

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9715 OF 2021
WITH
INTERIM APPLICATION NO.333 OF 2022
IN
WRIT PETITION NO.9715 OF 2021

M/s.Rudra Health Spa Pvt.Ltd	.. Applicant
Versus	
Madhukar K. Tambe	.. Respondent

...

Mr.Anand Pai with Mr.Nishit Dhruva, Mr.Prakash Shinde,
Ms.Niyati Merchant i/b MDP & Partners for the applicant.
Mr.G.R. Naik for the respondent.

CORAM: RAVINDRA V. GHUGE, J.
DATED : 22nd FEBRUARY, 2022

P.C:-

1 By this petition, the petitioner has put forth prayer
clause 27(a) as under :-

“That this Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records and proceedings in Reference (IDA) No.229 of 2017 and after examining the legality, validity and propriety of the impugned Award dated 3rd April 2021, by the Ld. Presiding Officer, this Hon’ble Court be pleased to quash

and set aside the impugned Award dated 3rd April, 2021, being Exhibit-a” hereto”

2 By the impugned award dated 3/4/2021, Reference IDA No.229/2017 has been answered affirmatively and the respondent second party workman is granted reinstatement with continuity and full back wages from 19/3/2015. The grievance of the petitioner is two fold. Firstly, that it was specifically averred in paragraph no.8 of the written statement dated 27/12/2018 that the petitioner company has been closed since 30/9/2017. Secondly, this aspect could not be emphatically put forth as the petitioner failed in leading evidence before the Labour Court and since, despite opportunities, no evidence was led, the trial Court proceeded to deal with the claim of the respondent.

3 Having considered the extensive submissions of the learned counsel for the respective sides, it is apparent that if the petitioner is able to establish that the undertaking/establishment has been closed, from September 2017, it would have an impact on the outcome in the reference case. It is also apparent from the impugned award that the Labour Court has noted that the petitioner did not lead evidence.

4 Taking into account the fact situation as above, it would be appropriate to grant an opportunity to the petitioner to

to participate in the proceedings by leading evidence, however not without imposing costs.

5 I have heard the learned Advocate for the petitioner on costs and after taking instructions from the client, he submits that an amount of Rs.60,000/- would be a fair figure. The learned Advocate for the respondent workman submits that he is out of employment since 19/3/2015 and not gainfully employed. Costs amount could be Rs.One lakh.

6 Considering the above, this Petition is partly allowed. The impugned award dated 3/4/2021 is set aside only for the reason that the petitioner should be granted an opportunity to lead evidence. Reference IDA No.229/2017 is restored to the file of the 10th Labour Court, Bombay on the following conditions :-

- (a) The petitioner shall deposit an amount of Rs.70,000/- before the Labour Court on 25/3/2022.
- (b) There shall be no extension of time for depositing the amount.
- (c) If the amount is deposited, the Labour Court would permit the petitioner – first party employer to lead oral and documentary evidence.
- (d) Consequentially, the order of closing the evidence of the employer dated 8/3/2021 stands set aside.

(e) The recording of evidence of the petitioner employer would be concluded by 30/6/2022.

(f) The Labour Court would endeavour to deliver its award afresh, after considering the entire evidence, on or before 30/9/2022.

(f) The amount of Rs.70,000/- deposited by the petitioner would be withdrawn by the respondent, as costs for remanding the matter, without conditions.

7 Pending interim application would not survive and stands disposed off.

RAVINDRA V. GHUGE, J