IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3685 OF 2024

Shyam Kashinath Koli ...Petitioner
V/s.
M/s ESSEL World Leisure Pvt. Ltd. ...Respondent

Mr. R.S. Upadhyay, Advocate for Petitioner.
Mr. Kiran Bapat, Senior Counsel a/w Mr. Mahesh Shukla, Mr. Sachin Pathak and Mr. Niraj Prajapati for Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATE : 23rd September 2024

P.C. :

1. By the impugned Order dated 27th March 2024, the learned Member, Industrial Court, Mumbai directed the Complainants who desire to prosecute the complaint to deposit the amount which is paid to them at the time of settlement (VRS compensation) paid by the Respondent-employer in the Industrial Court, Mumbai within a period of four months from the date of said Order. It has been further directed that the Complaint shall proceed qua those complainants only who deposit the amount and would stand dismissed qua those complainants who fail to deposit the amount within above mentioned period and if none of the complainants deposit the amount within above mentioned period, the complaint would stand dismissed in its entirety at the expiry of said period.

2. It is the submission of Mr. Upadhyay, learned Counsel for the Petitioner that the Complaint has been filed as the provisions of closure and retrenchment as provided under Section 25-O and 25-N of the Industrial Disputes Act has not been followed. He relied on the judgment of the Supreme Court in the case of ***M/s Ariane Orgachem Private Limited Vs. Wyeth Employees Union and Ors***[1] and more particularly on paragraphs 32 and 33 of the same. He submitted that the dispute raised by the Petitioner is neither patently frivolous nor the same is belated claim and the Petitioners are not barred from raising the industrial dispute on the ground of estoppel. He submitted that the complaint is maintainable and therefore the impugned Order passed is not in accordance with law. The relevant portion of paragraphs 32 and 33 of the Supreme Court decision in the case of M/s Ariane Orgachem Pvt. Ltd. (supra) reads as under:

> "*32. Further, the High Court has rightly adverted to various judgments of this Court including Bombay Union of Journalists v. State of Bombay [AIR 1964 SC 1617] wherein it was held thus: (AIR pp. 1621-22, para 6)*
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> *"6. … it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to*

1 (2015) 7 SCC 561

make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under Section 10(1)...."

33. Therefore, in the present case, the dispute raised by the respondent Union on behalf of the workmen concerned is neither patently frivolous nor is it a belated claim of the workmen concerned. The contention of the learned Senior Counsel for the appellant that the workmen are barred from raising the industrial dispute on the ground of estoppel, is also rejected by this Court in view of the fact that estoppel is a principle of equity which deals with the effect of contract and not with its cause. It does not mean that a void or voidable contract cannot be adjudicated by the Industrial Tribunal/courts merely because the workmen concerned have accepted the voluntary retirement as pleaded by them and other benefits from the appellant as per National Insurance Co. Ltd.

3. On the other hand, it is the contention of Mr. Bapat, learned Senior Counsel that 134 workers have accepted the settlement and accordingly tendered resignation. Mr. Bapat, relied on the judgment of the Supreme Court in the case of ***Man Sing Vs. Maruti Suzuki India Limited***[2]. He pointed out paragraph 7 of the said judgment and submitted that the impugned Order passed is in accordance with law. The said paragraph 7 reads as under:

2 2011 14 SCC page 662

"7. The workmen challenged the order of the Division Bench before this Court inter alia on the ground that having held that the management's appeals were not maintainable, the Division Bench had no jurisdiction to make the impugned direction. This Court repelled the workmen's contention and in paras 100 and 101 of the decision held and observed as follows: (Ramesh Chandra Sankla case [(2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] , SCC pp. 90-91)

> *"100. Even otherwise, according to the workmen, they were compelled to accept the amount and they received such amount under coercion and duress. In our considered opinion, they cannot retain the benefit if they want to prosecute claim petitions instituted by them with the Labour Court. Hence, the order passed by the Division Bench of the High Court as to refund of amount cannot be termed unjust, inequitable or improper. Hence, even if it is held that a 'technical' contention raised by the workmen has some force, this Court which again exercises discretionary and equitable jurisdiction under Article 136 of the Constitution, will not interfere with a direction which is in consonance with the doctrine of equity. It has been rightly said that a person 'who seeks equity must do equity'. Here the workmen claim benefits as workmen of the Company, but they do not want to part with the benefit they have received towards retirement and severance of relationship of master and servant. It simply cannot be permitted. In our judgment, therefore, the final direction issued by the Division Bench needs no interference, particularly when the Company has also approached this Court under Article 136 of the Constitution.*
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> *101. For the foregoing reasons, in our opinion, the order passed by the Division Bench of the High*

> *Court deserves to be confirmed and is hereby confirmed. The payment which is required to be made as per the said order should be made by the applicants intending to prosecute their claims before the Labour Court, Mandsour. In view of the fact, however, that the said period is by now over, ends of justice would be served if we extend the time so as to enable the applicants to refund the amount. We, therefore, extend the time up to 31-12-2008 to make such payment. We may, however, clarify that the claim petitions will not be proceeded with till such payment is made. If the payment is not made within the period stipulated above, the claim petitions of those applicants will automatically stand dismissed. The Labour Court will take up the claim petitions after 31-12-2008*."

4. Accordingly, arguable questions are raised. In view of the nature of challenge, it is necessary that the Writ Petition be disposed of at the stage of admission.

5. The Writ Petition be listed for final hearing on **10th October 2024**. To be shown fairly high on board.

6. Till next date, the proceeding in Complaint U.L.P. 41 OF 2022 shall remain stayed.

(MADHAV J. JAMDAR, J.)