
(2011) 07 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 1323 of 2011

Harish	Vs	APPELLANT
D. Vijay Kumar		RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2012) 132 FLR 21 : (2012) 1 LLJ 728 : (2012) 1 MhLj 736

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Rohit Joshi, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Savant, J.—Heard Shri Rohit Joshi, the learned Counsel for the petitioner and Shri D. Vijaykumar, the respondent, in person.

Rule, with the consent of the parties made returnable forthwith.

2. The above petition takes exception to the Award dated 7.6.2008 passed by the 4th Labour Court as also the order dated 30.1.2010 passed by the same Court in Misc. Reference (IDA) No. 1/2010.

Shorn of necessary details, a few facts can be stated thus :

The petitioner herein is the heir of one Himmatbhai Thaker who is arrayed in the reference proceedings by the respondent herein as the Managing Partner of M/s. Thaker National Ltd. The respondent herein raised an industrial dispute against his termination by the said company which resulted in the State Government referring the said dispute for adjudication u/s 10(1) of the Industrial Disputes Act to the Labour Court. In the said reference proceedings, the respondent herein was the party No. 2 and the said Himmatbhai Thaker was the party No. 1. It appears that the said Himmatbhai Thaker died on 7.1.2004 during the pendency of the said reference proceedings. However, the said reference proceedings were

thereafter adjudicated ex parte and an Award came to be passed on 7.6.2008 whereby the reference was answered in favour of the respondent and the respondent was held to be entitled to reinstatement with payment of back wages and continuity of service w.e.f. 6.5.2000. The Award of the Reference Court is dated 7.6.2008 which is the first order which is under challenge in the above petition. Thereafter it appears that the respondent herein filed an application being Misc. Reference (IDA) No. 1/2010 for amendment of the cause title of the said reference proceedings so as to substitute the said Himmatbhai Thaker by his heirs. The said application was allowed by the Labour Court and accordingly the respondent was allowed to amend the Statement of Claim in the reference proceedings so as to include the heirs of the said Himmatbhai Thaker which included the name of the petitioner.

3. Heard the learned Counsel for the parties. The principal contention of the learned Counsel for the petitioner is that the Award passed in the name of a dead person is unsustainable. The learned Counsel would contend that the said Award has been passed without the heirs of the said Himmatbhai Thaker being brought on record and is, therefore, vitiated on the said ground.

4. Per contra, it is submitted by Shri D. Vijaykumar, the respondent herein who is appearing in person, that he had filed Misc. application for bringing the heirs on record which was allowed by the Labour Court by making endorsement thereon as "allowed". The said application was filed by him on 19.8.2005 wherein the names of the heirs, excluding the name of the petitioner herein are mentioned. The respondent would contend that on the said application being allowed notices were accepted by the said heirs. However, they did not object to they being brought on record. It was contended that in so far as Misc. IDA No. 1/2010 is concerned, notices were directed to be issued to the heirs, however, on wrong interpretation of the said order by the staff of the Labour Court the said notices were not issued and sent which fact is demonstrated by the letter addressed to the Secretary of the Labour Court, Nagpur on which an endorsement is made that the same as "received on 1.2.2011".

5. Having heard the learned Counsel for the parties, I have bestowed my anxious consideration to the rival contentions. In my view, the impugned Judgment and Award of the Reference Court would have to be quashed and set aside and in so far as Misc. IDA No. 1/2010 is concerned, appropriate orders would have to be passed in the instant petition. In so far as the setting aside of the judgment and award of the Labour Court is concerned, it is required to be noted that though it is claimed by the respondent herein that the application for bringing the heirs on record was allowed, no such amendment was carried out in the cause title of the reference. Neither any notice was issued to the heirs of said Himmatbhai Thaker. It is further pertinent to note that the Award, came to be passed in the name of a dead person, that in my view is inconceivable. If the application, as stated by the respondent appearing in person, for bringing the heirs on record was allowed, it was his duty to bring the heirs on record of the reference by

amending the reference proceedings. Having not done so, the same has resulted in a serious miscarriage of justice inasmuch as the heirs of the said Himmatbhai Thaker did not have the opportunity to contest the same resulting in an ex parte Award being passed against them.

6. In so far as the Misc. IDA No. 1/2010 is concerned, as mentioned hereinabove, though it is the claim of the respondent that the application for joining the heirs was allowed by the Labour Court, no such amendment was carried out and, therefore, the respondent filed an application for correcting the title of the award to show the heirs of said Himmatbhai Thaker in his place after the Award came to be passed. In my view, that was impermissible as an Award could not be corrected after it was passed. More so, when it was passed without hearing the heirs. However, during the course of hearing of the above petition, Shri Rohit Joshi, the learned Counsel appearing for the petitioner, states that he has no objection if the heirs are brought on record on the remand of the proceedings and that the petitioner herein would appear on such remand and would participate in the said reference proceedings so as to result in its early disposal. The above petition is, therefore, required to be allowed and is accordingly allowed and the following directions are issued :

(i) The impugned Judgment and Award dated 7.6.2008 of the Labour Court is quashed and set aside and the matter is remanded back to the Labour Court, Nagpur, for de novo adjudication of the reference.

(ii) The order passed in Misc. IDA No. 1/2010 is also quashed and set aside. However, the respondent would be entitled to bring the heirs of said Himmatbhai Thaker on record including the petitioner above named.

(iii) Since the learned Counsel for the petitioner states that he has no objection to the heirs being brought on record on remand of the matter, the Trial Court to allow the amendment of the cause title and thereafter issue notices to the other four heirs excluding the petitioner. In so far as the petitioner is concerned, as stated by Shri Joshi, he would appear in the said reference proceedings without notice.

(iv) On remand, the Trial Court to decide the reference proceedings by giving proper opportunity to both the parties and thereafter decide the said reference on its own merits and in accordance with law.

(v) The petitioner herein and the other heirs would be entitled to file their written statement as would be directed by the Labour Court, Nagpur.

(vi) The reference proceedings to be decided by 31st of May, 2012.

(vii) Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

(viii) The parties to appear before the Labour Court on 25th of August, 2011 at 2.30 p.m.