

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12688 OF 2024

Godrej & Boyce Mfg. Co. Ltd.

....Petitioner

V/S

Valerian Alex Fernandes

....Respondent

WITH
CIVIL REVISION APPLICATION NO.366 OF 2022

Godrej & Boyce Mfg. Co. Ltd.

....Applicant

V/S

Valerian Alex Fernandes

....Respondent

Mr. Mandar Soman *for the Petitioner/Applicant.*

Mr. Machhindra A. Patil *i/b Mr. Vijay R. Garad for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 6 SEPTEMBER 2024.

P.C.:

1 Though Writ Petition and Civil Revision Application arise out of proceedings filed under distinct and an unconnected enactments, they somehow have uncanny connection between them, which is the reason why they are being disposed of by this common order.

2 The workman Valerian Alex Fernandes has instituted Complaint (ULP) No.184 of 2010 before Labour Court, Thane, alleging unfair labour practices

on behalf of his Employer-M/s. Godrej & Boyce Manufacturing Company Limited and has prayed for his reinstatement in service with effect from 18 November 2010 alongwith full backwages and continuity of service. It appears that the employee has been discontinued from service on 18 November 2010 and consequently was called upon to vacate the residential quarter allotted to him vide order dated 19 November 2010. It appears that in the said Complaint, the Employee filed application for interim relief at Exhibit-U2 in which ad-interim relief was granted in his favour by the Labour Court vide order dated 29 December 2010. After hearing both the sides, the said application at Exhibit U2 came to be disposed of by order dated 17 February 2016 by continuing the ad-interim relief till final disposal of the Complaint. Order dated 17 February 2016 passed on application at Exhibit U2 is subject matter of challenge in Writ Petition No.12688 of 2024.

3 The Employer-Godrej treats the employee as its licensee in respect of the residential premises bearing No.X-109/14 on account of execution of Articles of Agreement for Employee's Residential Accommodation executed on 14 November 2002. According to Employer-Godrej the allotment of the said residential accommodation is not made as a condition of service to the employee and that occupation of the said accommodation is governed purely by the terms and conditions of the Agreement dated 14 November 2002. Employer-Godrej accordingly filed LE & C Suit No.13/15 of 2013 seeking recovery of possession of the said accommodation on the basis of terms and conditions of the Agreement dated 14 November 2002. The suit was decreed by the learned Judge of the Small Causes Court on 31 August 2019. The

employee preferred P-Appeal No.376 of 2019 before Appellate Bench of Small Causes Court which has been allowed by judgment and decree dated 7 January 2022, which is subject matter of challenge in Civil Revision Application No.366 of 2022. The Appellate Bench has set aside Trial Court's decree by holding that bar under section 60 of the MRTU and PULP Act was applicable to the suit filed by Employer-Godrej and that therefore the suit itself is not maintainable. The Appellate Bench has considered the fact that the subject matter of the vacation of residential quarter is incorporated in Complaint (ULP) No.184 of 2010 and that therefore bar under section 60 of the MRTU and PULP Act is attracted. For that sole reason, the eviction decree passed by the Trial Court has been set aside by the Appellate Bench.

4 In my view, what is challenged essentially in Complaint (ULP) No.184 of 2010 is the dismissal order dated 18 November 2010. Merely because the employee sought interim relief in respect of vacation of accommodation in Complaint (ULP) No.184 of 2010, it does not mean that the right of the employee to remain in occupation of the concerned accommodation is a subject matter of issue in the said Complaint. While deciding Complaint (ULP) No.184 of 2010, the Labour Court would decide the issue as to whether the dismissal order of the employee passed on 18 November 2010 is valid and whether he is entitled to the relief of reinstatement and/or backwages. Since the Employer-Godrej has already adopted due process of law by filing suit for seeking recovery of possession of the residential accommodation from the employee, the said issue need not be reagitated in Complaint (ULP) No.184 of 2010, even in a indirect manner by seeking interim relief. So far as

continuation of residence of the employee in the accommodation is concerned, his rights can be protected in the proceedings filed before the Small Causes Court. Therefore the interim relief granted in favour of the employee on 17 February 2016 in Complaint (ULP) No.184 of 2010 needs to be vacated so that grant of said interim relief does not come in the way of decision of proceedings before the Small Causes Court and its Appellate Bench.

5 Once the issue of right of the employee to occupy the residential accommodation is taken out of purview of Complaint (ULP) No.184 of 2010, the bar under section 60 of the MRTU & PULP Act would no longer apply and the Appellate Bench of Small Causes Court would be in a position to decide the validity of the decree passed by the Small Causes Court without going into the issue of maintainability of the suit. For that purpose the decree passed by the Appellate Bench on 7 January 2022 in P-Appeal No.376 of 2019 deserves to be set aside and the Appeal deserves to be restored on the file of the Appellate Bench to be decided afresh. Mr. Soman, after taking instructions from his clients, fairly makes a statement that till decision of the Appeal by the Appellate Bench, his client shall not execute the decree of the Trial Court. Statement is recorded and accepted.

6 I accordingly proceed to pass the following order:

ORDER

i) Order dated 17 February 2016 passed by Labour Court, Thane in Complaint (ULP) No.184 of 2010 is set aside and it is clarified that the issue of

right of the employee to occupy residential accommodation shall not form part of adjudication in Complaint (ULP) No.184 of 2010.

ii) The judgment and decree dated 7 January 2022 passed by Appellate Bench of Small Causes Court in P-Appeal No.376 of 2019 is set aside and the Appeal is restored on the file of the Appellate Bench for being decided afresh in the light of the observations made in the order. Statement made on behalf of the Employer-Godrej about non-execution of the decree till decision of the Appeal is accepted.

iii) Considering the fact that the Complaint (ULP) No.184 of 2010 pending for last 14 long years, the Labour Court is requested to decide the same in an expeditious manner.

iv) Even the Appellate Bench of the Small Causes Court shall accord due priority for decision of P-Appeal No.376 of 2019 considering the fact that the decree was passed on 31 August 2019.

7 All rights and contentions of the parties about merits of the Complaint pending before the Labour Court as well as proceedings remanded before Appellate Bench are expressly kept open.

8 With the above directions, Writ Petition and Civil Revision Application are **disposed of**. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)