

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

WRIT PETITION NO. 4779 OF 2019

Sukhdeo Jivtu Nimje and ors __ Vs. __ M/s. Reliance Industries Ltd

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

Court's or Judge's orders

Mr. S.D.Thakur, Advocate for Petitioners
Mr. D.M.Kakani, Advocate for Respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 02/03/2023

1] Mr. Thakur, learned counsel for the petitioners, today has tendered a pursis across the bar, intimating that petitioner nos. 5 and 20 are no more and their names be deleted.

The pursis is taken on record and marked as "X" for identification.

In view of the said pursis, the names of petitioner nos. 5 and 20 be deleted from the memo of the petition, at the risk and consequences of the petitioners.

2] The petition challenges the following orders :

A] The order passed below Exh. C/8 (pg.91), an application for dismissal of the appeal on the ground that the verification to the memo of appeal was signed only by the appellant no.1/Pruthviraj Motiram Gajbe, which has been allowed by the order dated 16.10.2018 (pg.103).

B] The order passed below Exh. C/11 (pg.95), an application raising additional grounds in support of the application at Exh. C/8, which also has been allowed by the order dated 16.10.2018 (pg.103).

C] The order below Exh. U/30 (pg.106) by the petitioners 1 to 40 seeking amendment in the title clause of the memo of appeal and updating the names of the appellants and adding their signature in BIR Appeal No. 3/2014, dated 22.1.2019, whereby the application has been rejected (pg.134).

D] The order below Exh. U/32 (pg.117), an application under Section 119C of the Maharashtra Industrial Relations Act, 1946, for permission to correct clerical error in the memo of appeal, which had been rejected by the order dated 22.1.2019 (pg.137), and,

E] The order below Exh. C/13, an application for dismissal of appeal, since the original appellant no.1 Pruthviraj Motiram Gajbe, in view of the order dated 16.10.2018 had withdrawn the proceedings from the Trial Court (pg.114), dated 22.1.2019, which came to be allowed and the appeal was disposed of having become infructuous.

3] It is contended by Mr. Thakur, learned counsel for the petitioners that 94 BIR applications were filed under Section 78 & 79 of the BIR Act, 1946, which were numbered as BIR Application Nos. 76/2010 to 169/2010. In these applications, by a common order

dated 10.2.2014 below Exh.26 (pg.58), out of three issues framed therein (pg.59), issue no. 2 came to be deleted by the said order dated 10.2.2014 (para 15, page 71). This deletion of issue no. 2 by the order dated 10.2.2014 came to be challenged by way of a common appeal bearing Appeal No. 3/2014 before the learned Industrial Court [Pruthviraj Motiram Gajbe and 93 ors vrs. M/s. Reliance Industries Ltd] (pg.73). This memo of appeal was signed by the counsel for the appellant as named therein, however, the verification thereto was done by the appellant no.1, the said Pruthviraj Motiram Gajbe.

4] It is contended that out of 94 BIR proceedings, some of them have been withdrawn by some of the appellants. It is however, on the contention that the memo of appeal in Appeal No. 3/2014 was not signed by all the appellants, the objection raised by the application Exh. C/8 and C/11 came to be allowed by directing that the appeal shall be continued only for the appellants who have signed the memo of appeal and so far as the appellants who had not signed the memo of appeal, the appeal stood dismissed (pg.103). On account of this, an application was moved at Exh.U/30 by as many as 40 appellants seeking amendment to the memo of appeal for permitting them to append their signatures to the memo. This also came to be rejected by the order dated 22.1.2019. The application thereafter filed at

Exh.U/32 for correction of the clerical error also came to be rejected by the order dated 22.1.2019 (pg.135). Another application for dismissal of the appeal Exh. C/13 which was filed on the ground that the original appellant no.21/Pruthviraj Motiram Gajbe had already withdrawn his proceeding before the Labour Court and since he was the sole signatory to the appeal, the proceedings had become infructuous, also came to be allowed on 22.1.2019 (pg.139).

5] It is submitted by Mr. Thakur, learned counsel for the petitioner that though the memo of appeal was not signed by all the appellants, in fact, the appeal was common appeal on behalf of all the appellants and therefore merely because the appellant no.1/Pruthviraj Motiram Gajbe had withdrawn his proceedings before the Labour Court, that by itself would not render the appeal not maintainable on behalf the persons whose cases have not been settled. He therefore submits that in such a situation, considering the nature of the legislation which was for the benefit of the employees, an opportunity ought to have been afforded to the present petitioners who had not signed the memo of appeal, but had indeed preferred the appeal, which is reflected from the fact that the memo of appeal itself bore their names. It is further contended that a memo of appeal can always be filed under the signature of the counsel and unless certain facts are there, which were

absent before the Labour Court, there is even no need for verification. It is also contended that the vakalatnama filed along with memo of appeal contains the signatures of all the petitioners. It is therefore submitted that the impugned orders which deprive the petitioners of their right to appeal are required to be quashed and set aside and the matter be remitted back to the learned Industrial Court for decision of appeal according to law.

6] Mr. Kakani, learned counsel for the respondent vehemently objects to the above contentions and submits that since the memo of appeal was not signed by the present petitioners, in law there was no appeal legally instituted by them and therefore the impugned orders cannot be faulted with.

7] It is not in dispute that the memo of appeal (BIR Appeal No.3/2014) contains the names of all the petitioners as well as other appellants as named therein. The appeal was duly signed by the counsel engaged by the appellants including the petitioners whose vakalatnama was also on record. No doubt, that the verification to the appeal was signed by only the appellant no.1, viz. Pruthviraj Motiram Gajbe, however, unless there are facts in the memo of appeal which are other than what is occurring before the Trial Court, the question of verification would be moot. In such circumstances, considering that the legislation was a beneficial legislation, an opportunity ought to have been

granted to the present petitioners who intended to prosecute the appeal. Merely because the original appellant no.1 and some other appellants had withdrawn their original proceedings before the Labour Court, that itself would not mean that the right of the present petitioners to continue with the challenges raised in the appeal was wiped out.

8] In that view of the matter, in my considered opinion, all the orders as stated in para 1 (A) to (E) above, are hereby quashed and set aside and the present petitioners are allowed to sign the memo of appeal and continue the appeal by doing all that is permissible in law in that regard, as a result of which the application below Exh. C/8, C/11 and C/13 are hereby dismissed and the applications below Exh. U/30 and U/32 are hereby allowed.

9] The petition is accordingly allowed in above terms. No costs.

JUDGE

Rvjalit