14 10.5.2022 (A s s i g n e d)
Sc Ct. no.4

**MAT 193 OF 2021**
**with**
**I.A. No. CAN 1 OF 2021**
**-------------**

Hooghly Mills Company Limited

Vs.

Netai Khan & Ors.

Mr. Partha Sarathi Sengupta
Mr. Shyamal Sarkar
Mr. Kumar Gupta
Mr. Bhaskar Mukherjee.
…. For the Appellants
Mr. Bikash Shaw
…. For the Respondent No. 1.
Mr. Susanta Pal
Mr. Ananda Dulal Sarkar.
…. For the State/ Respondents
Mr. Abhrajit Mitra
Mr. Soumya Majumdar
Mr. Phiroze Edulji
Mr. Rachit Lakhanani
Ms. Amrita Pandey
Ms. Anamika Pandey
Mr. Ghanshyam Pandey.
…. For the Respondent No. 6

The instant litigation has a checkered history and has travelled to this Court on many occasions and the orders were passed from time to time.

It is not in dispute that the appellant used to run a jute mill by the name of Gondalpara Jute Mill situated in the district of Hooghly and were discharging all their contractual and statutory liabilities towards its employees/workers. Subsequently, the appellant found it difficult to run the said jute mill and thereafter was unable to pay the gratuity dues of the employees/workers and, therefore, was in search of a suitable person having adequate resources to meet the shortfall and the interest of the employees/workers.

The respondent no. 5 ventured to purchase the said jute mill and an agreement was entered into indicating not only the consideration money but the different obligations and liabilities of the respective parties to this agreement.

We do not delve to go deep into the nitty-gritty of the several clauses or the terms and conditions embodied under the said agreement but restrict our consideration in a limited manner after noticing the various orders passed in an earlier round of litigation and the submissions of the respective parties advanced before us.

The writ petition was taken out by one of the employees/workers of the said jute mill viz. Netai Khan before this Court alleging the non-disbursement of gratuity and the other emoluments attached to his services and the writ petition was disposed of directing the deposit of specified amount with the Registrar General of this Court and the Certificate Officer, Chandannagar was further directed to check and verify the receipts relied upon by the respondent no.5 in support of the claim that the said demand has already been meted out.

The primary objection pertaining to such receipts appears to have been taken by the appellant and the said writ petitioner that it was all along a practice prevalent at the jute mill even prior in time of the acquisition by the appellant that the employees/workers used to sign in anticipation of the payment to be made subsequently. On the other hand, the respondent no. 5 took the stand that since the employees/workers have already executed the receipt which evidently indicates the payment of their legitimate dues, it cannot be saddled with further responsibilities in terms of the said agreement. Precisely for such dispute, the matter was relegated to the Certificate Officer to check and verify on the basis of an evidence to be adduced and/or given by the parties to ascertain not only the veracity towards payment but also its very existence, bearing in mind the functions having prevailed in the said jute mill. The matter was subsequently carried to an appellate Court and by an order dated 20th January, 2021, passed in MAT 78 of 2021, the order of the Single Bench was interfered with in the limited sense that the portion of the order by which the direction was passed to deposit the amount with the Registrar General of this Court was, in fact, set aside for the final decision to be taken by the Certificate Officer on the above issue in accordance with law.

Amidst the pendency of the matter before the Certificate Officer, the writ petition, filed by the respondent no. 1 herein, appeared before the Single Bench and despite having noticed the order of the Division Bench dated 20th January, 2021, the writ petition was allowed directing the appellant to pay the entire amount of gratuity i.e. Rs.1,72,049/- along with interest @10% per annum within three weeks from the date by way of bank draft and the compliance report shall be filed within the specified date.

The appellant has taken a serious exception to the aforesaid order as it runs counter to the tenet of the order of the Division Bench. It does not appear to have been disputed by the appearing parties. The portion of the order by which the said amount was directed to be deposited with the Registrar General was, in fact, set aside by the Division Bench for the final decision to be taken by the Certificate Officer, Chandannagar in accordance with law and, therefore, the order directing the said amount to be paid to the respondent no.1 herein, is in direct conflict with the order of the Division bench and, therefore, cannot be sustained. Though the Division Bench was in seisin of the intra-court appeal against an interim order, yet observation was made that the writ court may pass the order in tune with the observation made therein during hearing of the said writ petition. The observation of the Division Bench was tentative in nature which was clearly understood by the Single Bench to be a mere *prima facie* observation and proceeded to pass the final order in the similar fashion that of the interim order.

In our opinion, the Division Bench being the appellate Court has directed that the matter should be relegated to the Certificate Officer, Chandannagar to determine whether the payments have, in fact, been made or not. There was no occasion on the part of the writ Court to pass an order directing such payment to be made.

The order impugned is hereby set aside. The Certificate Officer, Chandannagar is directed to expedite the process in terms of the order of the Division Bench on 20th January, 2021 and the endeavour shall be shown to complete such exercise within eight weeks from the date of communication of this order.

All parties shall cooperate and assist the certificate officer in adhering the time limit indicated hereinabove and shall not seek unnecessary adjournments unless necessitated by unforeseen and unavoidable circumstances.

In view of disposal of the appeal, the writ petition shall be treated to have been disposed of.

There will be no order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

**(Rabindranath Samanta, J.)** **(Harish Tandon, J.)**