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**IN THE INDUSTRIAL COURT NO.2, MAHARASHTRA AT
KOLHAPUR**

Misc. Application (ULP) No.1 Of 2018
(CNR No.MHIC09-000041-2018)

Shri Balaso Anna Talekar
R/o : Near Ganesh Mandir, Malbhag,
Rangoli, Tal. : Hatkanangale,
Dist. : Kolhapur.

..Applicant

V/s

- 1) Sanjay Founders Pvt. Ltd.,
Station Road, Ganganagar, Ichalkaranji
Tal. : Hatkanangale, Dist. : Kolhapur.
Through its Managing Director
Shri Dhondo Shivram Kulkarni
Shivkamal Building, Yasholaxmi Nagar,
Kabnoor, Ichalkaranji,
Tal. : Hatkanangale, Dist. : Kolhapur.
- 2) Shri Suryakant Mahadeo Bidkar
Director,
18151, Industrial Estate,
Opp. Development Center, Ichalkaranji,
Tal. : Hatkanangale, Dist. : Kolhapur.
- 3) Shri Baban Aadhissha Chougule,
Director
A/p : Dattavad,
Tal. : Shirol, Dist. : Kolhapur.
- 4) Shri Gajanan Shankarrao Bidkar
Director,
R/o : Ward No.6/41, Mangalwar Peth,
Ichalkaranji,
Tal. : Hatkanangale, Dist. : Kolhapur.

- 5) Shri Milind Bharamgonda Patil
Director,
Pragati Founders Pvt. Ltd.,
Laxmi Industrial Estate,
Tal. : Hatkanangale, Dist. : Kolhapur. ..Opponents

Coram : V.A. Raut, Member

Appearances : Mr.V.S. Chavan, Advocate for Applicant
Mr.D.S. Joshi, Advocate for Opponents

JUDGMENT

(Delivered on 27th March 2019)

This application has been filed by applicant u/s 50, Form No.24 (Regulation No.140-A) of MRTU & PULP Act,1971 against opponents for recovery of amount, passed in Comp.(ULP) No.186/2013 by the Industrial Court, Kolhapur on 24/08/2017.

Brief Facts –

2. The applicant was working with opponent No.1 Company in Fitling Department since 01/02/1996. The opponent No.1 company was the partnership firm. The opponent Nos.2 to 5 were the partners of opponent No.1 company. At the time of closing the opponent company Shri Dhondo Shivram Kulkarni was the Managing Director of opponent No.1. Due to internal disputes between opponent Nos.2 to 5, the opponent No.1 company was closed. The said opponent No.1 industry was closed as per the written order dt.30/09/2013. The applicant had filed complaint u/s 28 r/w item 9 and 10 of Sch.IV of the

MRTU & PULP Act, 1971 against the opponents being Comp.(ULP) No.186/2013, thereby claiming his dues and prayed that opponents be directed to pay the annexed employees half salary for May to July 2013, full salary for August to October 2013, and to pay office employees half salary for April 2013 and full salary for June to October 2013, the opponents be directed to pay arrears of bonus for 2011-2012 @ 4% and @ 8.33% for 2012-2013, also prayed to direct the opponents to pay compensation u/s 25-FFF of Industrial Disputes Act, 1947 and notice pay to the annexed employees and to pay gratuity to them. The said complaint was finally decided on 24/08/2017. The operative part of order is reproduced herein below -

Order

- (i) The complaint is hereby partly allowed.
- (ii) It is hereby declared that opponents engaged in unfair labour practice under item Nos.9 and 10 of Sch.IV of the MRTU & PULP Act, 1971.
- (iii) The opponents are hereby directed to cease and desist the unfair labour practice forthwith.
- (iv) The opponents are hereby directed to pay closure compensation to annexed employees of applicant union u/s 25-FFF(1) of Industrial Disputes Act, 1947.
- (v) The opponents are further hereby directed to pay unpaid half salary from May to July 2013, full salary from August to October 2013 to the annexed employees

and half salary for April 2013, full salary from June to October 2013 to office employees within three months from the date of receipt of copy of this order.

- (vi) The opponents are further directed to pay bonus @ 4% for the year 2011-2012 and 8.33% for the year 2012-2013 to the annexed employees of applicant union within three months from the date of receipt of copy of this order.
- (vii) The opponents are further directed to pay to gratuity amount as per Payment of Gratuity Act and over time wages from December 2012 to May 2013 to annexed employees of applicant union within three months from the date of receipt of copy of this order.
- (viii) The opponents are further directed to deposit the Provident Fund amount with penalty of annexed employees to the PF Office within three months from the date of receipt of copy of this order.
- (ix) No order as to costs.

Kolhapur.

Date : 24th August 2017.

Sd/-
(D.V. Thakare)
Member,

Industrial Court No.2, Kolhapur

3. According to applicant, in terms of said order and in implementation of same, he has calculated his due amount as per Annexure-A, total amounting to Rs.1,19,202/-. The said amount as per Annexure is not paid to the applicant. The applicant issued a letter dt.3/10/2017 to opponents and requested to obey the order of Court.

The opponent No.2 though the post department gave him intimation but did not receive the notice. The opponents have not paid the said due amount within limitation as per order of Court. Therefore, applicant has filed this application for recovery of dues from the opponents. The said amount as per Annexure is not paid to applicant, therefore he is claiming recovery of said amount. The opponents failed to pay the said amount to applicant. Hence the present recovery application.

4. The opponent No.1 company has appeared and filed written statement at Ex.C-10. It was the Managing Director of opponent No.1 company in original Comp.(ULP) No.186/2016 and company which is registered and was functioning under Indian Companies Act,1956. The company is a legal entity and opponents are not personally and in any capacity liable to pay any due from opponent No.1 company i.e. Sanjay Founders Pvt. Ltd. The opponent No.1 is mentioned by name illegally and in unauthorised manner are impleaded party to this proceeding. No order against opponent No.1 in his personal capacity may be passed.

5. The averments regarding the Comp.(ULP) No.186/2013 in para-3 of application are the facts of Comp.(ULP) No.186/2013. The amount claimed by applicant are false. The application is not maintainable, hence liable for dismissal. The present opponents are

not liable to pay any amount. The cause of action for the application has not arisen. The Annexure is false and figures in the annexure are beyond the order of court. The applicant has claimed exorbitant amount. The chart filed by other working directors is true and it mentions the correct due amount to the applicant. The application is liable for dismissal and rejection in toto.

6. The opponent Nos.2 and 3 appeared and filed written statement at Ex.C-8. It is contended that the application is false one. They denied the contentions in the application. The opponents are the Directors of opponent No.1 company which is registered and was functioning under Indian Companies Act, 1956. The company is a legal entity and opponents are not personally and in any capacity liable to pay any due from the opponent No.1 company i.e. Sanjay Founders Pvt. Ltd., The opponent Nos.2 and 3 are illegally and in unauthorised manner are impleaded party to this proceeding. No order against opponents may be passed.

7. It is contended that the amount claimed is exorbitant and not due to the applicant. The working directors in Comp.(ULP) No.186/2013 have filed the chart of the dues payable to applicant and other employees. The applicant, in this application has claimed exorbitant and excess amount and not as per the order of Industrial

Court. Hence the application is not maintainable. The application be dismissed with costs.

8. The opponent No.4 appeared and filed its written statement at Ex.C-6 and denied the claim of applicant. It is contended that the opponent Nos.4 and 5 in this application were appointed by the Directors of the company by the Hon'ble High Court in Company Appeal No.10/2009 / Company Application No.1083/2009 vide order dt.31/03/2010. Both were appointed as Directors in the meeting held on 30/06/2010 and against the will of opponent Nos.1 to 3. The opponent Nos.4 and 5 were never allowed to take part in day-to-day business of the opponent No.1 company. They were never given information regarding business and thus they protested in writing, they were never concerned. So any amount due to anyone, due to conduct of opponent Nos.1 to 3 and opponent Nos.4 and 5 are not responsible. The amounts are due, due to act of opponent Nos.1 to 3 and opponent Nos.4 and 5 cannot be made responsible for the same. The opponent Nos.4 and 5 may be deleted from the array of opponents.

9. It is contended that the amount claimed is exorbitant and not due to the applicant. The working directors in Comp.(ULP) No.186/2013 have filed the chart of the dues payable to applicant and other employees. The applicant, in this application has filed exorbitant

and excess amount and not as per the order of Industrial Court. Hence the application is not maintainable. The application be dismissed with costs.

10. The opponent No.5 appeared and adopted the written statement of opponent No.4 vide pursis at Ex.C-12.

11. Upon the rival pleadings of the parties, I have framed the following issues on 25/02/2019 and noted my findings thereon are as follows -

<u>Issues</u>	<u>Findings</u>
1) Whether the application is maintainable ?	In the affirmative
2) Whether the applicant is entitled to get Recovery Certificate u/s 50 of the MRTU & PULP Act, 1971 ?	In the affirmative
3) What Order ?	As per order below

Reasons

12. The applicant examined himself at Ex.U-8. The applicant has filed Annexure-A alongwith application, the copy of Judgment in Comp.(ULP) No.186/2013. The applicant has filed the chart of showing his dues alongwith list Ex.U-10. The applicant has filed on record evidence closed pursis at Ex.U-10A. The opponent Nos.1 to 3 have filed evidence closed pursis at Ex.C-13 and opponent Nos.4 and 5 have filed evidence closed pursis at Ex.C-14. The opponents have filed on record the chart for dues of workers alongwith Ex.C-13.

13. Issues Nos.1 & 2 :- The applicant deposed that he was working with opponents. Shri Dhondo Shivram Kulkarni was the Managing Director, Suryakant Bidkar, Baban Chougule, Gajanan Bidkar, Milind Patil were directors/partners of the company. The company was closed as per written order dt.30/09/2013. To close the company, is illegal act of opponents. Therefore, the union had filed Comp.(ULP) No.186/2013. The said complaint was decided on 24/08/2017. The opponents have not obeyed the order of court and did not pay amount as per order of court. Therefore, applicant has filed this recovery application. The applicant has filed on record the copy of Judgment in Comp.(ULP) No.186/2013 at Ex.U-2 and extract of amount payable to applicant alongwith application at Annexure-A.

14. In cross-examination the applicant has stated that now the opponent company is closed. All the properties of opponents are lying. There are boards of different debtors at the property. The owner had promised that he will pay the amount of workers after selling the property of company and accordingly issued notice to the workers. He denied that his claim is exorbitant.

15. The learned advocate Mr.V.S.Chavan for applicant has submitted that applicant had filed Comp.(ULP) No.186/2013 before this court and it was decided on 24/08/2017. As per the Judgment the applicant is entitled to get legal dues as prayed by present

application. The applicant has filed on record the chart for the due amount to the applicant at Annexure-A, which shows the legal amount due to him. The said chart is prepared as per the order of Industrial Court, Kolhapur in Comp.(ULP) No.186/2013. The opponents have filed written statement and it has not led the oral evidence. The opponents have denied the amount claimed by applicant in written statement, but the opponents have not filed on record any documentary evidence or led oral evidence to show that how the said amount is incorrect which is due to applicant. Hence the amount claimed by applicant is proper. The opponents have not challenged the order of Industrial Court.

16. The learned advocate for applicant has submitted that the present application is filed in order to execute the order of Industrial Court passed in Comp.(ULP) No.186/2013 on 24/08/2017. The present application is filed for execution. Considering the factual position that the opponents have not challenged the order of Industrial Court passed in Comp.(ULP) No.186/2013 before Hon'ble High Court. In such circumstances the applicant is entitled for recovery of his dues. Hence there is no need to consider the objection of opponents. Hence prayed to allow the recovery application. He relied on case,

- (i) Bhagwat Bhimrao Somwanshi v/s Chief Officer,
Alandi Municipal Council (2005 I CLR 475-
Hon'ble Bombay H.C.)

Ratio : While allowing the petition and remanding the matter for fresh decision to Industrial Court, it is observed that Industrial Court, in the earlier complaint, has already held that the petitioner was entitled to wages and therefore Industrial Court in present proceeding was merely required to ascertain if the amount claimed was correct arithmetically which it has jurisdiction to do.

- (ii) Ultra Drytech Engineering Ltd. and Anr. v/s
Vaibhav Laxman Suravkar and Anr.(2005 I CLR
26-Hon'ble Bombay H.C.).

Ratio : A mere perusal of the said section indicates that the said provisions are in fact summary provisions and provide for recovery of dues by an employee from the employer which are already due and payable and/or determined by the earlier proceedings. The provisions of Sec.50 nowhere prescribe that the money which is due and payable should be the exact determined sum and that an Industrial Court cannot undertake an exercise of simple arithmetical calculation. Once the rights of the parties are already determined under a valid award or an order then for the execution of such determined rights the provisions of Sec.50 of the MRTU & PULP Act, 1971 are in para material with the provisions of Sec.33(C)(1) of the Industrial Disputes Act, 1947 which have been the subject matter of

interpretation in various pronouncements of the Hon'ble Supreme Court.

Considering the above ratio and facts and circumstances of present case, it is clear that the right of applicant is already determined by the Judgment and Order of this court in Comp.(ULP) No.186/2013. Admittedly the applicant by filing this application claimed his dues from the opponents as per the Judgment passed by this court. The applicant has filed on record Annexure-A. The same has not been challenged or disproved by opponents by leading oral evidence to that effect. It is also observed by this court in Comp.(ULP) No.186/2013 in Judgment dt.24/08/2017 that it is established by applicant that by not paying compensation and legal dues the opponents engaged in unfair labour practice under item 9 and 10 of Sch.IV of the MRTU & PULP Act,1971. The evidence coupled with relevant documents made by applicant is not contradicted by opponents. Thus applicant succeeded in establishing its claim.

17. On the contrary, the learned advocate Mr.D.S. Joshi for opponents has submitted that the opponent Nos.2 and 3 are the directors of opponent No.1 company, which is registered and was functioning under Indian Companies Act,1956. The opponent company is a legal entity. The opponents are not personally and in any capacity liable to pay any dues. The opponent Nos.2 and 3 are

illegally impleaded party to this proceeding. The amount claimed is exorbitant and not due from opponents. The working directors in Comp.(ULP) No.186/2013 have filed the chart of dues payable to applicant and other employees. The applicant has filed an exorbitant and excess amounts application, not as per the order of court. Hence application is not maintainable and is liable for dismissal. Hence prayed to dismiss the application.

18. I have gone through the entire material documents on record. Annexure-A filed alongwith application showing the calculation of due amount of unpaid half salary from May to July 2013, full salary from August to October 2013 to annexed employees, the closure compensation, bonus @ 4% for the year 2011-2012 and 8.33% for the year 2012-2013. The Annexure-A is supported by way oral evidence and documentary evidence. I have perused the record and proceeding. I have perused the due amount chart of workers filed in complaint. The calculation at Annexure-A are calculation in terms of execution of the order of this court dt.24/08/2017. The chart at Annexure-A specifies the total wages of applicant calculated as per said order dt.24/08/2017. Therefore according to him the calculations are as per order of this court in Comp.(ULP) No.186/2013 dt.24/08/2017. The cross-examination of applicant clears that opponents though disputing the calculation not disproved the

calculations by examining their witness. Nothing is suggested to disprove the calculations made by applicant. The applicant is not claiming the amount of gratuity in this application accordingly he mentioned in Annexure-A with application.

19. I therefore hold that the applicant is entitled for an amount of Rs.1,19,202/- as per order of this court in Comp.(ULP) No.186/2013 dt.24/08/2017 towards his dues regarding which the recovery certificate has to be issued. The opponents have failed to pay the dues as per order of this court. Though the opponents have raised objection that the applicant has filed exorbitant and excess amounts application, on perusal of Annexure-A/Chart alongwith the complaint in Comp.(ULP) No.186/2013 the applicant was claimed the amount of gratuity, but the said gratuity amount is not claimed in the present recovery application. The applicant has stated that the said amount will claim before the Competent Authority. Thus it is seen that the amount claimed by applicant is not exorbitant and excess than the amount claimed in the Annexure-A filed alongwith complaint. Hence application is maintainable.

20. Since in Order dt.24/08/2017 this court has not awarded any interest in case of default, this court being an executing Court u/s 50 of the MRTU & PULP Act,1971 cannot go beyond the said order to impose any interest on the said due amount. Therefore, the applicant

would not be entitled to any amount towards interest as claimed.
Hence I answer issue Nos.1 & 2 in the affirmative and proceed to pass the following order.

Order

- (i) The application is hereby allowed.
- (ii) This office is directed to issue Recovery Certificate of the amount of Rs.1,19,202/- against the opponent Nos.1 to 5, to the Collector, District - Kolhapur, to recover the amount as arrears of land revenue.
- (iii) The applicant shall furnish details of property of opponent Nos.1 to 5 with supporting affidavit.
- (iv) No order as to costs.

Kolhapur.

Date : 27th March 2019.

Sd/-
(V.A. Raut)
Member,
Industrial Court No.2, Kolhapur

Argued on	27/03/19
Judgment dictated on	27/03/19
Judgment transcribed on	01/04/19
Judgment checked & signed on	09/04/19