

(2010) 08 BOM CK 0011

In the Bombay High Court

Case No : L.P.A. No. 177 of 2010 and C.A. No. 229 of 2010

Thomson Press (India) Ltd.

APPELLANT

Vs

Thomson Press Kamgar Sanghtana

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Citation : (2011) 3 LLJ 207

Hon'ble Judges : R.G. Ketkar, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : J.P. Cama, S.V. Kher, i./b., B.V. Bukhari, for the Appellant; K.K. Singvi and Jane Cox, for the Respondent

Judgement

1. Heard finally by consent of parties.
2. This Letters Patent Appeal challenges the order passed by the learned single Judge of this Court in Writ Petition No. 5476/2010. By that order the learned single Judge has made following directions against the Petitioners.
 - (ii) During the pendency of the Complaint, the Company is restrained from;
 - (a) recruiting any person whether from the open market or from its own establishments elsewhere in the country or in its establishment at Airoli.
 - (b) transferring raw material, semi finished goods, finished goods, which may be lying in the establishment at Airoli.
 - (c) removing the plant and machinery from the establishment at Airoli, during the pendency of the strike.
3. So far direction ii(a) is concerned, we see no reason to interfere with it, because this will directly affect the strike which is going on.
4. So far as direction at ii(b) restraining the Appellant from transferring raw material, semi-finished goods, finished goods are concerned, we do not find even a prayer made in the application before the Industrial Court for restraining the

Appellant from removing the finished goods from the factory. Therefore, in our opinion, there is no justification for making that order. Therefore, the Appellant will be free to remove the finished goods from the factory under the supervision of the Investigating Officer of the Industrial Court.

5. So far as removal of raw material is concerned, it is the case of the Appellant that part of the raw material which is lying in the factory belongs to the customers to whom it is to be; returned.

6. In our opinion, if the raw material is not owned by the Appellant, but is owned by its customers and if they are demanding their raw material back, there would be no justification for not permitting the customers to take back the raw material belonging to them. However, it is found that there is no material on record presently available to find out which part of the raw material is owned by the customers of the Appellant. There is also no material on record to show that those customers are demanding their raw material back. In our opinion, therefore, it will be appropriate to grant liberty to the Appellant to move the Industrial Court seeking permission to remove raw material from the factory. In case the Appellant satisfies the Industrial Court that any part of the raw material presently lying in the factory does not belong to the Appellant and that it belongs to somebody else who is demanding possession of that raw material, then the Industrial Court shall permit removal of such material under the supervision of its Investigating Officer. In case an application for that purpose is made by the Appellant within a period of two weeks from today, the Industrial Court shall dispose of that application in accordance with law as expeditiously as possible, in any case within a period of four weeks from the date of its submission.

7. So far as the order restraining the Appellant from removing semi-finished goods are concerned, we see no reason to interfere with that part of the order of the learned single Judge. So far as direction contained in paragraph ii(c) of the order is concerned, according to us in view of the clear statement made before the Industrial Court that the Appellant does not intend to remove any plant or machinery from the establishment, the learned single Judge was perfectly justified in making that order. However, in case the Appellant wants to resile from that statement and wants to transfer some machineries, the Appellant shall be at liberty to approach the Industrial Court for permission to withdraw its statement. The learned Counsel appearing for the Appellant informs us that his application for review is already pending before the Industrial Court. The Industrial Court shall dispose of that application in accordance with law as expeditiously as possible. In case the issue is not already raised in the Review Application, the Industrial Court shall permit that issue to be raised and decide it in accordance with law. Till the Industrial Court makes any order, the order passed by the learned single Judge will continue to operate and two weeks after the Industrial Court makes an order, in case the order of the Industrial court permits the Appellant to remove the machineries.

8. Petition and civil application disposed