

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8609 OF 2021

Sajidullah Ibrahim Ansari and Anr.

...Petitioners.

Versus

Numan Akhtar Jainul Abedi Ansari
and Others.

..Respondents.

Mr. Rahul D. Oak and Mr. Siddesh Shetye for the Petitioner.

Mr. B. V. Samant, AGP for the Respondent-State.

Mr. Numan Akhtar Jainul Abedi Ansari, Respondent No. 1 in-person.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

Date : December 13, 2021.

P. C. :

1. The petition is circulated by claiming urgency. Learned counsel for the petitioner invited our attention to the copy of notice issued to the Petitioner at the instance of respondent No.3 – Tahsildar, Bhiwandi dated 7th February 2019. Perusal of the notice shows that the petitioners were called upon to deposit an amount of Rs.2,40,130/- due and payable under the provisions of Section 174 of the Maharashtra Land Revenue Code 1966. It is submitted by the learned counsel for the petitioner that the proceeding was initiated at the instance of Respondent No.1 under section 33(C)(1) of the Industrial Disputes Act, 1947 for the alleged recovery of unpaid minimum wages for the period 1st of March 2017 to 30th June 2018.

. Learned counsel Mr. Rahul Oak appearing for the Petitioners then submitted that an *ex-parte* order was passed and as the petitioner was not given an opportunity of hearing, this *ex-parte* order passed by the authority is clearly in breach of the principles of natural justice. Counsel for the petitioner then submitted that the petitioner approached learned Labour Court at Thane against the *ex-parte* order; the Petitioner was protected by an order dated 24th October 2019 passed by the Presiding Officer whereby the recovery proceeding for an amount of Rs.2,40,130/- in pursuant to the award, was temporarily stayed till the decision on maintainability of main proceeding.

2. Learned counsel for the Petitioner then submitted that the petitioner thought it fit to approach the competent forum for raising his grievance and seeking redressal thereof by the competent authority, that is, the Assistant Commissioner of Labour, Bhiwandi. Accordingly, a pursis was filed before the Labour Court, Thane seeking withdrawal of proceeding. Our attention was invited to the copy of order dated 24th October 2019 passed by the Presiding Officer, Labour Court, Thane which is placed on record at Exhibit-E page no.48 to the petition, as well as to the withdrawal pursis placed on record at Exhibit-F page no.50. The petitioner then filed an application before the Learned Assistant Commissioner of Labour, Bhiwandi under Rule 26(2) of the Industrial

Disputes (Bombay) Rules, 1957 for setting aside *ex-parte* recovery order of Rs.2,40,130/-, copy of the same is placed on record at Exhibit-G, page no.51. Counsel for the petitioner then submitted that in spite of repeated requests to the authority to hear the said application for passing appropriate orders, the application has not been heard by the authority, as such the petitioner is left with no choice but to approach this Court.

3. It seems that a private notice was issued to Respondent No.1 after filing of petition in this Court and in response to the said notice, today Respondent No.1 – Mr. Numan Akhtar Jainul Abedi Ansari is personally present in this Court. Respondent No.1 is also carrying his Aadhaar Card and the same is verified by the Assistant Government Pleader.

4. Considering the above referred aspects of the matter, we are of the opinion that the petition itself can be disposed of with certain directions and the interest of Respondent No.1 can also be protected. Accordingly, the petition is disposed of with following directions :

[a] The Assistant Commissioner of Labour, Bhiwandi is directed to decide the application filed by the Petitioners

on 5th March 2021, which is still unnumbered, as expeditiously as possible, and not later than six weeks from the date of receipt of a copy of this order. The Assistant Commissioner of Labour may give an opportunity of hearing to the contesting parties, i.e., the Petitioners as well as Respondent No.1.

- [b] As a condition precedent for grant of interim relief, Petitioners to deposit an amount of Rs.1,20,065/- in the office of Assistant Commissioner of Labour, Bhiwandi within two weeks from today.
- [c] Needless to state that the Assistant Commissioner of Labour, Bhiwandi may pass the appropriate orders in respect of the withdrawal of amount on his final decision of the application on merits.
- [d] It is further made clear that this Court has not expressed any opinion on merits of the application and all contentions of the respective parties are kept open for the decision by the competent authority, i.e., the Assistant Commissioner of Labour, Bhiwandi.
- [e] Till the decision of Assistant Commissioner of Labour, Bhiwandi, Respondent No.3 shall not take any action pursuant to the notice dated 7th February 2019 issued to the Petitioners, subject to the Petitioners depositing an amount of Rs.1,20,065/-, as stipulated in clause (b) above.
- [f] All concerned to act upon a copy of this order, which is duly authenticated by the Registry of this Court.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]