Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14798 OF 2023

1. **Sunanda S. Mandhare**, (Mrs. Sunanda Sunil Badrike), Age 48 years, RH-05, Loha Bhavan Coop. Housing Society Limited, Plot No.6, Sector-3, New Panvel, Raigad, Maharashtra 410 206

2. **Savitri H. Patil** (mRS. Savitri Pradip Patil) Age 45 years, Nanda Deep, Plot No.23, Road No.7, Sector, New Panvel 410 206
3. **Aarti L. Sawant** (Mrs. Rajashri Sanjay Rane), Age 45 years, 403, Rajpath Eastern Heights, Navghar Road, Near Tata Colony, Mulund (East), Mumbai 400 081
4. **Sushma Balkrishna Mhatre** (Mrs. Sushma Vlhas Kadu), Age 46, Plot No.688, Shree Swami Samarth Bunglow, Kadu Sir, Mhada Colony, Pen, Raigad, Maharashtra 402 107
5. **Nutan S. Pingulkar** (Mrs. Nutan Sanjay Chikhalikar), Age 50 years, B-201, Suraj Apartment, Plot No.160/161, Sector-4, Near Prakash Super Market, New Panvel, Raigad 410 206
6. **Kalpana P. Mankame** (Mrs. Sakshi Sanjay Powale), Age 48 years, Aditya Plaza, Plot No.91, B Wing,

First Floor, Near Purohit Hospital,
MCCH Society, Panvel, Raigad, Navi
Mumbai, Maharashtra, India 410 206

7. **Sandhya S. Chavan** (Mrs. Meenal Murlidhar Ghag), Age 50 years, Greenfield Apartments, NL-6/8/10, Sector-8, Nerul, Navi Mumbai 400 706

... **Petitioners**

Vs.

1. **Procter & Gamble Health Limited**, Godrej One, 8th Floor, Pirojshah Nagar, Eastern Express Highway, Vikhroli (E), Mumbai 400 079
2. **Sadhana R. Pote**
3. **Rohini S. Kurghode**
4. **Veena V. Pimpalvadkar**
5. **Smitha S. Khambekar**
6. **Pushpa C. Thange**
7. **Sandhya N. Singhasane**
8. **Arundhati M. Marathe**
9. **Vanshree Y. Bagade**
10. **Nalini S. Mokal**
11. **Lata S. Gaikwad**
12. **Jyotsna D. Mayekar**
13. **Neelam P. Sarmalkar**
14. **Asha D. Patil**
15. **Kalpana G. Waghmare** All C/o. Rekha-Villa CHS, 24/4, 'B' Wing, Sathe Wadi, Sane Guruji Marg, 'B' Cabin, Naupada, Thane (W) 400 602

... **Respondents**

Mr. Yogendra Pendse with Ms. Tejashree Joshi for the petitioners.

Mr. S.K. Talsania, Senior Advocate with Mr. R.N. Shah i/by Mr. Piyush Shah for respondent No.1.

Mr. Avinash Jalisatgi with Ms. Divya Wadekar and Mr. Mulanshu Vora for respondent Nos.2, 3, 4, 6, 7, 9, 10 & 12.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 9, 2026

PRONOUNCED ON : APRIL 10, 2026

JUDGMENT:

1. By the present Petition instituted under Articles 226 and 227 of the Constitution of India, the Petitioners have assailed the legality and correctness of the Judgment and Award dated 9 February 2023 rendered by the 4th Labour Court at Thane in Miscellaneous Restoration Application (IDA) No. 1 of 2022.

2. The factual matrix giving rise to the present Petition, in brief, is that the Petitioners, along with certain other workmen, excluding Respondent No. 1, had instituted proceedings under Section 33C(2) of the Industrial Disputes Act, 1947. In the said proceedings, it was, inter alia, contended that the workmen were entitled to wages in accordance with the principle of equal pay for equal work and that they had been paid wages lower than those legally due by E-Mark India Ltd. It is further the case of the Petitioners that E-Mark India Ltd. subsequently came to be taken over by Respondent No. 1 Company pursuant to a Share Purchase

Agreement concerning the healthcare business of the erstwhile Company. The erstwhile Company entered appearance in the aforesaid proceedings and tendered a detailed Written Statement contesting the claims raised therein. During the pendency of the said proceedings, the erstwhile Company, having regard to the pendency of certain other litigations, preferred an Application seeking stay of the proceedings, which Application came to be allowed by the Labour Court, thereby directing that the proceedings be kept in abeyance. Writ Petition No. 1103 of 2000 came to be disposed of on 26 October 2016.

3. The Petitioners further assert that they had challenged the said order by way of a Special Leave Petition. It is their case that notwithstanding the disposal of the Writ Petition, the Labour Court continued to keep the proceedings in abeyance until approximately the year 2019, although the matter was periodically listed on the board. Upon disposal of the aforesaid Writ Petition, the Labour Court resumed hearing of the Application. According to the Petitioners, the erstwhile Company had full knowledge of such disposal; however, it failed to remain present before the Labour Court during the subsequent proceedings.

4. Thereafter, the Labour Court, by its Judgment and Order dated 27 January 2020, allowed the Application, inter alia placing reliance upon the law laid down by the Supreme Court in State of Punjab vs. Jagjit Singh. It is further stated that immediately after the pronouncement of the said Judgment, the outbreak of the COVID-19 pandemic intervened, on account of which further proceedings could not be effectively pursued and remained stalled

for a considerable period.

5. Upon easing of the pandemic-related restrictions, the Petitioners approached the Executing Authority, namely the Deputy Commissioner of Labour. The said Authority, after affording an opportunity of hearing to the parties, issued a Recovery Certificate. It is specifically averred that Respondent No. 1 was also heard at the stage of issuance of the Recovery Certificate and was fully aware of the Judgment and Order dated 27 January 2020, as the erstwhile Company had duly communicated the same along with particulars of the execution proceedings.

6. Respondent No.1 thereafter instituted Miscellaneous Restoration Application (IDA) No. 1 of 2022 seeking restoration of the original Application on diverse grounds, including the alleged takeover of the erstwhile Company. The Petitioners entered appearance and opposed the said Application. Respondent No. 1 also sought interim relief by way of stay to the execution of the Recovery Certificate and prayed for modification of the condition of deposit from a monetary deposit to furnishing of a bank guarantee. By an order passed in Writ Petition No. 13247 of 2022, this Court permitted Respondent No. 1 to furnish a bank guarantee and enhanced the quantum from 30% to 40% of the Recovery Certificate amount. The Restoration Application was thereafter heard on merits, wherein Respondent No. 1 adduced evidence through its witness, whereas the Petitioners chose not to lead any evidence. The Petitioners contend that, by the impugned Judgment and Order dated 9 February 2023, the Labour Court allowed the said Restoration Application and restored the original Application

to its file. Being aggrieved by and dissatisfied with the said Judgment and Order, the Petitioners have invoked the writ jurisdiction of this Court by filing the present Petition.

7. Mr. Pendse, learned Advocate appearing on behalf of the Petitioners, submits that the Labour Court has committed a manifest error in appreciating the material facts on record. It is contended that Respondent No. 1 Company must be presumed to have knowledge of the pending proceedings, particularly in view of the categorical admission of its witness that both entities are, in substance, one and the same. According to him, although the Labour Court has recorded findings to that effect, it has failed to draw the necessary and correct legal inference arising therefrom. It is further submitted that the Labour Court has failed to appreciate that Respondent No. 1 had knowledge of the Judgment and Order dated 27 January 2020 at least from 25 February 2022, and despite such knowledge, did not take any steps within a reasonable period as required in law.

8. The Petitioners further contend that Respondent No. 1 did not apply for a certified copy of the said Judgment and Order until April 2022 and, more importantly, did not file any application for condonation of delay while seeking restoration of the proceedings. In the absence of such an application, it is submitted that the restoration proceedings were clearly barred by limitation. It is submitted that the Labour Court has failed to consider the aforesaid aspects in their proper perspective and has, therefore, erroneously allowed the restoration application. It is further contended that the reasons put forth by Respondent No. 1 are

wholly untenable and appear to be an afterthought. The plea regarding the demise of the Advocate is stated to be factually incorrect, inasmuch as the said Advocate was never representing Respondent No. 1. This, according to the Petitioners, clearly indicates that Respondent No. 1 has acted in an opportunistic manner with a view to reopen proceedings which had already attained finality. Mr. Pendse further submits that apart from the Advocate whose demise has been relied upon by Respondent No. 1, one Advocate Puranik was also representing the Company in the said proceedings. It is, therefore, contended that the Company was represented by more than one Advocate, and the plea sought to be raised on the basis of the demise of a single Advocate cannot be accepted as a valid or sufficient ground.

9. Learned Advocate for the Petitioners further submits that the Labour Court has failed to appreciate that the erstwhile Company had actively participated in the proceedings and that the matter was kept in abeyance by consent of parties only till the decision of the proceedings pending before this Court. It is submitted that upon disposal of the said proceedings, the Labour Court rightly resumed the matter and proceeded to pass the Judgment and Order dated 27 January 2020 in accordance with law. The Petitioners contend that, in such circumstances, Respondent No. 1 cannot be permitted to reopen the proceedings under the guise of restoration, particularly in the absence of sufficient cause and without furnishing any satisfactory explanation for the delay.

10. It is further submitted that the impugned Judgment and Order dated 9 February 2023 is contrary to settled principles of

law, suffers from non-application of mind, and has been passed without proper consideration of the issue of limitation as well as the conduct of Respondent No. 1.

11. Per contra, Mr. Talsania, learned Senior Advocate appearing on behalf of Respondent No. 1, submits that the employees were fully aware that Application (IDA) No. 174 of 1997 had been kept in abeyance till the decision in Writ Petition No. 1103 of 2000. It is submitted that after dismissal of the said Writ Petition by this Court on 26 October 2016, the employees neither placed a copy of the Judgment before the Labour Court nor informed the Labour Court about such disposal on any of the subsequent dates. It is further submitted that by suppressing this material fact, as well as the Judgment of this Court, the employees proceeded to obtain an ex-parte order, particularly at a time when the Advocate appearing for the Respondent Company had expired after a prolonged illness. It is contended that it was the bounden duty of the employees to bring the said fact to the notice of the Labour Court, especially in view of the Order dated 11 September 2013 passed by the Labour Court, wherein it was specifically observed that the proceedings shall remain in abeyance till the decision of the High Court.

12. It is further submitted that by a subsequent Order dated 27 June 2016, the Labour Court had reiterated that the main application had been kept in abeyance until the decision of the High Court in Writ Petition No. 1103 of 2000. It is pointed out that the Labour Court, in the said Order, had observed that since the issue regarding completion of 240 days of service in a year was common to both proceedings, it would not be appropriate to

record independent findings, and accordingly rejected the application seeking review. In view of the aforesaid orders, it is submitted that it was incumbent upon the employees to bring to the notice of the Labour Court the dismissal of the Writ Petition and to place on record a copy of the Judgment and Order dated 26 October 2016 passed by this Court.

13. It is further submitted that suppression of these material facts is evident from the ex-parte Judgment and Order dated 27 January 2020, inasmuch as the employees, while advancing arguments through their Advocate, failed to disclose to the Labour Court the factum of dismissal of the Writ Petition. It is contended that even in the present Petition, the Petitioners have suppressed the material facts relating to the Judgment and Orders passed in Writ Petition No. 1103 of 2000 and have merely stated that the said Writ Petition was disposed of in the year 2016, without disclosing the true effect thereof. It is further submitted that on 5 December 2023, being the first date of hearing, the Petitioners, without serving notice upon the Respondents despite a Caveat having been filed, failed to inform this Court that the Writ Petition filed by them had already been dismissed in the year 2016. It is contended that had the Respondents been served and heard, the true facts would have been placed before this Court and the Order dated 5 December 2023 would not have been passed. In support of the aforesaid contentions, reliance is placed upon the judgment of the Supreme Court in *Ramjas Foundation vs. Union of India and Others, reported in (2010) 14 SCC 38*, wherein it has been held that a party who does not approach the Court with clean hands is

not entitled to be heard on merits and is disentitled to any relief.

14. It is further submitted, placing reliance on the observations in the said judgment, that it is an established principle that when a party seeks relief on an ex-parte basis, it is under an obligation to make full and fair disclosure of all material facts, failing which any order obtained is liable to be set aside. It is further contended that the said principles have been consistently applied by the Supreme Court in a catena of decisions, wherein relief has been declined to parties who have suppressed material facts or have not approached the Court with clean hands. On the aforesaid ground alone, it is submitted that the present Petition deserves to be dismissed.

15. Learned Senior Advocate further submits that on 1 December 2018, the erstwhile E-Merck came to be acquired by Procter & Gamble pursuant to acquisition of shares. It is submitted that on 13 April 2019, Advocate K.T. Rai, who was appearing for the erstwhile Company, expired after a prolonged illness. It is further submitted that on 11 October 2019, the Labour Court was on leave as per the Roznama; however, the stage of the matter was altered to that of hearing without any formal order, and the notation "kept in abeyance" was removed. This aspect has been recorded by the Labour Court in its Order dated 9 February 2023 while restoring the proceedings. It is contended that Respondent No. 1 was never made aware of such change in status, as neither notice was issued by the employees nor by the Labour Court, and in the absence of representation due to demise of the Advocate, the Respondents remained unaware of the proceedings. It is, therefore, submitted that the Petitioners have failed to make out any case warranting

interference and no ground exists to grant any relief in their favour. According to Respondent No. 1, the Order dated 9 February 2023 passed by the Labour Court is legal, proper, and justified, and the present Petition being devoid of merit, deserves to be dismissed.

REASONS AND ANALYSIS:

16. I have gone through the rival submissions with care. The real question is not only whether Respondent No. 1 had knowledge of the earlier proceedings, but whether the Labour Court committed such an error in allowing the restoration application that this Court must interfere in writ jurisdiction. The answer has to be found in the surrounding conduct of the parties, the earlier orders of the Labour Court, the stage at which the matter stood, and the explanation offered for non-appearance and delay.

17. The Petitioners contend that Respondent No. 1 was fully aware of the proceedings and that such knowledge must be presumed, since its witness admitted that the erstwhile Company and Respondent No. 1 were in substance one and the same. It is also said that the Labour Court itself recorded findings showing continuity between the two entities, yet it failed to draw the proper legal inference. This submission cannot be brushed aside lightly. If the successor company had stepped into the shoes of the erstwhile Company, it would ordinarily be expected to take charge of pending litigation and follow the matter with due diligence. A party cannot remain silent for long and later claim complete ignorance as a matter of course. At the same time, presumed

knowledge is not the same as proved effective knowledge on a particular date. The Court has to see whether there was notice in fact, whether the matter was listed, and whether the party had a fair chance to appear.

18. The record shows that the proceedings under Section 33C(2) had remained in abeyance for a long time because of pending proceedings before this Court. The orders dated 11 September 2013 and 27 June 2016 clearly show that the Labour Court itself had kept the matter in suspension till the decision of Writ Petition No. 1103 of 2000. Those orders also make it plain that both sides were conscious that the fate of the Labour Court matter was linked with the result of the writ petition. Once the writ petition was disposed of on 26 October 2016, it was certainly expected that the parties would place the fact before the Labour Court and seek appropriate directions. The mere expectation of such conduct does not by itself answer the further question whether Respondent No. 1 was given due opportunity after the case was revived or whether it was proceeded against without effective notice.

19. The Petitioners say that Respondent No. 1 had knowledge of the Judgment and Order dated 27 January 2020 at least by 25 February 2022, and even then did not act with reasonable quickness. They also point out that the certified copy was not applied for till April 2022 and no separate application for condonation of delay was filed. In a case where a party wants restoration after the passage of time, the explanation for delay cannot be vague or casual. The law expects a reasonable and honest explanation. But the issue here is not to be decided in

isolation only on the basis of dates. The Labour Court was required to see the entire sequence. The proceedings had remained dormant for years. The status of the matter on the board had changed. The company says no notice was issued. Its earlier Advocate had died after illness. There was also another Advocate, Puranik, said to have been on record. These facts together created a situation in which the Labour Court could reasonably hold that the absence was not deliberate in the strict sense urged by the Petitioners.

20. The Petitioners have further argued that the plea based on the death of the Advocate was false, because the said Advocate was not even representing Respondent No. 1, and in any case another Advocate Puranik was also representing the company. This submission does raise doubt on the exact manner in which the company was represented. Yet it does not by itself demolish the finding of the Labour Court. The death of one Advocate may not be the only reason, but it can still be one of the reasons showing why the company did not follow the matter with the expected speed. The presence of another name on record is not enough to conclude that there was representation on every relevant date. Representation in law is a matter of actual appearance, notice and conduct.

21. The Petitioners also say that the erstwhile Company had participated in the proceedings and that the matter was kept in abeyance only by consent till the decision of the pending writ petition. On that aspect there can be little dispute. The earlier orders show that the matter was indeed kept in abeyance because there was a pending proceeding before this Court. Therefore when

that proceeding ended the parties were expected to take steps. But this point, instead of helping the Petitioners fully, also cuts both ways. If the matter had been kept in abeyance for a specific reason, then the later change in the board position and the resumption of hearing ought to have been clearly brought to the notice of all concerned. The record suggests that the stage changed and the caption “kept in abeyance” was removed without a clear order being communicated to the company. The Labour Court has noted this aspect. That finding cannot be ignored unless it is shown to be impossible.

22. The charge of suppression is pressed strongly by both sides. The respondent says the employees suppressed the dismissal of Writ Petition No. 1103 of 2000 and thereby obtained an ex parte order. The Petitioners, on the other hand, maintain that Respondent No. 1 was aware of the dismissal, that its witness admitted the identity between the two companies, and that the restoration application was itself a device to reopen concluded proceedings. Suppression is a serious allegation. It affects the fairness of the process. But it must be tested against the actual procedural history. The earlier Labour Court orders do show that the existence of the writ petition was known. The question is whether after disposal of that writ petition the matter was properly brought back before the Labour Court with notice to all concerned. On the present record, the Labour Court appears to have accepted the explanation that Respondent No. 1 was not effectively informed about the resumed hearing and that, because of the changed status of the case, it did not have a fair opportunity to

appear. That conclusion may not be the only possible one, but it is certainly a possible one.

23. The argument based on limitation also does not carry the matter any further. The Labour Court was not dealing with a technical defect alone. It was dealing with a restoration request arising out of a long history, where the matter had remained in abeyance for years, where the successor company claimed no effective notice, and where the explanation was supported by evidence. The rule of limitation is meant to bring certainty, but it cannot be applied in a vacuum so as to defeat the ends of justice where the court below has taken a bona fide view on facts. In the present case, the Labour Court was entitled to weigh the conduct of the parties and decide whether sufficient cause had been shown. That is a matter of discretion. Unless such discretion is shown to be arbitrary or perverse, interference is not called for.

24. Much stress has been laid by the Petitioners on the fact that Respondent No. 1 did not immediately apply for a certified copy and did not file a formal condonation application. These are valid points, but they are not decisive by themselves. Courts are concerned with substance, not with procedural lapses. Where the party explains that it came to know later, that it had no proper representation, and that the record itself reflected confusion about the status of the matter, the Labour Court may still choose to restore the proceedings so that the dispute is heard on merits. Such a course does not amount to illegality merely because the application was not perfectly drafted.

25. The Labour Court examined the earlier orders, the change in the status of the case, the version of Respondent No. 1 regarding knowledge and representation, and the evidence led before it. It then allowed restoration. The reasons may not satisfy the Petitioners, but they cannot be said to be unsupported by record. The petitioners have not shown that the Labour Court ignored any decisive material, applied a wrong principle of law, or exercised jurisdiction in a manner so unreasonable that it calls for interference. The impugned order therefore does not suffer from such patent illegality as would justify writ correction.

26. For these reasons, the challenge to the Judgment and Order dated 9 February 2023 cannot succeed. The restoration was granted by the Labour Court after considering the rival cases and the surrounding facts. In the absence of any clear perversity, this Court would not be justified in upsetting that decision. The Petition, therefore, deserves to fail.

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

(i) The Writ Petition stands dismissed;

(ii) The Judgment and Order dated 9 February 2023 passed by the 4th Labour Court, Thane in Miscellaneous Restoration Application (IDA) No. 1 of 2022 is upheld;

(iii) The proceedings in Application (IDA) No. 174 of 1997, as restored by the Labour Court, shall now proceed in accordance with law and be decided on their own merits, without being influenced by any observations made in the

present judgment;

(iv) All contentions of the parties on merits are kept expressly open;

(v) In the facts and circumstances of the case, there shall be no order as to costs;

(vi) Pending applications, if any, stand disposed of.

(AMIT BORKAR, J.)