

2 January 2024.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2270 OF 2023

Rieter India Pvt. Ltd.

...Petitioner

V/s.

Shri. Kisan Taytaba Mahanagare

and Ors.

...Respondents

Mr. Kiran Bapat, Senior Advocate with Mr. T.R. Yadav, Mr. Rutuij Bapat i/by. Mr. Gaurav Gawande, for the Petitioner.

Mr. Abhishek Kulkarni a/w. Mr. Sagar Wakale, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 2 January 2024.

P.C. :

1. By this petition, Petitioner challenges Order dated 18 November 2022 passed by the Industrial Court, Satara allowing Misc. Restoration (ULP) No. 3 of 2018 and restoring the Complaint by setting aside the Order dated 8 September 2017.

2. I have heard Mr. Bapat, the learned Senior Advocate appearing for the Petitioner. Inviting my attention to the Order dated 8 September 2017, Mr. Bapat would submit that the said order is not an *ex-parte* order within the meaning of Section 31 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) or under Regulations 118 or 119 of the Industrial Court Regulations, 1975. According to Mr. Bapat, only an *ex-parte* order can be set aside under the provisions of Section 31(2) of the MRTU & PULP Act. Inviting my attention to the amended Regulation 119A, Mr. Bapat would submit that the words “dismissed for default” came to be inserted in Regulation 119A for the first time by way of amendment with effect from 17 October 2019 and prior to the said amendment, no provision was made for setting aside an order dismissing the complaint for default under the provisions of Section 31(2) of the MRTU & PULP Act. He would submit that the Legislature has consciously inserted Regulation 119A by taking note of the fact that the provision for setting aside the Order dismissing the complaint in default was not available under the statutory framework of MRTU & PULP Act.

3. Alternatively, Mr. Bapat would submit that complainant’s Advocate was present when the Order dated 8 September 2017 was passed. That the complaint was fixed for

arguments and the Advocate could have well argued the complaint on 8 September 2017. According to Mr. Bapat, therefore the Order dated 8 September 2017 cannot be treated as an ‘*ex-parte* order’ as the same was passed in presence of Complainant’s Advocate. He would further submit that the application for setting aside the Order dated 8 September 2017 was filed on 6 December 2018 after considerable delay. Inviting my attention to the Order dated 7 October 2009 passed in Complaint (ULP) No. 66/2009, Mr. Bapat would submit that similar complaint filed by the Union regarding transfer of 73 employees has already been dismissed by the Industrial Court, Pune. He would therefore submit that entertaining Complaint (ULP) No. 72/2009 on merits at this distant stage would be an academic exercise.

4. *Per-contra*, the learned counsel appearing for the Respondent-employees would oppose the petition and support the order passed by the Industrial Court.

5. After considering the submissions canvassed by the learned counsel appearing for the parties, the short issue that arises for consideration is whether the Order passed by the Industrial Court dismissing the complaint in default on 8 September 2017 could have been recalled under the provisions of Section 31(2) of the MRTU & PULP Act, 1971. Section 31 provides thus :

31. Consequences of non-appearance of parties.-

(1) Where in any proceeding before the Court, if either party, inspite of notice of hearing having been duly served on it, does not appear, when the matter is called on for hearing the Court may either adjourn the hearing of the matter to a subsequent day, or proceed ex-parte, and make such order as it thinks fit.

(2) Where any order is made ex parte under sub-section (1), the aggrieved party may, within thirty days of the receipt of the copy thereof, make an application to the Court to set aside such order. If the Court is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it may set aside the order so made, and shall appoint a date for proceeding with the matter.

Provided that, no order shall be set aside on any such application as aforesaid, unless notice thereof has been served on the opposite party.

6. It is the contention of the Petitioner that Section 31 applies only to an *ex-parte* order. Petitioner thus expects use of the words 'dismissed for default' in Section 31, which according to the Petitioner, are conspicuously absent. My attention is invited to the provisions of Regulations 118, 119 and 119A of the Industrial Court Regulations, 1975 which read thus :

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118. (i) Alongwith application under Section 31(2) of the Act the applicant shall file affidavit in support of the grounds for getting the ex parte order set aside.

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(ii) A notice of hearing of the application for setting aside the ex parte order shall be served on the party who is entitled to be heard. Such notice shall be in Form 22.

119. The Court may under Section 31(2) of the Act set aside ex parte order on such terms as to costs and other conditions as it considers necessary.

119A. [119-A. On an application filed under Section 31(2) of the MRTU and PULP Act, 1971 seeking to have an ex-parte order or a "dismissed in default" order, set aside, after 30 days from the date of the passing of such ex-parte or "Dismissed In Default order, the court may, upon issuing notice to the other side in Form No. 22, entertain such an application provided a separate application for seeking condonation of delay is filed supported by an affidavit and only if a just and sufficient cause is made out by the applicant. Sections 5 to 12 of the Limitation Act, 1963 shall apply to such applications.]

7. Relying on the provisions of Regulation 119A, it is sought to be contended that the words 'dismissed in default' are used for the first time by way of amendment effected on 17 October 2019 and that therefore any order dismissing the complaint prior to 17 October 2019 cannot be recalled under the provisions of Section 31 of the MRTU and PULP Act. I am unable to agree. Though the words "dismissed in default" are used in amended Regulation 119A, there is no corresponding amendment either to Regulations 118 and 119 and especially to Section 31 of the MRTU & PULP Act. Regulation 119A is introduced for the purpose of enabling the Tribunal to entertain application for recall of order by condoning

the delay. The real objective behind introducing Regulation 119A is to make an enabling provision for condonation of delay in filing an application for setting aside an *ex-parte* order or order dismissing the complaint in default. The objective is not to introduce a new provision for recall of order dismissing the complaint in default. That provision already existed under Section 31 of the MRTU and PULP Act. The word '*ex-parte*' used in Section 31, in my view, would also cover complaints which are dismissed in default in absence of the complainant. If the submission canvassed by Mr. Bapat is accepted, then no complaint dismissed for default prior to introduction of Regulation 119A can ever be restored. On the other hand, if the complaint is allowed *ex-parte* in the absence of opposite party, such opposite party would be in a position to seek setting aside of such *ex-parte* order under the provisions of Section 31 of the Act. In my view, the objective behind enacting Section 31 is not to restrict the power of the Industrial Court only in favour of Respondent and not to provide remedy to the complainant.

8. So far as the contention of the Petitioner that the order was passed in presence of complainant's advocate is concerned, it is seen that the order clearly directs dismissal of the complaint in default. The order dated 8 September 2017 reads thus :

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“Today this complaint is fixed for argument on P.P. Complainant is absent. Hence, proceeding is dismissed in default.”

9. Perusal of the Order dated 8 September 2017 would leave no matter of doubt that the complaint has been dismissed on account of default on the part of the complainant to remain present. The Industrial Court has not gone into the merits of the complaint. Therefore, an application for restoration of the complaint under Section 31 of the MRTU and PULP Act was perfectly maintainable.

10. So far as dismissal of Complaint (ULP) No. 66/2009 is concerned, that cannot be a reason for setting aside the Order dated 18 November 2022 restoring the complaint by setting aside the order of dismissal. If the Order passed in Complaint (ULP) No. 66/2009 has any bearing on decision of Complaint (ULP) No. 72/2009, the Petitioner would be at liberty to rely upon the Order passed in Complaint (ULP) No.66 of 2009. However, the same cannot be a reason for maintaining the order dismissing the complaint for default.

11. The power of the Industrial Court to recall an order of dismissal of complaint is discretionary. The Industrial Court has exercised the discretion in condonation of delay and in directing restoration of the complaint. This Court would not exercise its

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jurisdiction under Article 227 of the Constitution of India in sound exercise of discretion by the Industrial Court.

12. The Writ Petition, being devoid of merits, is **rejected** without any orders as to costs.

SANDEEP V. MARNE, J.