MANU/MH/2328/2012

Equivalent Citation: [2012(134)FLR145]

IN THE HIGH COURT OF BOMBAY

O.O.C.J. Appeal No. 506 of 2008 in Writ Petition No. 2515 of 2007

Decided On: 20.03.2012

Appellants: **Eastern Ship Chandlers Pvt. Ltd. and Another**
Vs.
Respondent: **Mumbai Kamgar Sabha**

Hon'ble Judges/Coram:
D.K. Deshmukh and A.V. Potdar, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: S.C. Naidu with Y.C. Naidu with Manoj Gujar with T.R. Yadav i/b. C.R. Naidu and Co.

For Respondents/Defendant: Manish Desai with Ms. Nidhi Singh i/b. Vidhi Partners

JUDGMENT

D.K. Deshmukh and A.V. Potdar, JJ.

1. By this appeal, the appellant challenges the order passed by the learned Single judge of this Court in Writ Petition No. 2515/2007 dated 1st April, 2008. That petition was filed by the present appellant challenging judgment dated 1st August, 2007 passed by the Industrial Court, Mumbai, in Complaint (ULP) No. 1069 of 1999. The learned Single Judge has dismissed the petition. By the order of the Industrial Court which was challenged in the writ petition, the Industrial Court had directed the present appellant to implement the modified Award with effect from 22nd September, 1995 and extend the benefits there under to the concerned employees and pay the difference between actual payment made and the amount that is payable to the concerned employees under the Award within two months from the date of the order.

It appears that an Award was made under section 10A of the Industrial Act pursuant to the voluntary reference to arbitration made on 29th October, 1994. It appears that the reference arose out of charter demands made by the Mumbai Kamgar Sabha on behalf of the employees working in the firms dealing in hardware articles, goods located in Nagdevi and surrounding areas in the city of Bombay. It is common ground that a company by name Eastern Stores and Trading Company Private Limited was a party to the Arbitration Agreement. The Agreement was dated 27th January, 1992. It is also an admitted position that Eastern Stores and Trading Company Private Limited, which was party to the Arbitration Agreement, was dealing in hardware and its business was located in Nagdevi.

It is the case of the petitioner that during the pendency of the reference before the Arbitrator, the aforesaid company viz. Eastern Stores and Trading Company Private Limited closed its operations. An application was made for the change of name of the appellant-company and that change was registered on 5th November, 1993. The changed name of that company now is Eastern Ship chandlers Private Limited. The Arbitrator made his Award as observed above on 29th October, 1994. In the Award,

the Arbitrator fixes wages for unskilled, semi-skilled and skilled work and also fixed Dearness Allowance, House Rent Allowance, Leave Travel allowance, medical benefits for the workmen. Thus, generally conditions of service and emoluments of the workers engaged in Concerns dealing in hardware articles located in Nagdevi area are determined by the Award. It appears that a complaint of unfair labour practices was filed by the respondent-Union before the Industrial Court to which the present appellant was joined as a respondent claiming that by not implementing the Award made by the Arbitrator, the appellant has committed unfair labour practices and a direction was sought against the appellant to implement the Award made by the Arbitrator. The appellant on being served appeared before the Industrial Court and claimed that the Award is not binding on it for several reasons. It claimed that the appellant as a corporate entity was not party to the arbitration Agreement. It was claimed that it does not carry on business in Nagdevi area and it also does not deal in hardware. It appears that oral and documentary evidence was led before the Industrial Court. The Industrial Court thereafter delivered its judgment dated 1st August 2007 holding that the Award made by the Arbitrator is binding on the appellant and that it is guilty of unfair labour practices inasmuch as it is not implementing the Award and the appellant was directed to implement the Award. This order of the Industrial Court was challenged in a writ petition filed in this Court being Writ Petition No. 2515/2007. That writ petition was dismissed by the learned Single Judge of this Court by Order dated 1st April, 2008. The present appeal is, thus, directed against the order of the learned Single Judge and the judgment of the Industrial Court.

2. Learned Counsel appearing for the petitioner submits that the present appellant is an entirely new entity and therefore, the Award made by the Arbitrator is not binding on it. Learned Counsel further submits that even assuming that only change in the name of the company is brought about in 1993, then also because admittedly there was complete change of business brought about and the location of the business was also shifted, the Award would not be binding on the appellant company. It was further submitted that the Industrial Court as also the learned Single Judge have misread the evidence on record and have not applied their mind to the material pieces of evidence on record.

Learned Counsel for the appellant also relied on a judgment of the Supreme Court in the case of Anakapalla Co-operative Agricultural and Industrial Society v. Its Workmen MANU/SC/0281/1962 : 1963 (6) FLR 1, and the judgment of Christopher Pimenta and others v. Life Insurance Corporation of India MANU/MH/0121/1958 : AIR 1958 Bom. 451.

3. We have heard the learned Counsel for the respondent. He supported the order passed by the Industrial Court as also the learned Single Judge. The learned Counsel submits that the appellant has come out with a false case that it was not party to the arbitration proceedings. Learned Counsel submits that the document which was relied upon by the appellant shows that only its name has been changed and therefore, the appellant was party to the Arbitration Agreement and therefore, Award made by the Arbitrator pursuant to that Agreement is binding on the appellant.

4. Now in the light of this rival submissions, if record of the case is perused. It becomes clear that the Award of the learned Arbitrator is pursuant to a demand made by the respondent-Union on behalf of the employees working in the firms dealing in hardware articles, goods located in Nagdevi and surrounding areas in City of Bombay. It determines and lays down conditions of service of the workmen of three

kinds (1) unskilled, (2) semiskilled and (3) skilled engaged in these establishments. It is, therefore, obvious that while determining and fixing the conditions of service and emoluments of the workers working in a particular kind of establishment and in a particular locality, the situation in existence in that locality and in that industry has been taken into consideration. Therefore, if it is shown that the establishment has ceased to carry on the same kind of business and in the same locality the Award will not apply by its own force. In order to make the Award applicable to such an establishment, it will have to be established that despite change in the nature of business and change in location, the nature of activity carried out is the same. We have not been pointed out any material placed on record in this regard. On the contrary, we find that the witness examined on behalf of the respondent by name Sitaram Krishna Chandvilkar, in paragraph 10 of his cross-examination, states the activities of respondent No. 1 as specified in the written statement are there and we do not dispute about it. The relevant paragraph of the written statement is paragraph 2 which reads as under:

> 2. The respondent No. 1 herein is a Company incorporated under the Companies Act, 1956 having its registered office at 8, Wadia House, 120, Wode House Road, Colaba, Mumbai-400 005. The Respondent No. 1 is engaged in the business of shipchandling i.e. supplying good and provisions aboard vessels. The said business is entirely different activity and the respondent No. 1 is a service provider. The respondent No. 1 therefore is in a completely different line of trade and business as compared to establishments located in Nagdevi Area of Bombay.

5. Thus, it was an admitted position between the parties that the business of the appellant No. 1 company is of Shipchandling i.e. supplying goods and provisions aboard vessels and it is also admitted position that the business carried out by the petitioner is totally different from the business carried on by the establishment located in the Nagdevi area of the city of Bombay which was party to the arbitration Agreement. Perusal of the Award shows that reference was at the behest of employees working in firms dealing in hardware articles, goods located in Nagdevi area and the surrounding areas in the City of Bombay. Perusal of the judgment of the Industrial Court, however, shows that the Industrial Court has not taken into consideration this admission on behalf of respondent No. 1 that there is a drastic change in the nature of business of the appellant No. 1 and that the location of the business is also changed. It appears from paragraph 8 of the order of the Industrial Court that it is relying on affidavit at Exhibit U-23 to record the finding that there is only change of name and only change of place of business. However, perusal of the affidavit at U-23 on the record shows that it is an affidavit filed by one Aspi Marker and in paragraph 3 of his affidavit, he states--

I say that for the past five years we have shifted our operations from the Nagdevi area and the line of business has also changed as presently the company are ship chandlers dealing in Maritime equipment. I say that infact all licenses including sales tax assessment of our erstwhile company has been completed and the said business of trading in mill gin stores has been totally wounded up.

6. The learned Industrial Court has, thus, totally omitted to consider the statement made in the affidavit at U-23 about change in the nature of business. It appears that the learned Single Judge has also fallen in the same error. Learned Single Judge in paragraph 13 of the order relying on the same affidavit at Exhibit U-23 endorses the finding of the Industrial Court that there is only change in the name of the company.

In our opinion, therefore, as it is an admitted position that there is change in the nature of business as also location of the business. Unless the respondent No. 1 leads evidence to show that despite change in the nature of business and change in location of the business, there cannot be change in the conditions of service of the employees including emoluments and wages, the Award made by the Arbitrator cannot be held to be binding on the company even assuming that the same company which was party to the Arbitration Agreement continues to exist. The judgment on which the learned Counsel appearing for the appellant has relied on deal with the question as to who can be termed as successor-in-interests, in our opinion, in the present case, it is not necessary to go into that aspect of the matter because according to us even assuming that the same company continued to exist, the Award cannot be held to be binding on it in view of drastic change in the nature of business and the location. In the result, therefore, the present appeal succeeds. The order of the learned Single Judge and the order of the Industrial Court are set aside. The complaint filed by respondent No. 1 being Complaint (ULP) No. 1069/99 is dismissed.