

Vidya Amin

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

**WRIT PETITION NO. 616 OF 2020**

Valsala Venugopal Menon ... Petitioner  
*Versus*  
Chunilal Mulchand & Co. ...Respondent

Mr. Ganesh S. Patil for the petitioner.  
Mr. Anand Pai a/w. Mr. Rutvij Solanki for the respondent.

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**CORAM: G. S. KULKARNI, J.**  
**DATED: 23 January 2023**

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**P.C.**

1. Heard Mr. Patil, learned counsel for the petitioner and Mr. Pai, learned counsel for the respondent.

2. The order impugned in this petition is to an order dated 8 February, 2019 passed by the Presiding Officer, 1<sup>st</sup> Labour Court, Mumbai in Reference (IDA) no. 292 of 2013. By the impugned order, an application filed by the petitioner/employee objecting to the appearance of Advocate Shri Avinash Patil to represent the respondent/employer has been rejected. There is a previous history to the proceedings on this issue inasmuch as at an earlier point of time, there was an application as made by the petitioner/employee (below Exh. U-3) to debar the respondent/employer from being represented by any lawyer considering the provisions of Section 36(4) of the Industrial Disputes Act. The said application of the petitioner was allowed by an order dated 3

May, 2017 passed by the learned Labour Judge. The said order passed by the learned Labour Judge was assailed by the respondent in this Court in Writ Petition No. 2031 of 2017, which came to be dismissed by a co-ordinate Bench of this Court by an order dated 6 June, 2018. It is not in dispute that the said order continues to operate, however, what appears to have happened is that the respondent appointed the same Advocate Avinash Patil, who had earlier filed his Vakalatnama on behalf of the respondent, however, in the capacity as General Secretary of the Employer-Association as intended to represent the respondent. This was objected by the petitioner/employee by the application in question, which has been rejected.

3. In my opinion, *ex facie* such a course of action for Shri.Avinash Patil, Advocate to represent the respondent was not permissible, as it would be in the teeth of the earlier orders passed in the proceeding as noted above. This for the reason that the scope of Section 36(2) and Section 36(4) of the Industrial Disputes Act are completely different. If the respondent was to bonafide invoke the provisions of Section 36(2), in that event, the respondent ought to have made a proper application instead of directly filing the authority of Advocate Avinash Patil taking a position that he would represent the respondent/employer as a status of General Secretary of Employer-Association. However, no such application was filed. In the facts

and circumstances of the case, in my opinion, this was not the correct position taken by the respondent and which possibly is not in consonance with the order dated 3 May, 2017 passed by the learned Labour Judge and the order passed on the Writ Petition. In passing the impugned order, the learned Labour Judge has missed the purport and consequence of the said orders, as the learned Labour Judge has proceeded purely on the provisions of Section 36(2) of the Industrial Disputes Act.

4. On such backdrop, Mr. Pai would fairly submit that an opportunity be granted to the respondent to make a proper application under section 36(2) of the Industrial Disputes Act so that any other appropriate representative as falling within the purview of Section 36(2) can be appointed by the respondent to represent the respondent in the pending proceedings before the Labour Court.

5. In this view of the matter, the petition would not require any further adjudication and the impugned order for the above reason is required to be set aside. The petition is accordingly disposed of by the following order:

### **ORDER**

- (i) The impugned order dated 8 February, 2019 is quashed and set aside, however, with liberty to the

respondent to make a proper application under section 36(2) of the Industrial Disputes Act , which be filed within a period of two weeks from today.

(ii) If such application is made, the learned Labour Judge shall decide the same on its own merits after granting hearing to both the parties.

(iii) All contentions of the parties on the pending proceedings are expressly kept open.

**(G. S. KULKARNI, J)**