

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

WRIT PETITION NO. 2184 OF 2021

Kotak Mahindra Bank Ltd.

...Petitioner

vs.

M/s. Parekh Platinum Ltd. And Anr.

...Respondents

VISHAL
SUBHASH
PAREKAR

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Mr. Kishore Jain i/by Ms. Divya D. Jain & Mr. Dilip Satale -
Advocate for the Petitioner.

Mr. Mahendra M. Agavekar - Advocate for the Respondent No. 1.

Mr. Sunil C. Surana - Advocate for Respondent No. 2.

CORAM : N. J. JAMADAR, J.

DATE : AUGUST 31, 2021

P.C.:

1. The challenge in this petition is to an order dated 20th April 2021 passed by the Presiding Officer, Second Labour Court, Mumbai on an application (Exh. C-15) filed by the Petitioner to recall the respondent no. 2 - the applicant in Application (IDA) No. 269 of 2014, for cross examination whereby the learned Judge was persuaded to reject the application.

2. The substance of the challenge is that the learned Judge had not heard the parties on the merits of the said application (Exh. C-15) and the order came to be passed thereon without providing an effective opportunity of hearing.

3. From the perusal of the record, it appears that the petitioner/opponent No. 2 had filed application to recall respondent No. 2/applicant for further cross examination. In the reply dated 12th March, 2021, inter alia, an objection to its tenability was taken on the ground that neither the said application contained verification nor an affidavit was filed in support thereof. Thereupon, the petitioner filed pursis (Exhibit CA-16) and it was reserved for orders.

4. The learned counsel for the petitioner makes a grievance that by the impugned order, the original application for recalling of the application for the cross examination (CA-15) itself came to be rejected. It was urged that there was no opportunity for the petitioner to advance submissions on the merits of the application for recalling the witness (CA-15) and yet, the learned Judge rejected the main application (CA-15) by the impugned order

5. The learned counsel for the petitioner invited the attention of the Court to the order sheet dated 8th April, 2021 which reads as under:

Applicant absent. Adv. S. C. Surana present for applicant. Adv. R. D. Joshi present for Opp. 1. Adv. Kishor Jain present for Opp. 2. CA-16 Application for permission to withdraw earlier application and file

fresh application with verification.Other side to say ... Say given by applicant Advocate and Opp. 1 Advocate on Exh. CA-16. Heard on CA-16 all the parties Advocates Matter kept for Order on Exh. CA-16.

6. The learned counsel for the respondent No.2/applicant controverted the submissions on behalf of the petitioner. It was urged that while canvassing the submissions on the application (CA-16), the parties had advanced the submissions on the prayer for recalling the application as well. Having regard to the nature of the prayer, the learned Judge was well within his rights in deciding the main application for recalling the witness. It was strenuously submitted by the learned counsel for respondent No. 2 that since a well reasoned order has been passed by the learned Judge, there is no justifiable reason to entertain the petition.

7. I have perused the impugned order and the material on record, especially the order sheet extracted above. From the perusal of the roznama dated 8th April, 2021 it becomes explicitly clear that learned Judge, Labour Court heard the application (CA-16) which was preferred for withdrawal of the earlier application (CA-15) with liberty to file a fresh application. The order sheet does not record that the learned Judge heard the parties on the main application (CA-15). It is imperative to note that learned Judge did

not advert to the developments which unfolded before passing of the impugned order namely the application with for withdrawal of the main application with liberty to file a fresh application(CA-16), reply thereto and submissions in support thereof and in opposition thereto, even remotely. The main application (CA-15) was heard and decided as if the learned Judge was dealing with the main application (CA-15) alone. Had the learned Judge adverted to the aforesaid factors and recorded that notwithstanding the aforesaid developments he was persuaded to deal with the prayer in the main application (CA-15), different considerations would have come into play.

8. In the above circumstances, the submissions on behalf of the petitioner that no effective opportunity of hearing was granted to the petitioner qua the prayer in the main application (CA-15) and the impugned order came to be passed cannot be said to be unfounded. In the face of the material on record, I refrain from making further observations to obviate the possibility of being understood to have entered upon the merits of the application to recall respondent No. 2 for further cross examination.

9. Thus to rule out the possibility of prejudice and provide an

effective opportunity of hearing, in the facts of the case, it is necessary to remit the matter back to learned Judge, Labour Court for afresh consideration. At this stage, the learned counsel for respondent No. 2 submits that underlying proceeding i.e. application IDA 269 of 2014 may be expedited. It would be contextually relevant to note that in the impugned order the learned Judge directed the parties to expedite the proceeding. Thus, having regard to the pendency of the proceeding before the learned Judge, the submission on behalf of respondent No. 2 for a direction for expeditious hearing and disposal of the main application seems justifiable.

Hence following order:

ORDER

- (a) The petition stands allowed.
- (b) The impugned order passed on application (Exhibit C-15) dated 20th April 2021, stands quashed and set aside.
- (c) The learned Judge, Labour Court is requested to hear and decide the application for recall of the witness filed on 08th April 2021, after providing effective opportunity of hearing to both the parties as expeditiously as possible and preferably within a period of three weeks

from the date on which the parties are directed to appear before the learned Judge.

(d) The parties shall appear before the Labour Court on 07th September 2021.

(e) The learned Judge is also requested to hear and decide the main application IDA 269 of 2014 as expeditiously as possible.

(f) The parties are directed to render the necessary co-operation to the learned Judge for the expeditious disposal of the proceedings, and not to seek adjournment except in unavoidable circumstances.

(g) All concerned shall act on an authenticated copy of this order.

(N. J. JAMADAR, J.)