

**(2008) 08 GUJ CK 0003**

**In the Gujarat High Court**

**Case No :** Misc. Civil Application - For Contempt No. 2058 of 2003

Chemical Mazdoor Panchayat

APPELLANT

Vs

Ashwin G. Modi and Others

RESPONDENT

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**Date of Decision :** 08-08-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes Act, 1947 — Section 17B

**Citation :** (2008) 08 GUJ CK 0003

**Hon'ble Judges :** R.P. Dholakia, J; Dhirubhai Naranbhai Patel, J

**Bench :** Division Bench

**Advocate :** Sona Sagar, for the Appellant; J.V. Japee, for Opponent 1, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

D.N. Patel, J.—The present application has been preferred for initiating action under the provisions of Content of Courts Act, 1971 for the breach of order passed by this Court dated 2nd May, 2003 passed in Civil Application No. 3056/2003 in Special Civil Application No. 9042/2002 especially of paragraph Nos. 7 and 8, which read as under:

7. This Court, without considering the merits of the matter, that will be considered at the time of final hearing, at this stage of the view that all the workmen are entitled to benefits of Section 17-B of the I.D. Act, 1947. Therefore, it is directed to the original petitioner to the respondent workmen concerned the pay last drawn monthly wages inclusive of maintenance allowance, if any, available to the workmen, with effect from 31st December, 1998 till 30th April, 2003 within period of three months from the date of receiving the copy of the affidavit as required u/s 17-B of the I.D. Act from each workman concerned individually along with copy of this order. On the other hand, learned advocate Ms. Sona Sagar undertakes that all 79 workmen concerned who are out of job and not employed in any establishment and not receiving

adequate remuneration from the employer, will file necessary affidavit u/s 17-B of the Act immediately within period of four weeks from the date of receiving the copy of this order without any delay. It is further directed to the petitioner to pay regularly to the respondent workmen concerned the pay last drawn monthly wages inclusive of maintenance allowance, if any, available to the workmen during pendency and final disposal of this petition.

8. However, it is made it clear that this Court inclined to pass this innocuous order, on the other hand, granting liberty to the original petitioner that even in future, if the original petitioner finds any material to satisfy this Court that the workmen concerned are employed in any establishment and getting adequate remuneration from the employer, the petitioner can move this Court with appropriate proceedings for modification of this order granting relief u/s 17-B of the Act in favour of the respondents workmen.

2. Having heard learned Counsel appearing for the respective parties and looking to the facts and circumstances of the present case, it appears that:

(i) That, Reference Application bearing No. 9/1995 was instituted at the behest of applicant-workman before the Industrial Tribunal, Surat, which was decided on 31st December, 1998 and certain directions were given by the Industrial Tribunal. Against the same, Special Civil Application No. 9042/2002 was preferred by the respondent under Articles 226 and 227 of the Constitution of India. Initially, stay was granted by this Court in Special Civil Application No. 9042/2002 vide order dated 7th October, 2002 against the award passed by the Industrial Tribunal, Surat.

(ii) Thereafter, Civil Application bearing No. 3056/2003 was preferred by the present applicant for vacating stay granted by this Court in writ petition bearing Special Civil Application No. 9042/2002 mainly on the ground of breach of condition imposed by this Court vide order dated 7th October, 2002. This Civil Application preferred by the applicants was allowed vide order dated 2nd May, 2003 and the aforesaid direction was given as stated in paragraph Nos. 7 and 8 and thereby direction was given to make the payment of wages last drawn by the applicants inclusive of maintenance allowance, if any, in view of the provisions of Section 17-B of the Industrial Disputes Act, 1947.

(iii) Against the aforesaid order, a contempt of which is alleged by the applicants, L.P.A. No. 1248/2003 was preferred by the respondents along with Civil Application bearing No. 8481/2003. It is stated by the learned Counsel for the respondents that L.P.A. has been admitted by this Court and stay has been granted as prayed for in the Civil Application No. 8481/2003 in L.P.A. No. 1248/2003 and thereby Division Bench of this Court has stayed the order passed in Civil Application No. 3056/2003 dated 2nd May, 2003. Thus, the order, a contempt of which is alleged, is already stayed by the Division Bench of this Court in Civil Application No. 8481/2003.

(iv) Even otherwise also, looking to the long litigation before the High Court at

Maharashtra, it appears that more than one matters have been instituted, as for example, one by the Bank of India for the auction of the mortgaged property owned and possessed by the respondents, second, an application preferred by the present applicant for joining party in the Suit filed before the High Court at Maharashtra, thirdly, Civil Application preferred by the applicants was dismissed for default and the appeal is preferred and is also pending before the concerned Court at State of Maharashtra as per the affidavit-in-rejoinder and affidavit-in-reply filed in the present application. It is also stated by the learned Counsel for the respondents that the respondent is not a running concern nor there is any property nor any manufacturing activity is going on.

3. As a cumulative effect of the aforesaid facts, reasons and the order passed in Civil Application No. 8481/2003 in L.P.A. No. 1248/2003 and also looking to the orders passed by the High Court at Maharashtra, there is no disobedience of the order passed by this Court in Civil Application No. 3056/2003 in Special Civil Application No. 9042/2002 dated 2nd May, 2003, much less, a willful disobedience by the respondents. In view of the facts and circumstances, there is no substance in the present application. Hence, the present application is dismissed. Rule is discharged. All interim reliefs, if any, come to an end.