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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12993 OF 2022

Hiroo Advani, Age 73 years,
Advocate, Supreme Court of India,
10, Thakur Niwas, Level-2,
173, J. Tata Road, Mumbai 400 020 ... **Petitioner**

Vs.

David Vednayagam Raja,
C/o. Shri Waman Shivram Keni,
Shivram Pandurang Bhandari Chawl,
M.G. Road, Charkop Village,
Kandivali (West), Mumbai 400 067 ... **Respondent**

WITH
WRIT PETITION NO.13031 OF 2022

Hiroo Advani, Age 73 years,
Advocate, Supreme Court of India,
10, Thakur Niwas, Level-2,
173, J. Tata Road, Mumbai 400 020 ... **Petitioner**

Vs.

Waman Shivram Keni,
Shivram Pandurang Bhandari Chawl,
M.G. Road, Charkop Village,
Kandivali (West), Mumbai 400 067 ... **Respondent**

Mr. Avinash Jalisatgi with Mr. Vishwabhushan Kamble, Mr. Shaikh Yusuf Ali, and Mr. Mulanshu Vora, for the petitioners in both the writ petitions.

Mr. Narendra R. Kolte for the respondent in both the writ petitions.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 17, 2026.

PRONOUNCED ON : APRIL 30, 2026

JUDGMENT:

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner has assailed the legality and correctness of the order dated 22 June 2022 passed by the Industrial Court at Bandra, Mumbai in Revision Application (ULP) Nos. 30 and 31 of 2021.

2. The factual background, in brief, indicates that the respondent had initially instituted Complaint (ULP) No.1539 of 1998 before the Industrial Court at Mumbai alleging commission of unfair labour practices and seeking recovery of arrears which, according to the respondent, were agreed to be paid by the management of M/s Usha Offset Printers Pvt. Ltd. pursuant to a settlement dated 10 March 1998. It was the case of the respondent that under the said settlement, the company had undertaken to pay the arrears within a stipulated period of 30 days. However, despite such undertaking, the payment was not effected, and instead the company allegedly sought repeated extensions from the union on one pretext or another. It is further the case of the respondent that the company itself had instituted Complaint (ULP) No. 1439 of 1998, which ultimately came to be dismissed. The respondent has further alleged that thereafter the company declared a lockout with effect from 25 November 1998, compelling the union to file Complaint (ULP) No. 539 of 1998. The said

complaint culminated in an ex parte order dated 21 February 2004 passed by the Labour Court in favour of the respondent.

3. It appears that thereafter, on 17 February 2005, the respondent instituted Miscellaneous Criminal Complaint (ULP) No. 18 of 2005 before the 6th Labour Court at Mumbai alleging breach of the aforesaid order dated 21 February 2004. A perusal of the complaint, however, would indicate that there is no specific averment as to the role of the present petitioner in the alleged non-compliance. The complaint does not disclose as to how the petitioner could be termed as a necessary or proper party, nor does it set out any material particulars indicating that the petitioner was under any legal obligation to ensure compliance with the order of the Industrial Court. The mere fact that the petitioner was at some point of time associated with the company as a director, by itself, would not be sufficient to fasten criminal liability in the absence of specific pleadings showing his involvement in the day-to-day affairs or responsibility for compliance with the order in question. The foundational requirement of attributing responsibility has not been satisfied in the complaint. The petitioner had ceased to be a director of the said company with effect from 9 December 2001, which is a date prior to the passing of the order dated 21 February 2004. This aspect assumes significance inasmuch as the alleged breach pertains to a period subsequent to the petitioner's resignation, thereby raising a serious doubt as to the maintainability of proceedings against him.

4. The record further indicates that on 28 March 2005, the Labour Court, Mumbai took cognizance of the complaint and

issued process against the petitioner. Thereafter, the proceedings appear to have progressed at a considerably later stage, with the respondent filing a compilation of documents on 19 January 2019 and an affidavit of evidence on 26 April 2019. Even in the said affidavit, there is a conspicuous absence of any averment demonstrating that the petitioner falls within the definition of "employer" under the Act or that he was in charge of and responsible for the conduct of the business of the company at the relevant time. Despite such absence of foundational pleadings, the Labour Court proceeded to direct the petitioner to appear and record his statement under Section 313 of the Code of Criminal Procedure, 1973.

5. The petitioner thereafter invoked the revisional jurisdiction of the Industrial Court under Section 44 of the Act by filing Revision Application No. 30 of 2021. The Industrial Court, however, by the impugned order dated 22 June 2022, dismissed the revision application without properly appreciating the legal position governing the maintainability of such revision and without due consideration of the issue of limitation. The order does not reflect a proper application of mind to the settled principles governing exercise of revisional jurisdiction.

6. Mr. Avinash Jalisatgi, learned counsel for the petitioner has contended that the petitioner was not a party to the original proceedings, namely Complaint (ULP) No.1539 of 1998, and therefore the subsequent criminal complaint is not maintainable against him. It is submitted that in criminal law, vicarious liability cannot be presumed in the absence of a specific statutory

provision. In the absence of any averment or material to show that the petitioner was personally responsible for the alleged breach, the continuation of criminal proceedings would be unsustainable. It is further submitted that no period of limitation is prescribed for invoking revisional jurisdiction under Section 44 of the MRTU and PULP Act. It is further urged that neither in the complaint nor in the affidavit of evidence has the respondent made any statement to establish that the petitioner answers the description of an "employer" within the meaning of the Act or that he was in charge of the day-to-day affairs of the company. Reliance is placed on the decision in *Dipak Ray v. Mafatlal Engineering Employees' Union,* (1995) 2 Mah LJ 149 to contend that in the absence of such foundational pleadings, criminal proceedings under Section 48 of the Act cannot be sustained against a person who was not a party to the original proceedings and against whom no specific role is attributed.

7. Per contra, Mr. Narendra Kolte, learned counsel for the respondent has submitted that the respondent had duly served a compliance letter dated 11 March 2004 upon all the accused, including the petitioner, both by hand delivery and through an advocate. It is contended that despite receipt of the said communication, the accused failed to comply with the order dated 21 February 2004, thereby necessitating initiation of criminal proceedings. It is further submitted that the Labour Court, upon being satisfied that a prima facie case was made out, rightly issued process against the accused persons by order dated 28 March 2005.

8. It is also contended on behalf of the respondent that the revision application preferred by the petitioner was grossly belated, having been filed after an inordinate delay of approximately 16 years from the date of issuance of process. It is submitted that the petitioner did not file any application seeking condonation of delay nor did he furnish any satisfactory explanation for such delay. According to the respondent, the revision application was thus liable to be rejected on the ground of delay alone. It is further alleged that the petitioner has abused the process of law, and on these grounds, dismissal of the present writ petition is sought.

REASONS AND ANALYSIS:

9. Having heard the learned counsel for the parties and having perused the record placed before this Court, this Court is of the view that the present petition does not deserve interference. The reason is not found in the merits, but in the gross delay with which the petitioner has approached the revisional forum and thereafter this Court. The challenge is directed against the order dated 28 March 2005 by which process was issued against the petitioner in Miscellaneous Criminal Complaint (ULP) No. 18 of 2005, yet the petitioner chose to file Revision Application No. 30 of 2021 after a lapse of about sixteen years.

10. The factual background is not in serious dispute. The respondent had earlier obtained an order dated 21 February 2004 in Complaint (ULP) No. 539 of 1998. The respondent thereafter initiated Miscellaneous Criminal Complaint (ULP) No. 18 of 2005

alleging breach of that order. The Labour Court issued process on 28 March 2005. The petitioner did not challenge the said order within a reasonable time. He did not place before the Court any satisfactory explanation. The record does not disclose any circumstance which prevented him from approaching the revisional court earlier.

11. The petitioner has tried to contend that Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act does not prescribe any period of limitation and therefore the revision could not have been rejected on the ground of delay. This submission cannot be disputed. There may be no statutory limitation under Section 44. But the absence of a limitation does not mean that a party may sleep over its rights for years together and then seek exercise of revisional jurisdiction. The doctrine of delay and laches still operates. A litigant who approaches the Court after an unreasonable delay cannot claim relief because the statute does not fix a limit. The Court must examine whether the delay is such that it renders the claim stale. In the present matter, the answer is clearly in the affirmative.

12. The respondent has rightly pointed out that the revision was preferred after about sixteen years from the date of issuance of process. That fact is sufficient to create doubt about the maintainability of the challenge. It is not even a case where a brief delay required a liberal approach. The delay is extraordinary. No specific and cogent grounds were shown. There is no sufficient cause on record.

13. The petitioner has sought to argue that he was not a party to the original complaint and that the criminal complaint itself was not maintainable against him. That argument may have had some substance if it had been raised at the proper time. But when the petitioner allows the process to remain unchallenged for such a long duration, he cannot later insist that the Court should ignore the delay altogether.

14. The respondent has also submitted that the petitioner had participated in the affairs of the company and that the complaint and affidavit asserted his role. Whether those submissions would succeed on merits is not the issue at this stage. What is material is that the petitioner permitted the proceedings to remain pending for more than a decade and a half. On this ground alone, the Court is not inclined to reopen the matter.

15. It is necessary to notice that the Industrial Court also took the view that the revision application was belated. This Court finds no perversity in that approach. The revisional court was justified in holding that the petitioner had approached it after a inordinate delay.

16. The submission of the petitioner that there is no limitation under Section 44 therefore does not carry the matter further. This Court is not holding that every delayed revision must fail only because it is late. The Court is holding that where the delay is so enormous and the explanation is absent, the Court would be justified in refusing to entertain the challenge. In the present case, the petitioner has not been able to offer any reason for the long

interval between the issuance of process and the filing of the revision. The petition therefore suffers from the vice of laches in its strongest form.

17. For all these reasons, this Court is satisfied that the writ petition is liable to be dismissed on the ground of delay and laches alone.

18. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

19. The judgment and order dated 22 June 2022 passed by the Industrial Court at Bandra, Mumbai in Revision Application (ULP) No. 30 of 2021 is upheld.

20. Rule is discharged. There shall be no order as to costs.

(AMIT BORKAR, J.)