

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2750 OF 2018

Vasant s/o Late Keshavrao Thakre and others

Vs.

Rukhma w/o Vitthal Dawale and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. S. Ghatge, Advocate for petitioners.

Mr. S. B. Dhande, Advocate for respondent nos.1 to 3, 4(A), 5, 6, 8(a)(b), 9 to 19.

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/08/2022

1. Heard Mr. Ghatge, learned counsel for the petitioners and Mr. Dhande, learned counsel for the respondent nos.1 to 3, 4(A), 5, 6, 8(a)(b), 9 to 19.

2. The petition challenges the order dated 31.10.2009 Annexure-C (page 33), whereby in proceedings under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the P. G. Act") against M/s K. T. Ginning Factory, the claimant therein were held to be entitled for gratuity along with interest at the rate of 10 % thereupon from 26.5.2002 till recovery.

3. Against the aforesaid order, an application for review came to be filed under Rule 11 (5) of the Payment of Gratuity Rules, 1972 which came to be

rejected on 4.7.2012 (page 71) on the ground that it was filed beyond the time permissible of 120 days. Both the orders were thereafter, questioned before the learned Industrial Court in Appeal No.7 of 2013 under Section 7(7) of the P. G. Act. The learned Industrial Court by the judgment dated 11.4.2018 held that the proceedings were not maintainable and so also for want of compliance of statutory provisions as contemplated under Section 7(7) of the P. G. Act. It is not in dispute that the quantum of gratuity i.e. Rs.3,20,724/- which is the principle amount has been deposited by the petitioners, with the learned Industrial Court on 5.1.2018.

4. It is the contention of Mr. Ghate, learned counsel for the petitioners that the order dated 31.10.2009 passed by the Controlling Authority was against M/s K. T. Ginning Factory, which is claimed to be a proprietary concern without naming who the proprietor was, in view of which, the finding rendered therein that the notices were served upon the respondent therein was factually incorrect and therefore, the ex-parte order dated 31.10.2009 passed by the Controlling Authority could not be sustained.

5. It is further contended, that thereafter subsequent events have over taken the matter inasmuch as, in Special Civil Suit No.256 of 1997 filed by

Chandrashekhar Thakre against the present petitioners and others, the Civil Judge Senior Division, Wardha by its judgment dated 30.7.2011, has held that the Ginning Factory under the name and style of M/s K. T. Ginning Factory, belongs to the plaintiff therein, namely, Chandrashekhar Keshavrao Thakre and Keshavrao Thakre the father of the present petitioner was merely a Manager therein, who was removed from the post of Manager, on or about 6.12.1978. So also, a claim raised by the present petitioners that Keshavrao Thakre was the absolute owner of the Ginning Factory was answered in the negative and it was held that the Will Deed executed by the Keshavrao Thakre bequeathing the Ginning Factory to the petitioners dated 20.1.1994, was of no effect. Though the appeals bearing R.C.A. Nos. 35 of 2018 and 821 of 2018 are pending against the aforesaid judgment, Mr. Ghate, learned counsel for the petitioners submits that there is no stay to the said judgment.

6. The judgment dated 30.7.2011 in Special Civil Suit No.256 of 1997, would clearly indicate that the petitioners who are the legal heirs of Keshavrao Thakre, are not having any right title or interest of any nature whatsoever in M/s K. T. Ginning Factory, which has also held, that Chandrashekhar Thakre, was in possession thereof in answer to issue no.2. This being the position, the petitioners, who are the legal heirs of Keshavrao cannot be held to be in any way concerned with the

Ginning Factory and consequently their liability for payment of Provident Fund (P. F.) dues, would not stand to reason.

7. Though Mr. Dhande, learned counsel for the respondents contends that the plea cannot be considered under section 7(7) of the P. G. Act on the ground that it is not filed within the period as contemplated therein, and therefore the appeal would not be maintainable, it is however material to note that though it is an admitted position as consented by Mr. Dhande, learned counsel for the respondents that the judgment in Special Civil Suit No.256 of 1997 dated 30.7.2011 was placed on record, the same does not appear to have been considered by the learned Industrial Court at all, neither has the learned Industrial Court considered the fact that the amount of gratuity already stood deposited with it, considering which, it could not have dismissed the appeal for non-compliance of statutory provisions.

8. Mr. Dhande, learned counsel for the respondents relied upon *Metal Box India, Ltd Vs. B. R. Rangari, Assistant Commissioner of Labour and others, 2006 (4) L.L.N. 539*, to contend that the deposit has to be prior to filing of the appeal under Section 7(7) of the P. G. Act, however, in the peculiar facts and circumstance of the present case, when the judgment of the learned Appellate Court dated 30.7.2011, itself held that the

petitioners had nothing to do with the M/s K. T. Ginning Factory, it was incumbent upon the learned Industrial Court to have considered this position as that is something which has a material bearing upon the liability saddled on the petitioners. A perusal of the impugned judgment indicates that in spite of being aware of the passing of the judgment on 30.7.2011, as indicated in para 20 therein, the same has not been taken into consideration. It is a trite position of law that the rights and liabilities as determined by a Civil Court of competent jurisdiction will have to be necessarily considered by the learned Industrial Court while deciding any proceeding before it. This having not been done by the impugned judgment dated 11.4.2018 passed by the learned Industrial Court the same cannot be sustained and is hereby quashed and set aside and the matter is remanded back to the learned Industrial Court to render a finding, in light of the judgment of the Civil Court dated 30.7.2011. No costs.

JUDGE

Sarkate