

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 904 OF 2020

Red Life Style Pvt. Ltd. & Ors. ... Petitioners
Versus
Bharatiya Kishan Industrial Kamgar Union ...Respondent

Mr. Sachin Bhaskar for the petitioners.
Mr. Sushan Mhatre for the respondent.

CORAM: G. S. KULKARNI, J.
DATED: 30 January 2023

P.C.

1. This is a petition which assails an order dated 15 December, 2018 passed by the learned Member of the Industrial Court at Mumbai in Complaint (ULP) No. 303 of 2017. The impugned order is a common order on the two Applications filed by the respondent-Union below Exhibit U-2 and Exhibit U-8 wherein interim reliefs were prayed by the respondent. In disposing of both these applications, following order has been passed directing the petitioners to deposit an amount of Rs.25 lakhs came to be passed:

"ORDER

- (i) *Application at Exh. U-2 is simply disposed of.*
- (ii) *Application at Exh. U-8 is partly allowed.*
- (iii) *The respondents are hereby directed to deposit Rs.25 lakhs with this Court, within two months from the date of this order."*

2. This petition was filed on 1 February, 2019. It is almost more than four years that the impugned order has operated. Perusal of the record would also indicate that there was no stay to the impugned order, despite this, learned counsel for the petitioners states that the amount of Rs.25 lakhs as directed by the Industrial Court has not been deposited.

3. Mr. Bhaskar, learned counsel for the petitioners in assailing the impugned order has raised two basic contentions. The first contention is that the impugned order ought not to have been passed, as the petitioners have raised an issue that there was no relationship of employer and employee between the parties. His second contention is that the respondent's case in Complaint(ULP) No. 303 of 2017 was untenable when they contended that some of the workmen were in employment of the petitioners for a period of about 12 years, 10 years etc. for the reasons that the petitioner-company was itself incorporated in the year 2010.

4. On the other hand, Mr. Mhatre, learned counsel for the respondent has drawn the Court's attention to the relevant paragraphs of the impugned order and more particularly, to the observations as made by the learned Member of the Industrial Court, that insofar as the issue as raised by the petitioners in regard to there being no employer-employee relationship is concerned, the same could be decided at a later stage, as it would be an issue on the

maintainability of the proceedings. Mr.Mhatre has also drawn the Court's attention to the observations in paragraph 16 of the impugned order wherein the learned Member of the Industrial Court has observed that such an issue in any event cannot be an impediment for the Industrial Court to pass appropriate interim orders in regard to deposit of the amount subject to the outcome of the proceedings.

5. I have heard learned Counsel for the petitioners as also I have perused the impugned order and the record. Insofar as the first contention as urged on behalf of the petitioners is concerned, as rightly observed by the Industrial Court, the issue as to whether there is relationship of employer and employee, is an issue to be decided on merits, which can be decided at the adjudication of the principal proceedings. Moreover, it is an issue touching the maintainability of the proceedings. Needless to observe that all these contentions being expressly kept open, it is open for the petitioners to urge contentions on such issue, at the adjudication of the complaint, and on the basis of appropriate materials.

6. Insofar as the second contention in regard to some of the workmen claiming a service which is not corresponding to the existence of the petitioner-company, which is stated to be incorporated in the year 2010, in my opinion, such issue is also on the merits of the petitioners case and which would

determine the entitlement of this workmen to claim the reliefs in the complaint. Such issue is also required to be adjudicated by the Industrial Court on evidence documentary/oral as may be led by the parties.

7. The reasons as set out by the learned Member of the Industrial Court directing the petitioners to deposit are in no manner perverse calling for interference of this Court in its writ jurisdiction.

8. The petition is accordingly dismissed.

9. The petitioners are directed to deposit the amount in compliance of the impugned orders, within a period of four weeks from today.

10. No costs.

(G. S. KULKARNI, J)