

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **CM Nos. 2174/2011 & 7206/2006 in W.P. (C) 7976/2003**
+ **Date of Decision: 8th November, 2011**

SUPERHOUSE LEATHERS LIMITED **...Petitioner**
! **Through: Mr. Rajiv Dewan, Advocate**

Versus

\$ **RANA PRATAP SINGH & ANR.** **....Respondents**
Through:Mr. Anuj Aggarwal, Advocate

CORAM:
* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. **Whether Reporters of local papers may be allowed to see the judgment? (No)**
2. **To be referred to the Reporter or not? (No)**
3. **Whether the judgment should be reported in the digest? (No)**

ORDER

P.K BHASIN,J:

By this common order two applications, one of which is filed on behalf of petitioner-management(being C.M. No. 2174/2011) under Section 151 of the Code of Civil Procedure for a direction to HDFC Bank to produce the records relating to the grant of vehicle loan to respondent no.1-workman(who shall hereinafter be referred to as 'the workman') to show that he was gainfully employed during the relevant period and the

other application (being C.M. No. 7206/2006) is by the workman under Section 17-B of the Industrial Disputes Act, 1957 (in short 'the Act'), are being disposed of.

2. The workman had raised an industrial dispute that his services were terminated illegally on 05.08.1994 by his employer M/s Super Garments Limited, of which Company the petitioner claims to be the successor-in-interest. That dispute was referred to the labour court where the reference was registered as I.D.No. 220/96. The labour court decided the reference in favour of the workman vide award dated 10.09.2001 and he was ordered to be re-instated in service with all back wages. That award has been challenged by the petitioner-management by filing the present writ petition. While entertaining the writ petition this Court had stayed the operation of the award of the labour court vide order dated 28th November, 2003.

3. The workman entered appearance on 16-03-05 and then filed an application under Section 17-B of the Act in April, 2006 alleging therein that he had remained unemployed since the termination of his services and so he was entitled to back wages and allowances from the date of termination of his services and also monthly wages during the pendency of the writ petition. That application was supported by his affidavit.

4. The petitioner filed its reply to the application under Section 17-B of the Act and opposed the same on the grounds that the respondent-workman's employer Company had ceased to exist, he himself had deserted his job w.e.f. 06.08.1994 and also because it had come to its knowledge that the workman was gainfully employed. The plea of the application having been filed belatedly was also taken.

5. During the course of one of the hearings on the application under Section 17-B of the Act the respondent no.1-workman had filed an additional affidavit pursuant to the directions of the Court to the effect that all these years he had been surviving with the financial assistance given to him by his mother and brothers. When in the reply-affidavit filed on behalf of the petitioner-management it was claimed that the workman had purchased some property and a motorcycle after the termination of his services the workman had clarified also that in the year 1996 he had purchased one plot for Rs.54,000/- from his own savings and withdrawal from his provident fund account as also with the contributions by his mother and brother and also that the motorcycle which was purchased in his name was in fact purchased by his son with his own money but only as a mark of respect his son had purchased the motorcycle in his(workman's) name. In view of this clarification given by the workman the petitioner moved I.A.No.2174 of 2011 for directions to HDFC Bank produce the

relevant records relating to the grant of vehicle loan of Rs.59,973/- to the workman in the year 2007 as those documents would show that the workman must be gainfully employed as otherwise he would not have got the loan. In reply to that application the workman had claimed that his loan request was in fact rejected by the bank since he was unemployed.

6. I have heard the counsels for both the workman and the petitioner - management.

7. The only point urged by the learned counsel for the petitioner – management in support of the application for a direction to HDFC Bank to produce the record relating to the grant of vehicle loan to the workman and in opposition to the workman’s application under Section 17-B was that normally banks do not give any loan to an unemployed person and so the necessary loan record should be summoned to see if the workman had given details of his source of income to ensure the bank that he would be in a position to repay the loan. The learned counsel for the workman had contended that no loan was given to the workman since he was unemployed and in any case no direction to the bank for producing any record could be given in view of the decisions of the Supreme Court reported in *2009 LLR 340, “Kaivalyadham Employees Association vs. Kaivalyadham S.M.Y.M. Samity”* which was followed by a Single Judge

Bench of this Court in an unreported decision in *WP(C) No. 5658 of 2008* rendered on 06-09-2011.

8. In the present case, as noticed already, even though the petitioner-management had averred in its reply to the workman's application under Section 17-B of the Act that it had come to its knowledge that the workman was gainfully employed but still no particulars of his employee or his employment were given. The petitioner-management is now claiming the assistance of this Court in collecting evidence for it by requiring HDFC bank to come to the Court along with the records of vehicle loan which petitioner claims to have been sanctioned to the workman. However, no such assistance can be rendered to the petitioner-management as no kind of investigation is envisaged under Section 17-B of the Act and the judgment of the Hon'ble Supreme Court referred to above and which was followed by a Single Judge Bench of this Court also, which was relied upon by the counsel for the workman, do support this conclusion.

9. The management's application for summoning of the record is, therefore, dismissed while the workman's application under Section 17-B of the Act is allowed. The petitioner-management is directed to pay to the workman last drawn wages or the minimum wages fixed from time to time

by the Competent Authority, whichever is higher, from the date of the passing of the impugned award till the disposal of this writ petition. The arrears upto the month of November, 2011 shall be cleared within four weeks while future wages shall be paid on or before 7th of each English calendar month. The workman, however, is directed to give an undertaking to refund the wages in the event of petitioner succeeding in this writ petition and he is found to have received in excess of the wages payable to him under Section 17-B of the Act. This undertaking shall be furnished within two weeks. In case arrears are not cleared within the given time, the petitioner shall become liable to pay interest on the amount of arrears @ 10% per annum.

P.K. BHASIN, J

November 08, 2011