

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10594 OF 2023

M/s. R. Shantilal and Company

and Ors.

...Petitioners

V/s.

Ramchandra Baban Todkar and Ors.

...Respondents

Ms. Neelam Yadav, for the Petitioners.

Mr. Rahul Nerlekar, for Respondent Nos.1 to 4.

Ms. Divya Wadekar i/by. **Mr. Rahul Oak/B.S. Mahamulkar**, for
Respondent No.5. _____

CORAM : SANDEEP V. MARNE, J.

Dated : 2 January 2024.

P.C. :

1. By this petition, Petitioners challenge the Order dated 19 January 2023 passed by the Member, Industrial Court, Thane on application at Exhibit-U-2 in Complaint (ULP) No. 176 of 2022. The Industrial Court has partly allowed the application filed by Respondent Nos. 1 to 4 and has directed the Petitioners to allow Respondent Nos. 1 to 4 to resume their duties and to temporarily allot them the work of mathadi nature during pendency of the main complaint. The Petitioners

are further directed to pay Respondent Nos. 1 to 4 their due wages for the work done.

2. Ms.Yadav, the learned counsel appearing for the Petitioners would submit that Petitioners were not granted due opportunity of representation by the Industrial Court before passing the impugned order dated 19 January 2023. She would submit that the Petitioners had handed over papers to an Advocate who failed to appear before the Industrial Court and on this count, the Order of the Industrial Court is passed without taking into consideration the defence of the Petitioners. Alternatively, she would submit that the Petitioners have already wound up their business and an intimation to that effect was issued to Respondent No.5-Board by letter dated 24 July 2019. She would further submit that the Petitioners are no longer carrying out the business of distribution from the establishments at Kurla or Bhiwandi and that Petitioners are now engaged in the activity of trading from newly opened Office at Mulund. She would submit that since no work is available with the Petitioners, the order passed by the Industrial Court is unsustainable and is liable to be set aside.

3. Mr. Nerlekar, the learned counsel appearing for Respondent Nos. 1 to 4, on the other hand, would oppose the petition. He would submit that the Petitioners were duly served as per the Bailiff Report.

That one of the Petitioners, namely Kamlesh Mehta infact appeared before the Industrial Court on 3 November 2022 and sought time to file reply. Thereafter, despite grant of repeated opportunities, Petitioners failed to appear before the Industrial Court. He would further submit that the Order passed by the Industrial Court cannot be treated as the one passed without hearing the Petitioners. So far as the merits of the petition are concerned, Mr. Nerlekar would submit that Petitioners are actively carrying out the same business activity at a new address. That they have merely shifted their activities from Kurla and Bhiwandi to Mulund. That there is sufficient work available for Respondent Nos.1 to 4 at the establishment of the Petitioners.

4. I have also heard Ms. Wadekar, the learned counsel appearing for Respondent No.5-Board.

5. After considering the submissions canvassed by the learned counsel appearing for the parties, it is seen that there is some degree of dispute between the parties about continuation of distribution activities by Petitioners and availability of work. By letter dated 24 July 2019, Petitioners had communicated to Respondent No.5-Board about discontinuation of operations and activities of distribution from their establishment at Kurla and surrender of premises to the landlord. On the other hand, it is the case of Respondent Nos.1 to 4 that the activities

are still being continued, albeit at a different address at Mulund. This issue needs to be determined finally by the Industrial Court in an expeditious manner.

5. While Petitioners contend that no work is available to any of the members of Toli No.706, it is the contention of Respondent Nos. 1 to 4 that work is indeed available and is being executed through other persons. Therefore, the present petition can be disposed of by clarifying that the Petitioner shall allot work to Respondent Nos. 1 to 4 to the extent available. Whether Respondent Nos. 1 to 4 are being unlawfully denied work despite availability is something which can be proved by evidence and determined at the stage of final decision of the complaint. The Writ Petition is accordingly **disposed of** with a clarification that the Order dated 19 January 2023 passed by the Industrial Court shall operate to the extent of availability of work at any establishment of the Petitioners. The Industrial Court is requested to expedite the hearing of main complaint.

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SANDEEP V. MARNE, J.