

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 4 OF 2022
IN
LETTERS PATENT APPEAL NO. 40 OF 2010
IN
WRIT PETITION NO. 7706 OF 2009**

Namdev Kondiba Shitole	...Petitioner
<i>Versus</i>	
Jagdish Electronics (India) Pvt Ltd	...Respondent

Mr KP Anilkumar, *with Chinmay Apte, i/b Amit R Saple, for the Petitioner.*

Mr Varun Joshi, *with Atman Mehta & Vipul Patel, i/b Haresh Mehta & Co, for the Respondent.*

**CORAM G.S. Patel &
 Gauri Godse, JJ.
DATED: 11th November 2022**

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1. The Contempt Petition is thoroughly misconceived. The story begins with an Award of 27th May 2009 of the Second Labour Court Pune on a Reference No. 428 of 1998. The present Respondent, Jagdish Electronics (I) Private Limited was the first

party to the Reference. The contempt Petitioner Namdev Kondiba Shitole was the second party.

2. We leave aside, since we believe it is now immaterial, a discussion of the allegations of the misconduct before the court of first instance. The resultant order, a copy of which is from page 12, allowed the reference partly directing Jagdish Electronics to reinstate Shitole with continuity of service but also rejecting Shitole's prayer for back wages. Jagdish Electronics assailed this order in Writ Petition No. 7706 of 2009. That Writ Petition was rejected by a learned Single Judge of this Court (RS Mohite J) on 3rd December 2009 (pages 39 to 40). The consequence was that the order of reinstatement was affirmed. But also affirmed was the order rejecting the prayer for back wages.

3. Against that order, Jagdish Electronics filed Letters Patent Appeal No. 40 of 2010. That Appeal was admitted by a Division Bench of this Court (Mohit S Shah, Chief Justice and SC Dharmadhikari J) on 12th July 2010 (page 58). The Division Bench granted an ad-interim stay of the directions of the Labour Court as confirmed by Mohite J for reinstatement of Shitole but this was subject to the condition that Jagdish Electronics would comply with the provisions of Section 17-B of the Industrial Disputes Act, as soon as Shitole filed an affidavit ascertaining that he was not gainfully employed.

4. Shitole sought that this order be vacated by a Civil Application No. 71 of 2011. That Civil Application was rejected by

another Division Bench of this Court (PB Majmudar and AA Sayed JJ; order copy at pages 59 and 60).

5. The Letters Patent Appeal finally came up for final disposal before a Division Bench of Pradeep Nandrajog, Chief Justice and Smt Bharati Dangre J on 7th January 2020. After a brief discussion, the Division Bench dismissed the Letters Patent Appeal. It held that the direction for reinstatement (originally of the second Labour Court Pune, and upheld by the Mohite J in the Writ Petition) for reinstatement with continuity of service without back wages was correct, and that the rejection of claim for back wages was a sufficient penalty on Shitole.

6. Shitole retired sometime in 2018. The ‘contempt’ now alleged is that Jagdish Electronics never reinstated Shitole, and that he is entitled to wages from the date of the order of his reinstatement, i.e., 27th May 2009 until his retirement in 2018.

7. It is open to Shitole to make an appropriate application before a Court of competent jurisdiction. Nothing can prevent that. But we entirely fail to see how such an order can be sought, let alone fashioned, in a Contempt Petition before this Court. It is unclear to us what that alleged contempt is. We must bear in mind that at least from 12th January 2010 right up till 7th January 2020 there was a stay obtained by Jagdish Electronics on the order of reinstatement. By the time the Letters Patent Appeal was finally disposed of, Shitole had already retired.

8. We see no ground made out to proceed against Jagdish Electronics in contempt. However, we make it clear that we keep open all Shitole's contentions in regard to his claim of dues from the period of reinstatement until retirement for appropriate proceedings in a Court of competent jurisdiction.

9. Jagdish Electronics has deposited an amount of Rs. 42 lakhs pursuant to our order dated 27th July 2022. In fact, there were two deposits. An amount of Rs. 13 lakhs previously deposited pursuant to an order of 5th May 2022. Shitole has withdrawn this. Next, by our order of 27th July 2022 we required an amount of Rs. 42 lakhs to be deposited. That has also been done.

10. Obviously, in any claim that Shitole makes, the amount of Rs. 13 lakhs already withdrawn will have to be reflected as adjusted.

11. As to the balance Rs.42 lakhs we permit Jagdish Electronics to withdraw the amount deposited with interest but on furnishing a signed undertaking by an authorised signatory that it will bring such amount into the Court concerned as and when — and if — directed to do so. We make this direction because Shitole's computation of back wages is seriously disputed by Jagdish Electronics. The required undertaking must be accompanied by a certified true copy of a board resolution of Jagdish Electronics authorising that person to make that affidavit and give that undertaking.

(Gauri Godse, J)

(G. S. Patel, J)