

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10810 OF 2019

M/s. Kheradia Enterprises

} ...Petitioner

V/s.

Mr. Talukdar Singh and anr.

} ...Respondents

Mr. Abhishek Lalji Tripathi, *for the Petitioner.*

Mr. Manoj Gujar *a/w. Mr. T.R. Yadav i/by. M/s. C.R. Naidu & Co.,
for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Judgment Resd. On : 6 March 2024.

Judgment Pron. On : 22 March 2024.

JUDGMENT:

1) **Rule.** Rule is made returnable forthwith. With the consent of the learned counsels appearing for the parties, petition is taken up for final hearing and disposal.

2) The Petitioner employer has filed this petition challenging the Award dated 8 January 2019 passed by the Presiding Officer, 9th Labour Court, Mumbai in Reference (IDA) No. 5 of 2012. The Labour Court has set aside termination of Respondent No.1 effected in 1 July

2010 and has granted him compensation of 40 months' wages in lieu of reinstatement, continuity of service and full back wages.

3) Facts of the case, in a nutshell, are that Petitioner is a small scale enterprise engaged in supply of footwear at wholesale rates in Mumbai City. It claims to have employed six to seven temporary employees considering the smaller nature of business it undertakes. That Petitioner has a godown at Dondtad street, Mumbai and does not have its own showroom. That it engaged temporary employees in the form of Naka Hamaal for delivering footwear to its customers in various pockets of Mumbai. That the engagement of said Naka Hamals is made as and when the need arises. Petitioner contends that it may have engaged the services of Respondent No.1 on Naka Hamal basis for supply of wholesale footwear, which does not amount to employment with Petitioner.

4) On the other hand, Respondent No.1 claims that Petitioner is engaged in the business of manufacture, sale and export of shoes and allied products alongwith other businesses. That they have branches, sales outlets, a main showroom and export house situated at Dondtad Street, Mumbai and four other showrooms/outlets at Kurla, Grant Road, Ghatkopar. That it also has business of selling chandeliers at Metro and Crawford Market at Mumbai. That Petitioner is one of the leading concern in the business of shoes and chandeliers and is fully well established. Respondent No.1 claims that he was employed by the Petitioner as a salesman since September 1992 and he continued to work without any break. That Petitioner made Respondent No.1 work

for 12 to 14 hours a day, without paying wages as per law. That various service benefits such as Provident Fund, ESI, HRA were denied. That at the end of the year 2009, Petitioner started changing service condition of Respondent No.1 and even reduced his wages. When a protest was raised by Respondent No.1, Petitioner got annoyed and terminated his services on 30 July 2010 without assigning any reasons and without following the due process of law.

5) In the above background, Respondent No.1 sent a demand letter to the Petitioner on 1 August 2010 requesting reinstatement and backwages. Since the demand letter was not responded, Respondent No.1 initiated proceedings before the Conciliation Officer by filing a complaint. Since conciliation proceedings resulted in failure, a Reference was made by the appropriate government to 9th Labour Court, Mumbai regarding termination and reinstatement of Respondent No.1.

6) Respondent No.1 filed his Statement of Claim giving a background in which his services were allegedly terminated. He stated that he was 55 years old, uneducated and could not secure employment despite making several efforts. He therefore prayed for reinstatement, continuity and full backwages. The Petitioner appeared before the Labour Court and filed Written Statement and denied employer-employee relationship with Respondent No.1. Petitioner asserted that Respondent No.1 was never employed in his establishment. Respondent No.1 filed various documents in support of his claim. He led evidence by examining himself as a witness.

Petitioner also relied on various documents including the muster roll. Petitioner examined Mr. Akeel Alarakha Keradia as a witness.

7) After considering the evidence on record, the Labour Court delivered Award dated 8 January 2019 and answered the Reference partly in affirmative. The Labour Court set aside termination of Respondent No.1 effected on 1 July 2012. Instead of directing reinstatement, continuity or backwages, the Labour Court directed that Respondent No.1 be paid compensation equivalent to 40 months wages in lieu of reinstatement, continuity and backwages. Aggrieved by the Award dated 8 January 2019, Petitioner has filed the present petition.

8) When the petition came up before this Court on 8 September 2022, this Court directed that 50% amount of Recovery Certificate be deposited in the Court on which condition, the Recovery Certificate was stayed. The Recovery Certificate was issued for an amount of Rs.4,16,000/- and this Court directed deposit of amount of Rs.2,08,000/- by Order dated 8 September 2022. It appears that Petitioner delayed deposit of the said amount which was ultimately deposited on 27 June 2023.

9) Mr. Tripathi, the learned counsel appearing for the Petitioner would submit that the Labour Court has erred in passing the impugned Award ignoring the position that Respondent No.1 failed to prove employer-employee relationship with the Petitioner. That not a single piece of evidence was produced by Respondent No.1 to demonstrate as to how Respondent No. 1 was in the employment of

the Petitioner. That the burden of proving such employment rested squarely on the shoulders of Respondent No.1, which he failed to discharge. That mere occasional engagement as Naka Hamala for delivery of footwear did not make Respondent No.1 an employee of the Petitioner. Mr. Tripathi would strenuously object to the findings recorded by the Labour Court about authenticity of the Muster Roll produced by the Petitioner. He would submit that the muster roll was produced at the insistence of Respondent No.1, who never questioned its authenticity. That in absence of any challenge questioning authenticity of the muster roll, it was beyond the jurisdiction of the Labour Court to comment on its reliability or trustworthiness. He would therefore submit that the order passed by the Labour Court suffers from patent error and the same deserves to be set aside.

10) Mr. Tripathi would further submit that engagement of Naka Hamal for delivery of goods is a standard practice adopted in the locality where Petitioner's establishment is located. That Respondent No.1 might have occasionally delivered the goods to the customers of the Petitioner. However, there is nothing on record to indicate that the customer paid any amount to him. That mere reliance of Respondent No.1 on delivery receipts would not indicate that he was employed as salesman as falsely claimed in the Statement of Claim. Mr. Tripathi would further submit that the muster-cum-wage register proved beyond any iota of doubt that Respondent No.1 was never in the employment of the Petitioner. He would pray for setting aside the award passed by the Labour Court.

11) *Per-contra*, Mr. Gujar the learned counsel appearing for Respondent No.1 would oppose the petition and support the order passed by the Labour Court. He would submit that Petitioner took a false defence of lack of employer-employee relationship, which got disproved on account of production of receipts and vouchers by Respondent No.1. If Respondent No.1 was not in service of the Petitioner, there was no reason for him to possess various documents relating to the business of the Petitioner. That Petitioner failed to remain present before the Conciliation Officer nor replied to the advocate's notice and subsequently took a false stand of absence of employer-employee relationship. The defence of engagement of Respondent No.1 as Naka Hamal was not pleaded in the Written Statement. That the Labour Court has rightly held that the Muster-cum-Wage Register produced by the Petitioner were manufactured documents. That immediately on filing of the said documents, Respondent No.1 denied existence and authenticity thereof. He would submit that there is no perversity in the findings recorded by the Labour Court. He would pray for dismissal of the petition.

12) Rival contentions of the parties now fall for my consideration.

13) The main controversy created by the Petitioner before the Labour Court, and which is one again raised before this Court, is about existence of employer-employee relationship between Petitioner and Respondent No.1. Petitioner approached the Labour Court with a complaint that he was engaged on the post of Salesman by the

Petitioner since September 1992 and that his last drawn wages were Rs.10,400/- per month. Respondent No.1 claimed that he rendered services of 18 long years and was terminated on 30 June 2010. In the Written Statement, Petitioner denied that Respondent No.1 was ever employed by it. Petitioner pleaded that it had employed only six to seven employees in the establishment, which did not include Respondent No.1.

14) Since Petitioner denied employer-employee relationship, Respondent No.1 filed several documents on record, which included original receipts issued to him on behalf of the Petitioner to the suppliers for having collected the amounts from such establishments after supply of goods of the Petitioner. Respondent No.1 led evidence and proved the said receipts and stated that he collected the amounts from the customers on behalf of the Petitioner. In the cross-examination, apart from giving a suggestion that the documents produced at Exhibit-U-13 were bogus, the Petitioner did not cross-examine him on the aspect of the said receipts. Though the plea of utilisation of Respondent No.1 as Naka Hamal for delivery of goods was raised at the stage of arguments before the Labour Court and is strenuously pressed before me in the present petition, no suggestion to that effect was given to the first Respondent in the cross-examination. This is because no specific averment was made by the Petitioner in the Written Statement that Respondent No.1 was occasionally utilised as Naka Hamal. Petitioner took a calculated risk of making a bald statement, possibly after noticing that no documents were filed by the first Respondent, that there was absence of employer-employee

relationship. However, once Respondent No.1 produced some documents to show connection between him and Petitioner, it became incumbent for the Petitioner to explain those documents. To explain those receipts, Petitioner subsequently came up with a case that Respondent No.1 might have delivered its goods to its customers as a Naka Hamal. However, no such suggestion was given to the first Respondent during the course of cross-examination. To make things worse, Mr. Akeel Alarakha Keradia filed Affidavit of Evidence on behalf of the Petitioner on 27 October 2018. In that Affidavit again, he did not depose that the first Respondent was engaged as Naka Hamal for delivery of footwear. Thus there is total absence of explanation on the part of the Petitioner in respect of the various receipts produced by the first Respondent showing engagement of his services for delivery of goods to the customers of the Petitioner.

15) It is sought to be strenuously argued by Mr. Tripathi that the burden of proving employer-employee relationship is on Respondent No.1 and that Petitioner is not expected to prove the negative. In my view, once the Petitioner denied employer-employee relationship, Respondent No.1 produced some documents to show his connection with the Petitioner. Those documents did establish that Respondent No.1 delivered Petitioner's goods to its customers and that he collected amounts on behalf of Petitioner for such delivery. Once this evidence was produced, it became incumbent for the Petitioner to either prove that those receipts were fabricated by demonstrating that it never supplied any goods to the customers named in the receipts or that the amounts shown in the receipts were the never credited in its

accounts. However, except giving a vague suggestion of the receipts being bogus, the Petitioner did not make any attempt to prove that the said receipts were not genuine. To prove that the first Respondent was not in its employment, the Petitioner produced Muster-cum-Wage Registers. The Labour Court, after perusal of the muster-cum-wage register, has recorded following findings :

7) The Second Party has also moved an application for production of documents from the custody of the First Party and the same was allowed on 09/05/2018. By way of application at Exh. U-10, the Second Party has prayed for directions to First Party to file on record muster-cum-wage register since September-1992 to June-2010. While submitting reply to application at Exh. U-10, the First Party has admitted that, it maintained muster-cum-wage register of its employees. However, the First party has filed on record the muster-cum-wage register only for the period from April-2007 to March-2010. On perusal of the muster-cum-wage register of the first party in ledger book form it become crystal clear that, First party has created the fresh muster-cum-wage register. All the four ledger books are new and it bears names of about 14 employees who have signed the register with the same ink and with only initial name. The First Party while filing the written statement has submitted that, it employed only 6 to 7 employees. However, the muster-cum-wage-register which is filed by the First party reflects the names of 14 employees. The First party failed to file on record the documents as per the order below Exh. U-10. I am of the opinion that, the muster-cum-wage register filed by the First party at Exh.C6 to Exh.C9 are not reliable and trustworthy documents. The outcome of the cross examination of the Second Party is not helping the First Party's case. On the contrary, the documentary evidence as well as the oral evidence adduced by the Second Party at Exh.UW-1 and Exh.UW-2 supports his contention. Even otherwise also, the First Party has not rebutted the Second Party's justification statement. The First Party remained absent before Government Labour Officer also. Considering the facts and circumstances and evidence on record, I am of the opinion that, the Second Party has duly proved that there was employer-employee relationship between First party and him and therefore, I answer issue no.1 in the "affirmative."

16) These are the findings recorded by the Labour Court. On perusal of the original documents, the learned Judge has arrived at the conclusion that the said documents were freshly created. The Ledger Books though pertained to the year 2007 to 2010, looked fresh and new to the eyes of the learned Judge. Upon perusal of the Ledger Books, it

appeared to him as the ones not pertaining to the year 2007 to 2010. The Wage Registers were apparently produced in the year 2018 and if they pertained to the period 2007 to 2010, it should not have looked fresh and new to the learned Judge. This Court finds no reason to disbelieve the opinion formed by the Learned Judge. The learned Judge of the Labour Court has already taken note of the fact that the Ledger Books pertaining to the year 2007 to 2010 showed names of 14 employees, which was against the claim of the Petitioner that it had only six to seven employees. To the eyes of the learned Judge, the contents of the Ledger Books appeared in the same ink with only initial names. These are the findings recorded by the learned Judge on the basis of visual inspection of the books. I do not see any reason why the opinion formed by the Learned Judge, upon perusal of the original register, should be doubted by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

17) After considering the overall conspectus of the case, I am of the view that the Petitioner failed in his defence that the Respondent was engaged as Naka Hamal for delivery of Petitioner's goods to its customers. He neither pleaded that defence nor led any evidence in support thereof. On the contrary, the documents produced by Respondent No.1 establishes some connection between him and the Petitioner. I therefore do not see any reason why the finding of fact recorded by the Labour Court about existence of employer-employee relationship should be interfered with by this Court.

18) Though the Labour Court found first Respondent's termination to be invalid, instead of granting the relief of

reinstatement, backwages and continuity, it has restricted the benefit to payment of 40 months wages to the Respondent. The amount of wages of 40 months are assessed by the Assistant Labour Commissioner at Rs.4,16,000/- Respondent No.1 drew last wages of Rs.10,400/- and he was to be awarded backwages in respect of the entire period atleast till superannuation. He would have received much higher amount from the Petitioner towards backwages. However, the Labour Court has restricted the relief of compensation of 40 months wages instead of ordering reinstatement and backwages. The compensation of 40 months is arrived at by taking into consideration the judgment of the Apex Court in **O.P. Bhandari V/s. Indian Tourism Development Corporation Ltd.** I do not see any error on the part of the Labour Court in adopting the said approach by awarding compensation of 40 months wages to the first Respondent.

19) I therefore find the impugned Award of the Labour Court to be unexceptionable. The Writ Petition must fail. The Writ Petition is accordingly dismissed without any orders as to costs. Respondent No.1 shall be entitled to withdraw the deposited amount in the Court alongwith accrued interest. Within 8 weeks, the balance amount of compensation of Rs.2,08,000/- shall be paid by the Petitioner to the first Respondent alongwith interest at the rate of 6% per annum w.e.f. 8 January 2019 till the date of payment.

20) With the above directions, the Writ Petition is dismissed. Rule is discharged.

SANDEEP V. MARNE, J.

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