

Vidya Amin

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

INTERIM APPLICATION NO. 3429 OF 2022

IN

WRIT PETITION NO. 1310 OF 2009

WITH

WRIT PETITION NO. 1310 OF 2009

Dr. Balabhai Nanavati Hospital

... Applicant/Petitioner

Versus

Ashoka Shetty

... Respondent

Mr. R.V. Paranjape a/w. Mr. T.R. Yadav for the applicant/petitioner.

Ms. Suvarna Joshi for respondent no. 1.

CORAM: G. S. KULKARNI, J.

DATED: 13 February, 2023

P.C.

1. By an order dated 6 February, 2023 this Court had appointed Ms. Rukmini Khairnar, Advocate of this Court as amicus curiae. Advocate Ms. Joshi appears and states that the respondent has engaged her to appear in the present proceedings. Accordingly, the learned amicus curiae as appointed stands discharged.

2. The Writ Petition is filed by Dr. Balabhai Nanavati Hospital, the original petitioner, which assails an order dated 6 May, 2009 passed by the Presiding Officer, Third Labour Court at Mumbai in Reference (IDA) No. 498 of 2006 deciding a preliminary issue, thereby holding that the respondent is a workman under section 2(s) of the Industrial Disputes Act. The petition was admitted for final hearing by an order dated 28 July, 2009.

3. This Interim Application filed by the original petitioner takes an exception to an order dated 18 April, 2022 passed by the Presiding Officer of the Labour Court on an application as made by the respondent praying for resumption of the pending enquiry on the ground that the stay as granted by this Court to the proceedings before the Labour Court vide order dated 28 July, 2009 had stood vacated in view of the orders passed by the Supreme Court in *Asian Resurfacing of Road Agency Private Limited & Anr. vs. Central Bureau of Investigation*¹.

4. Mr. Paranjape, learned counsel for the petitioner/applicant submits that the learned Labour Judge was not correct in allowing such application and directing that the enquiry under the Reference be resumed for evidence. He submits that considering the said decision of the Supreme Court in *Asian Resurfacing of Road Agency Pvt. Ltd.* case (supra), this Court in *Devsing Ramchandra Chavan vs. The State of Maharashtra & Ors.*, in Writ Petition No. 5483 of 2021 (in paragraph 40) had observed thus:

“40. In conclusion, it needs to be observed that the directions of the Supreme Court in paragraphs 36 and 37 in Asian Resurfacing of Road Agency Pvt. Ltd., operate only qua the criminal and civil cases pending trial, and such directions cannot be construed to be applicable to the other category of orders in proceedings which do not stay the trial of the civil or criminal cases as observed in paragraph 30 above. Such orders of the Supreme Court are also not applicable to the proceedings before the Tribunals. Thus, the tribunal was not correct in passing the impugned order as also applying the government circular dated 6 May, 2021.”

(emphasis supplied)

1 Criminal Appeal No. 1375-1376 of 2013 on 28 March, 2018

He submits that thus as clearly observed the orders of the Supreme Court in *Asian Resurfacing of Road Agency Pvt. Ltd.* case (supra) were not applicable to the proceedings before the Tribunal.

5. Learned counsel for the respondent would not be in a position to dispute this position.

6. Mr. Paranjape would thus be correct in his contention that when interim relief which was granted by this Court vide order dated 28 July, 2009 was in operation, the learned Labour Judge should not have proceeded on the basis that the said order passed by this Court stood vacated, so as to proceed with the reference. For the above reasons, the order dated 18 April, 2022 would be required to be set aside. It is accordingly set aside. Interim Application is allowed in terms of prayer clause (a).

7. Learned counsel for the parties submit that the issue involved in the writ petition is a short issue and each of the parties can conclude their submissions within 15 minutes. If that be so, let the petition be kept for final hearing on **6 March, 2023 at 4 p.m.** A brief synopsis with propositions be placed on record before the adjourned date of hearing.

G. S. KULKARNI, J