

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

CIVIL APPLICATION(O) NO. 2053/2019 IN C.A. NO.643/2018 IN
WRIT PETITION NO.2356/2016

The President, Bajaj Finance Ltd.(Erstwhile, Bajaj Auto Finance Ltd.) and anr.
Vs.

Rajesh V. Mandawkar

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.G.Bhangde, Senior Advocate with Shri A. P. Wachansundar, Advocate for applicants/
petitioners.

Shri R.S.Bhure, Advocate for non-applicant/respondent.

CORAM :- A.S.CHANDURKAR, J.

DATE :- APRIL 08, 2022.

By this application the applicants seek review of the order dated 05.08.2019 passed in Civil Application (O) No.643/2018. In Civil Application (W) No.643/2018 this Court on 05.08.2019 considered an application moved by the non-applicant under the provisions of Section 17 B of the Industrial Disputes Act, 1947 (for short, the Act of 1947) seeking directions to be issued to the applicants to pay the non-applicant last drawn wages during the pendency of the proceedings. That application was allowed and it was directed that the applicants shall pay an amount of Rs.9,000/- per month from September 2017 to the non-applicant during the pendency of the writ petition.

Shri M.G.Bhangde, learned Senior Advocate for the applicants submitted that the non-applicant failed to disclose the relevant information which was within his knowledge when the application under Section 17 B of the Act of 1947 was considered. Inviting attention to the averments made in paragraph 6 of the affidavit dated 11.02.2019 filed on behalf of the applicants it was submitted that during the period from 06.05.2015 to 30.11.2018 the non-applicant was making payments of Equated Monthly

Instalment (EMI) of Rs.32,569/- towards various loans availed by him. Various entries to that effect were made in the bank accounts of the non-applicant. In reply to that affidavit, the non-applicant had stated that these facts were brazenly false. It was submitted that thereafter on getting further information, the review application was amended and paragraph 13 A was brought on record giving details of the information received from the Credit Information Bureau (India) Limited (CIBIL) report of the non-applicant. It was stated that such EMIs were being paid from November 2018 of which the records were available. It was therefore submitted that on the basis of false affidavit filed by the non-applicant on 05.03.2019 it was sought to be portrayed that the non-applicant was not gainfully employed so as to entitle him to relief under Section 17 B of the Act of 1947. Referring to various documents on record it was submitted that the non-applicant was paying an amount of Rs.32,569/- as EMIs during the relevant period. The non-applicant was also a Director in about four Companies which was evident from his own profile that was uploaded by the non-applicant. It was submitted that there being suppression of relevant material facts which were within the knowledge of the non-applicant, a case for review had been made out. As the non-applicant failed to disclose all relevant material in the application filed under Section 17 B of the Act of 1947, the Court proceeded to grant the relief as prayed for in that application. The order dated 05.08.2019 was therefore liable to be reviewed. Placing reliance on the decision in *G.Srinivas vs. Government of A.P and others (2005) 13 SCC 712*, it was submitted that the review application ought to be allowed.

Shri R.S.Bhure, learned Advocate for the non-applicant opposed the aforesaid submissions and reiterated that the non-applicant was not earning anything which entitled him to the relief under Section 17 B of the Act of 1947. The amounts under EMIs were being paid by the non-applicant's brother and hence the non-applicant could not be deprived of the relief that was rightly granted to the non-applicant on 05.08.2019. He referred to the reply dated 20.02.2020 in that regard in which it was stated that the finance for the purchase of car was provided in the name of the

non-applicant for the reason that the non-applicant's brother was not a resident of Nagpur. It was thus submitted that there was no case made out to invoke review jurisdiction.

Having heard the learned Advocates for the parties and having perused the various documents placed on record, it becomes evidently clear that the non-applicant failed to place on record various relevant documents indicating his financial position when the application under Section 17 B of the Act of 1947 was decided. The documents placed on record by the applicants alongwith the review application are in the form of CIBIL statements pertaining to the non-applicant which indicate that he was paying an amount of Rs.32,569/- towards EMIs against various loan accounts. The loans have been taken in his individual name. The loan accounts disclose that they were opened in the year 2015 and the last payment made in one of them was on 29.06.2019. Similarly, the data placed on record pertaining to the period from August 2019 as well as June 2021 indicates that the non-applicant was a Director at Pratyusha Charitable Foundation and Shri Sai Gajanan Nidhi Limited. This period when the non-applicant was functioning as Director was after September 2017 from which date the applicants were directed to pay an amount of Rs.9,000/- per month to the non-applicant.

In *G.Srinivas* (supra), the Hon'ble Supreme Court has held that if it is found that there is wilful suppression of relevant facts on the part of a party, an order passed in ignorance of such relevant facts could be reviewed. It is thus clear that if the aforesaid facts which were within the knowledge of the non-applicant would have been placed on record, the same would have been taken into consideration while deciding the entitlement of the non-applicant to relief under Section 17 B of the Act of 1947. This is for the reason that such relief can be granted only if the claimant comes up with a case that he is not gainfully employed anywhere and there is an order of reinstatement in his favour which has been stayed by the superior Court. It is thus obvious that the non-applicant has failed to disclose the relevant facts

which were within his knowledge when his application under Section 17 B of the Act of 1947 was under consideration.

For these reasons, I find that there is a case made out to review the order passed in Civil Application (W) No.643/2018 dated 05.08.2019. Accordingly Civil Application (O) No.2053/2019 is allowed and the order dated 05.08.2019 in Civil Application (W) No.643/2018 is recalled. Civil Application (W) No.643/2018 stands dismissed as the non-applicant has failed to make out a case as required by the provisions of Section 17 B of the Act of 1947.

In view of aforesaid order, Civil Application (W) No.2056/2019 does not survive and it is also disposed of. Civil Application (W) No.2055/2019 can be considered by the Court according to roster assignment.

Order accordingly.

(A.S.CHANDURKAR, J.)

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