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Review Application (ULP) No. 1 of 2018

CNR-MHIC04-000061/2018

Filed on : 06.02.2018

Registered on : 07.02.2018

Decided on : 08.03.2018

Duration : Y M D
00 02 01

IN THE INDUSTRIAL COURT, MAHARASHTRA AT
THANE

REVIEW APPLICATION (ULP) NO. 1 OF 2018

IN

COMPLAINT (ULP) NO. 342 of 2017

M/s. Marsh Enterprises,
C/o. M/s. Lasons India Pvt. Ltd.
C-18, Taloja MIDC,
Taloja, Navi Mumbai.

... Applicant

V/s.

1. Sagar Krishna Tembe
At : Valap, Post : Padghe,
Taluka : Panvel, Dist. Raigad.
2. M/s. Lasons India Pvt.Ltd.,
C-18, Taloja MIDC, Taloja,
Navi Mumbai - 410 208.
3. Mr. Navin Agarwal (Director)
M/s. Lasons India Pvt.Ltd.,
C-18, Taloja MIDC, Taloja,
Navi Mumbai - 410 208.
4. Mr. Kripashankar Tiwari (Manager)
M/s. Lasons India Pvt.Ltd.,

C-18, Taloja MIDC, Taloja,
Navi Mumbai - 410 208.

... Opponents

Coram :- **SHRI. D.M. PATIL**, Member,
Industrial Court, Thane.

Appearances :-

1. Shri. S.D. Rawool, Ld. Adv. for the applicant.
2. Shri. D.H. Patil Ld. Adv. for the opponent no.1.
3. None for opponent nos. 2 to 4

J U D G M E N T

(Delivered on 8th March, 2018)

1) This is an application for review filed u/s 30(2) of MRTU & PULP Act, 1971 by the applicant. By this application the applicant sought to review order of this Court dtd. 11.01.2018 passed below Exh.U-2 in Complaint (ULP) No.342/2017. It is submitted in this said application that the applicant is a contractor having contract with M/s. Lasons India Pvt. Ltd., C-18, Taloja MIDC, Taloja, Navi Mumbai. The opponent no.1 has filed Complaint (ULP) No.342/2017 in which an interim relief application also been filed praying therein to allow the opponent no.1 employee to report for duty and to restrain the applicant from terminating the services of opponent without following due process of law.

2) The order came to be passed in the said application whereby the application Exh.U-2 was allowed and the applicant alongwith other opponents were directed not to

terminate the applicant from services without following due process of law. According to the applicant, this is ex-parte order and therefore the review application is filed. The applicant contended that the said order is on the face of it illegal and there is manifest error of law and therefore it needs to be reviewed. The applicant seeks review of the order on the following grounds ;

- (i) The opponent has wrongly mentioned the name of the company as Marsh Enterprises, the correct name of the applicant company is Mars Enterprises. .
- (ii) The opponent has never completed 240 days attendance in any calendar year during his service with the applicant.
- (iii) The opponent remained absent continuously without any permission and or information to the applicant from the month of March - 2017 to May - 2017.
- (iv)The applicant submits that the opponent on his own approached the applicant on 09.05.2017 and submitted resignation letter and requested to settle his dues if any on the grounds mentioned in the resignation letter. After receipt of the resignation letter the applicant has paid Rs.35,250/- by cheque bearing No.321250, which the applicant has admitted and the said cheque was honored in the account of the opponent on 15.05.2018.

This fact can be verified with the documents produced by the applicant in his list of documents at sr.no.1. The applicant has paid full and final amount by cheque towards his full and final settlement on 09.05.2017.

- (v) The opponent has not made any complaint and/ or made any whisper anywhere about the resignation and or forceful resignation as the documents produced by the opponent in the original complaint reveal that the opponent has written a letter to the Sr. Inspector of Police, Taloja Police Station on 30.10.2017 and letter dtd. 21.09.2017 given by Balram patil, Member Legislative Council of Maharashtra and the opponent has failed to mention about his resignation in both the documents on which much reliance was placed by the opponent himself.
- (vi) The opponent has made the present applicant as a party respondent no.1, but has not addressed any letter to the applicant being his employer and he approached this Court after 7 months from his resignation without any delay condonation application.
- (vii) The opponent has not approached with clean hands and this Court is not having jurisdiction to entertain the complaint as the case is not squarely falls within the jurisdiction of this Court.

3) The opponent no.1 has appeared in the matter and filed his reply at Exh.U-2. The opponent no.1 has denied the contents of application saying that it is not maintainable. It is contended in the reply that prior notice was served upon the applicant disclosing his intention to move the matter before this Court. Even this Court has issued notices to the applicant, however even after serving of the notices, the applicant has not appeared in the matter and lastly ex-parte order came to be passed on application Exh.U-2. The review application is being filed only after serving contempt notice. The applicant has not approached to the Court with clean hand. According to the opponent, he was unnecessarily harassed and he has not issued any resignation letter intending to resign from the services. Lastly the opponent no.1 prayed to reject the review application.

4) Considering the rival submissions of the parties, following points arise for my determination. My findings alongwith reasons to them are as under :

<u>No</u> .	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the applicant company has made out case for reviewing the order passed below Exh U-2 by this Court on 11.01.2018 in Complaint (ULP)342/2017 ?	No
2.	What Order ?	As given below.

REASONS

5) **As to Point No. 1** : Heard learned Advocate Shri. S.D. Rawool for the applicant and learned Advocate Shri. D.H. Patil for the Opponent no.1. It is vehemently submitted by the counsel for the applicant that the opponent no.1 employee has resigned from the services by resignation letter dtd. 09.05.2017. He was thereafter continuously absent and not reported to duty since he had resigned. However, by suppressing this fact the Complaint (ULP) No.342/2017 is being filed by the opponent no.1. Industrial Court, Thane has passed ex-parte interim order in the said complaint without considering stand of the applicant. Notice of the Court has not been properly served and therefore there is miscarriage of justice, hence he requested to review the order.

6) *Per contra*, it is submitted by the Ld. Counsel for the opponent no.1 that the Complaint (ULP) No.342/2017 was filed by serving prior notice upon the applicant. Even after filing of the complaint the Industrial Court has issued notices to the applicant company. However, even after accepting the notices the applicant company has not appeared in the matter and therefore application Exh.U-2 was allowed. Hence, he prayed to reject the review application.

7) Having heard both the parties, I have perused the documents filed by the applicant alongwith this application as well as record and proceeding of Complaint (ULP)

No.342/2017 which is pending in this Court. The applicant has produced certified copy of order below Exh.U-2 in Complaint (ULP) No.342/2017, copy of alleged resignation letter given by opponent no.1 dtd. 09.05.2017 and the copy of muster for the period April 2016 onwards.

8) The record of Complaint (ULP) No.342/2017 shows that the notices in that case were duly served upon the respondents therein. However, despite service of notice which can be ascertained from the bailiff report at Exh.O-1 in Complaint (ULP) No.342/2017, the respondent nos. 1 to 4 have not appeared in that matter. This fact has been noted in order below Exh.U-2 passed in aforesaid complaint. It is also noted in the order that even on the day of order none of the respondents have appeared though called repeatedly and the order was passed without any resistance by the respondents therein.

9) No doubt Sec.30(2) of the MRTU & PULP Act gives powers to the Industrial Court to review its own order. Grounds on which review can be sought are not provided in the said provision i.e. proviso of sub. Sec.2 of Sec.30 of the Act. However, review can be sought if there is apparent error or the mistake in the order.

10) If order passed below Exh.U-2 in Complaint (ULP) No.342/2017 is perused, it is clear that the respondents therein have not appeared in the matter, nor resisted the

interim application and therefore the ex-parte order on Exh.U-2 came to be passed. Hence, on the face of the order it cannot be said that there is any error apparent of the face record and therefore review of the said order cannot be made.

11) The grounds which tried to be raised in this application for review are the grounds of merit. The Complaint (ULP) No.342/2017 is filed for getting statutory benefits under item 9 & 10 of Sch.IV of the MRTU & PULP Act, 1971. Now by filing review application the applicant has come with a case that the respondent no.1 has resigned from the services by accepting his legal dues. It is also submitted that the said resignation letter has been acted upon legally whereas the opponent no.1 contended that it is not the resignation letter some same alterations are being carried out in the same. Be that as it may, rival submissions of the parties cannot be believed in review application and the same are require oral as well as documentary evidence since it is a question of pure fact.

12) Advocate for the opponent no.1 relied upon the judgment of Hon'ble Bombay High Court in the case of **Sohanlal Mijajilal Karotia v/s Welcome Group Searock Sheraton., reported in 2002 I CLR 796**. In the said judgment it is observed by Hon'ble High Court that while passing order in review application Courts cannot arrogate to itself the appellate power. The said judgment is applicable to

present case. It is not expected on the part of this Court to consider the merits of the case and only expectation to see whether there is any glaring error committed while passing order. Since the applicant fails to make out any such case, order does not require review. Hence, the grounds which are tried to be raised in review application cannot be taken into consideration for review of order dtd. 11.01.2018. Therefore, I hold that the applicant has not made out any case to review order of this Court passed below Exh.U-2 in Complaint (ULP) No.342/2017 on 11.01.2018. Hence, I answer point no.1 in the negative and proceed to pass the following order:

ORDER

1. The review application stands rejected.

2. No order as to costs. Sd/-

Date :- 08.03.2018

Place :- Thane

(D.M. Patil)

Member,

Industrial Court No.3, Thane

Argued on : 08.03.2018.

Judgment dictated on : 08.03.2018.

Judgment transcribed on : 09.03.2018.

Judgment checked &
signed on : 12.03.2018

Assistant Registrar,
Industrial Court, Thane.