

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 610 OF 2019

IN

WRIT PETITION NO. 4473 OF 2018

Anita Balram Dudhal ... **Applicant**

In the Matter Between :

M/s. Looks, The Ladies Shopee ... **Petitioner**

V/s.

Anita Balram Dudhal ... **Respondent**

Mr. Prashant C. Kamble, Advocate for the Applicant/Original Respondent.

Ms. Lalita H. Panchakshari, Advocate for the Respondent/Original Petitioner.

CORAM : G. S. KULKARNI, J.

DATE : NOVEMBER 17, 2021

PC :

1 Heard Mr. Kamble, learned Counsel for the applicant and Ms. Panchakshari, learned Counsel for the respondent on this application.

2 The applicant has prayed for withdrawal of 50% amount which was deposited by the petitioner in pursuance of order dated 25th April 2018 passed by a coordinate Bench of this Court (M.S.Karnik, J) in Writ Petition No. 4473 of 2018.

3 The original petitioner/employer has filed the above writ petition challenging the Judgment and Order dated 16th August 2017 passed by the Presiding Officer, 4th Labour Court, Pune in Application (I.D.A.) No. 137 of 2012 whereby such application as filed by the applicant under Section 33 C (2) of the Industrial Disputes Act, 1947 (for short, “the ID Act”) has been allowed by the following directions :

ORDER

- 1) The application Exh.1 is hereby allowed as under.
- 2) The opponent do pay an amount of Rs.73,091/- towards the difference of minimum wages and the amount of Rs.3,81,118/- toward the overtime waqges from the date of passing of this order till realisation of the entire amount to applicant.
- 3) No order as to costs.

4 While admitting this writ petition on 16th April 2019, a coordinate Bench of this Court (M.S.Karnik, J.) passed the following order :

ORDER

1. Heard learned counsel for the parties.
2. Arguable questions are raised, hence Rule. Learned counsel waives service of Rule on behalf of the respondent.
3. Petitioner has deposited the 50% of the amount in compliance with the order dated 25th April, 2018 passed by this Court.
4. In this view of the matter, there shall be ad-interim relief in terms of prayer Clause (C). The respondent is at liberty to file an application for withdrawal which shall be considered on its own merits.

5 In pursuance of liberty granted in paragraph four of the above order, the present application has been filed by the applicant/employee. Mr. Kamble, learned Counsel for the applicant has drawn my attention to the observations as made by the learned Labour Judge on issue No.1 interalia with regard to the payment of overtime wages and minimum wages. He submits that the applicant was working in the shop of the respondent/employer from 9.30 a.m. to 9.00 p.m. that the respondent employer was also paying overtime wages.

6 On the other hand, learned Counsel for the respondent has vehemently opposed this application. She relied on the reply affidavit filed by her clients. The main bone of contention of the respondent/employer is to the effect that the learned Labour Judge without any valid basis has fixed the amount payable under Section 33 C (2) of the ID Act. She submits that as the applicant is not in a good financial position, it would be difficult for the petitioner to recover the amount, in the event the petitioner succeeds in the writ petition.

7 I have heard the learned Counsel for the parties. I have perused the application and the reply affidavit filed by the petitioner/employer. I have also perused the impugned Judgment and Order passed by the learned Labour Judge. In my opinion, there appears to be sufficient reason and more

particularly in regard to the entitlement to the overtime wages which were being paid by the petitioner to the applicant. It is not a case that the amount as arrived and directed to be paid by the learned Labour Judge is without adjudication of the rival contentions in that regard. There is sufficient material to accept the limited prayer as made by the applicant in this application. In my opinion, it cannot be overlooked that as to what has been claimed in the present application is a meager amount namely 50% of the amounts as directed to be deposited and not the full amount.

8. Considering the averments made in the application and having regard to the need of such funds for the purpose of the very livelihood of the applicant, in the facts of the case the relief as prayed for needs to be granted, which is accordingly granted in terms of prayer clause (b), which reads thus :

“(b) This Hon’ble Court be pleased to allow to withdraw 50% amount which is deposited by the Petitioner in pursuance of the order dated 25th April, 2018 passed by this Hon’ble High Court.”

9. Office to do the needful to pay/release in favour of the applicant 50% of the amount as deposited by the petitioner/employer within one week from today.

10. Needless to observe that all contentions of the parties on merits of the petition are expressly kept open.

11. The application is disposed of in the above terms. No costs.
12. Parties to act on authenticated copy of this order.
13. At this stage, learned Counsel for the respondent prays for stay of this order. The prayer for stay is rejected.

(G. S. KULKARNI, J.)