
(2013) 01 BOM CK 0012

In the Bombay High Court

Case No : Appellate Side Letters Patent Appeal No. 319 of 2012 in C.W.P. No. 7806 of 2012 and Civil Application No. 534 of 2012

Kamat Printers Kamgar Sanghatna

APPELLANT

Vs

Kamat Printers Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Citation : (2013) 138 FLR 1106

Hon'ble Judges : K.K. Tated, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Gayatri Singh and Ms. Anubha Rastogi, for the Appellant; Shamrao S. Patil and Avinash S. Patil, for the Respondent

Judgement

A.M. Khanwilkar and K.K. Tated, JJ.—Heard Counsel for the parties.

The respondents have raised preliminary objection regarding maintainability of this appeal on the argument that the cause of action in the fact situation of the present case has arisen outside Greater Mumbai and for which reason, the Writ Petition was filed on the Appellate Side. According to the respondents, the appeal against the order of learned Single Judge on petition filed on the Appellate Side is not maintainable. The fact remains that the Writ Petition was filed and was entertained by the learned Single Judge as one under Articles 226 and 227 of the Constitution of India. Against the order passed on such a Writ Petition, by virtue of provisions in Letters Patent Appeal, the remedy of Letters Patent Appeal is provided for. Counsel for the Respondents, however, has relied on the exposition in the case of Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, as quoted in Paragraph 10 of the decision of the Full Bench of this Court in the case of Advani Oerlikon Ltd. Vs. Machindra Govind Makasare and Others, . The said exposition is of no avail to the Respondents to substantiate the argument as canvassed before us. In our opinion, the preliminary objection is devoid of merits.

Reverting, back to the merits of the appeal, the appeal takes exception to the order of the learned Single Judge dated 14th December, 2012 in Writ Petition No.

7806 of 2012, which in turn dismisses the Writ Petition and upholds the order passed by the Industrial Court, Thane, dated 24th July, 2012 below Exhibit C-5 in Complaint (ULP) No. 20 of 2012. The Industrial Court allowed the Respondents to remove and shift the machines mentioned at Sl. Nos. 1 to 8 at page 2 of Annexure "E" of Unit No. 2 of factory situated at C-787, T.T.C. industrial Area, Khairna, MIDC, Mavi Mumbai and injuncted the complainant, their office bearers, supporters from obstructing the removal of the said machines, in any manner. At the same time, the Industrial Court restrained the Respondents employer from terminating the services of the workers, except by following due process of law.

2. The argument of the appellant is that allowing of shifting the machines would inevitably result in rendering the members of the appellant, presently working in unit No. 2, as surplus and will be retrenched from services on that count. In that situation, section 9A of the Industrial Disputes Act, 1947 is clearly attracted, as the respondents cannot effect any change in the conditions of service of the employees working in Unit No. 2.

3. It is not in dispute that Unit No. 2 is not treated as a separate establishment. It is under the same employer. It is also not in dispute that the members of the Appellant, though working in one Unit, could be transferred in another Unit for administrative reasons. In other words, they could be interchanged inter se two Units at any point of time. Indeed, if the respondents were to remove the plant and machinery in Unit No. 2, there will be absolutely no activity in the said unit but, that by itself does not mean that the members of the appellant were likely to be retrenched from services or for that matter, the number of workmen presently working with the respondents in Unit Nos. 1 and 2 would be reduced in any manner. No such case has been pleaded, either in the complaint or in any of the affidavits, which position is fairly accepted by the Counsel appearing for the appellant. It is only if the appellant was to allege and assert that the effect of removal of machinery would lead to retrenchment of the members of the appellant or that, it would result in increase or reduction of the number of persons employed by the respondents in the two Units put together, the question of change of service conditions would arise. As aforesaid, no such case has been made out in the complaint or the affidavits filed before the Industrial Court. As long as, the respondents continues to employ the members of the appellant union, who are presently working and coupled with the fact that the Industrial Court has already inducted the respondents from retrenching or terminating the services of the members of the appellant, we fail to understand as to how the decision of the Industrial Court, allowing the respondents to take away the machinery of Unit No. 2, can be faulted. In our opinion, no interference is warranted, as no manifest injustice has been caused to the appellant on account of the dismissal of the Writ Petition. Hence, dismissed. In view of dismissal of the appeal, the Civil Application is also disposed of.

4. Needless to observe that the Industrial Court will decide the main proceeding pending before it on its own merits, in accordance with law. It will be open to the

Industrial Court to consider request of the appellant or any of the parties for amendment of the main complaint or pleadings, which application will have to be considered on its own merits, in accordance with law. We place on record the argument of the respondents that the issue of section 9A of the Act cannot be invoked in the proceedings under MRTU and PULP Act, 1971. That issue is kept open to be decided at appropriate stage.