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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3284/2020 & CM APPL. 11522/2020

ARUN TYAGI

..... Petitioner

Through: Dr. Subhash Vijayran, Advocate
versus

M/S WOVEN GOLD ACRYLIC (INDIA) PVT. LTD. AND ANR

..... Respondents

Through: Mr. Prashant Katara, Advocate for R-1.
Ms. Hetu Arora Sethi, ASC-GNCTD
with Mr. Abhimanyu Verma,
Advocate for R-2

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **08.06.2020**

1. This hearing has been held by video-conferencing.
2. The present petition has been filed by the Petitioner seeking 'interim payment' of a sum of Rs.79,638/- under Section 7(4)(a) of the Payment of Gratuity Act, 1972. It is the case of the Petitioner that he is entitled to gratuity of a sum of Rs.1,91,642/-. However, the Respondent No. 1 i.e. the employer was only offering Rs.79,638/- as the full and final payment. He thus submits that while the Labour Commissioner would determine the final amount payable as gratuity, at least the admitted amount may be released to the Petitioner owing to the financial constraints and the lockdown.
3. On the last date, ld. counsel for the Respondent No. 1 had appeared and accepted notice. Ld. counsel sought time to verify as to whether the amount which was mentioned at Annexure P-3 i.e. the so called admitted

amount is correct or not.

4. Mr. Katara, Id. counsel has reverted with instructions and confirms that the calculation of Gratuity at Annexure P-3 is correct. However, he submits that the Petitioner's right to claim the said amount is seriously under dispute, as his petition before the Labour Commissioner is not even maintainable. It is his submission that initially, a notice dated 11th October, 2019 was issued by the Petitioner, which was withdrawn and a second notice was issued on 7th February, 2020. According to Mr. Katara the time for claiming the amount had lapsed by the time the petition was filed by the Petitioner. Thus, no amount is liable to be released, even though the calculation at Annexure P-3 is correct.

5. It is further submitted that after issuing the second notice on 7th February, 2020, on the same day, the petition was filed before the Labour Commissioner which is not in accordance with Payment of Gratuity (Central) Rules, 1972.

6. This Court is not going into the merits of the dispute between the parties. The Labour Commissioner would be deciding as to whether the Petitioner is entitled to a higher amount than Rs.79,638/- or whether the Petition is maintainable. Since the Court is at this stage only concerned whether any interim payment ought to be made, of the admitted amount, leaving open the Respondents' objections in respect of maintainability of the petition before the Labour Commissioner and on merits, as an interim payment, the amount of Rs.79,638/- be released to the Petitioner. This order is being passed considering the lockdown crisis and the financial status of the Petitioner. This shall be without prejudice to the rights and contentions of the Respondents.

7. The Labour Commissioner shall adjudicate the petition filed by the Petitioner on its own merits, without being affected by the observations in this order.

8. Let the payment be released within two weeks from today. The amount shall be paid directly to the Petitioner, and shall be subject to the outcome of the petition before the Labour Commissioner. If the amount of Rs.79,638/- is finally held to be not payable to the Petitioner, the Labour Commissioner shall direct refund of the same by the Petitioner to the Respondent no.1, in accordance with law along with interest at the rate of 5%.

9. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

JUNE 08, 2020

Rahul