme Court Judgement in the case of **North-East Karnataka Road Transport Corporation Vs. M. Nagangouda.**¹ The judgment makes it clear that whilst considering gainful employment on the part of the employee, his self-employment income even from agricultural property or pursuit should be considered. This income must be deducted from the wages claimed under Section 17-B. There is no quarrel here with this proposition. The contest is on the factum of such agricultural income. There is nothing on record to show that the Applicant has been receiving any income from any agricultural activity or pursuit in the nature of self-employment or otherwise.

4 Accordingly, the Civil Application is allowed in terms of prayer clause -(b).

(S.C. GUPTE, J.)

1 (2007) 10 Supreme Court Cases 765