Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10074 OF 2016

1. **Echjay Forging Industries Pvt Ltd**
   (Formerly known as Echjay Forgings Pvt. Ltd) Kanjur Village Road, Kanjur (E) Mumbai:- 400 042

2. **Deepakbhai M. Doshi**
   M/s. Echjay Forging Industries Pvt Ltd (Formerly known as Echjay Forgings Pvt Ltd) Kanjur Village Road, Kanjur (E) Mumbai: 400 042.

... petitioners

V/s.

1. **Vasant Krishna Ghadge,**
   C/o Krishna Vithoba Gurav, Gurav Chawl, New Amar Bharat Seva Mandal, Sainath Nagar Road, Behind KVK High School, Ghatkopar (W), Mumbai 400 086.

2. **Mr. Krishna Vithoba Gurav,**
   Gurav Chawl, New Amar Bharat Seva Mandal, Sainath Nagar Road, Behind KVK High School, Ghatkopar (W), Mumbai 400 086.

3. **Mr. Anilkumar Nanda Naik**
   C/o Krishna Vithoba Gurav, Gurav Chawl, New Amar Bharat Seva Mandal, Sainath Nagar Road, Behind KVK High School, Ghatkopar (W), Mumbai 400 086.

4. **Mr. Sachin Gangaram Mahadik,**
C/o Krishna Vithoba Gurav,
Gurav Chawl, New Amar Bharat Seva
Mandal, Sainath Nagar Road,
Behind KVK High School,
Ghatkopar (W), Mumbai 400 086. ... **Respondents**

Mr. Avinash Jalisatgi with Ms. Divya Wadekar and Mr. Mulanshu Vora, for petitioners.

Mr. Shafi Kazi, Mr. T. V. Louis, Mr. Biju Joseph, & Mr. Vishal Sapre i/b KLT Law Associates, for respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 13, 2026

PRONOUNCED ON : MARCH 26, 2026

JUDGMENT:

1. By the present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioners call in question the legality and validity of the order dated 20 July 2016 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 248 of 2013. The petitioners seek issuance of a writ of certiorari, or any other appropriate writ, order or direction, for calling for the record and proceedings of the said complaint and, upon examination thereof, for quashing and setting aside the impugned order.

2. The facts giving rise to the present petition, in brief, are as follows. Petitioner No. 1 is a private limited company, formerly known as Echjay Forgings Pvt. Ltd., engaged in the business of manufacturing and machining steel and steel alloy forgings at its

factory situated at Kanjur Village Road, Kanjur (East), Mumbai. The respondents were employed in the said factory. The petitioners declared closure of the said factory and terminated the services of the four respondents for the reasons set out in the notice of closure dated 21 June 2013. Aggrieved thereby, the respondents filed Complaint (ULP) No. 248 of 2013 before the Industrial Court, Mumbai under Section 28 read with Items 9 and 1(c) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. By its final judgment and order dated 20 July 2016, the Industrial Court held, inter alia, that the petitioners had engaged in unfair labour practices by effecting an illegal closure and issued consequential directions against the petitioners.

3. It is the case of the petitioners that pursuant to a Scheme of Arrangement in the nature of a de-merger, sanctioned by this Court by order dated 05 December 2014 in Company Scheme Petition No. 432 of 2014 along with connected Company Summons for Direction No. 758 of 2013 and Company Scheme Petition No. 433 of 2014 along with Company Summons for Direction No. 759 of 2013, all assets and liabilities pertaining to the said factory stood transferred to petitioner No. 1. Petitioner No. 2 is stated to be a Director of petitioner No. 1. At the relevant time, the petitioners were engaged in manufacturing and machining of steel and steel alloy forgings, and in or about the year 2012, approximately 129 employees, including staff members, were employed at the said factory. The petitioners contend that owing to severe recessionary conditions prevailing globally and

rising inflation, the financial position of petitioner No. 1 became precarious. In these circumstances, a decision was taken to shift and relocate the manufacturing activities from the existing premises at Kanjur, Mumbai to Khalapur in District Raigad. Accordingly, a notice dated 10 February 2012 was displayed in the factory informing all employees of the proposed relocation. By the said notice, a Voluntary Retirement Scheme was also introduced for the employees.

4. The said notice was challenged by the employees by filing Complaint (ULP) No. 142 of 2012 before the Industrial Court, Mumbai alleging unfair labour practices, along with an application for interim relief. By an interim order dated 23 August 2012, the learned Member of the Industrial Court directed the petitioners, inter alia, to provide work to the employees at the Mumbai factory. The petitioners challenged the said interim order by filing Writ Petition No. 8850 of 2012 before this Court. The learned Single Judge admitted the petition and granted a stay to the operation of the Industrial Court's order dated 23 August 2012. The employees thereafter preferred Letters Patent Appeal No. 854 of 2012. The Division Bench allowed the appeal, set aside the order of the learned Single Judge, and remanded the matter for fresh consideration. During the pendency of the said proceedings, the workmen joined a trade union known as Akhil Bharatiya Asanghathit Shramik General Kamgar Union. After prolonged negotiations, an amicable settlement was arrived at between the petitioners and the workmen represented by the said union. Similarly, the staff members constituted a Staff Committee and

entered into a separate but similar settlement with the petitioners. Under both settlements, the workmen and staff members expressly stated that they were not willing to continue employment at the Khalapur unit and agreed to relinquish their rights to employment or re-employment. It was agreed that they would voluntarily resign from service, and in consideration thereof, the petitioners would pay monetary compensation and other benefits. It was further agreed that such resignations would take effect from 19 June 2012. Except for the present four respondents, all remaining 125 workmen and staff members accepted the terms of the settlement and executed the same. The petitioners paid all dues in accordance with the settlement to those who accepted it. The present respondents did not accept or sign the settlement. It is the case of the petitioners that all other employees had either resigned or were deemed to have resigned with effect from 19 June 2012. Those employees who had accepted the settlement filed a purshis dated 07 March 2013 before the Industrial Court in Complaint (ULP) No. 142 of 2012 seeking withdrawal of their names, which was allowed and their names were deleted from the proceedings. According to the petitioners, after 18 June 2013, only the present respondents continued in employment. In view of financial constraints and the alleged impossibility of continuing operations, the petitioners decided to permanently close the factory and issued a notice of closure. The services of the respondents were terminated by issuing individual termination letters on account of closure, and they were paid all statutory dues. It is further contended that the average number of employees during the

twelve months preceding the closure was less than 100, and therefore, the provisions of Chapter V-B of the Industrial Disputes Act, 1947 were not attracted.

5. The petitioners contend that since the services of all employees concerned in Complaint (ULP) No. 142 of 2012 had come to an end, the said complaint had become infructuous and was accordingly disposed of by the Industrial Court. The respondents did not challenge that order. Thereafter, on 29 July 2013, the respondents filed Complaint (ULP) No. 248 of 2013 before the Industrial Court, Mumbai under Section 28 read with Items 9 and 10 of Schedule IV of the ULP Act, challenging the closure and termination of their services. Interim reliefs were also sought. The respondents filed documents along with a list. The petitioners filed their written statement and supporting documents, including a list dated 30 July 2013. Upon an application made by the respondents seeking production of documents, the petitioners produced muster rolls for the relevant period and filed a purshis explaining their inability to produce certain other documents. Subsequently, original muster rolls and additional documents were also produced. Respondent Nos. 1 and 2 entered the witness box, while the other respondents did not lead evidence. On behalf of the petitioners, one Mr. K. K. Chandrakant, an ex-Cashier, was examined as a witness. Both parties also filed written submissions in addition to oral arguments. Upon consideration of the material on record, the Industrial Court, by its judgment and order dated 20 July 2016, held that the closure effected by the petitioners was illegal and

amounted to an unfair labour practice under Items 9 and 10 of Schedule IV of the ULP Act. The Industrial Court further directed the petitioners to pay 50 percent of the wages to the respondents from 21 June 2013 till the date of their superannuation, calculated on the basis of their last drawn wages.

6. Mr. Avinash Jalisatgi, learned counsel appearing on behalf of the petitioners, submitted that the respondents, by filing Complaint (ULP) No. 248 of 2013 before the Industrial Court, have challenged the action of the petitioners in declaring closure of the factory and the consequential termination of their services. It is contended on behalf of the respondents that such closure is illegal, mala fide and amounts to unfair labour practices under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The challenge to the closure is principally founded on two grounds, namely, that the closure was effected in violation of the provisions of the Industrial Disputes Act, 1947, and that prior permission of the State Government, as allegedly required, was not obtained. Learned counsel for the petitioners further submitted that the Industrial Court, by the impugned order, has allowed the complaint and, upon holding the closure to be illegal, has directed the petitioners to pay 50 percent of the monthly wages to the respondents till their respective dates of superannuation. According to him, the said order is contrary to law, unsustainable and liable to be quashed and set aside. He submitted, firstly, that the Industrial Court has erroneously held that the petitioners committed a breach of Section 33 of the Industrial Disputes Act,

1947. It is urged that for attracting Section 33, it must be established that a proceeding of the nature contemplated therein was pending before a Court or Tribunal, which was not the case here. The pendency of proceedings under the ULP Act or a writ petition would not attract Section 33. Reliance is placed on the decision in *Uttam B. Abhang vs. Durwani Karmachari Sahakari Patsanstha Maryadit, Ahmednagar, 2015 LAB. I.C. 4132*. It is further submitted that there was no specific pleading in the complaint in respect of any alleged breach of Section 33. Secondly, it is contended that the finding of breach of Section 18 of the Industrial Disputes Act, which pertains to settlements, is also misconceived. Elaborating further, learned counsel submitted that settlements were entered into with 76 workmen and 49 staff members, aggregating to 125 employees. None of these employees have questioned the said settlements. All of them accepted the terms, tendered resignation and voluntarily ceased employment. It is submitted that the present four respondents, who did not accept the settlements, have no locus to challenge the same. It is further pointed out that these 125 employees filed affidavits before the Industrial Court and sought deletion of their names from Complaint (ULP) No. 142 of 2012, which was accordingly allowed. It is thus contended that the legality of the said settlements could not have been examined in the present proceedings arising out of Complaint (ULP) No. 248 of 2013.

7. Learned counsel further submitted that the Industrial Court has erred in holding that the petitioners violated the provisions of Chapter V-B of the Industrial Disputes Act, particularly Section 25-

O. He submitted that as per Section 25-K, Chapter V-B applies only to industrial establishments employing 100 or more workmen on an average per working day during the preceding twelve calendar months. The Industrial Court has not recorded any finding that this threshold was satisfied. It is contended that the burden to prove that the number of workmen exceeded the statutory limit lies upon the respondents, which burden they have failed to discharge. Reliance is placed on Maharashtra General Kamgar Union vs. Indian Gum Industrial Ltd. It is further submitted that the petitioners produced muster rolls demonstrating that the average number of employees during the period from 21 June 2012 to 21 June 2013 was approximately 85. It is also pointed out that Respondent No. 1, in his cross-examination, admitted that the statements regarding the number of employees in his affidavit were based on instructions of his advocate and that he was unable to substantiate the same. It is further submitted that the Industrial Court has incorrectly held that the petitioners retrenched 129 employees. According to the petitioners, out of 129 employees, 125 had voluntarily resigned and left service prior to the closure, and therefore, there was no question of their retrenchment. It is also contended that such a case was never pleaded by the respondents.

8. Learned counsel for the petitioners further submitted that in proceedings under the ULP Act, where closure is under challenge, the Industrial Court cannot examine the motive of the employer in effecting closure. Reliance is placed on the decision in M/s. Indian Hume Pipe Co. Ltd. vs. Their Workmen. It is contended that

despite this settled position, the Industrial Court has erroneously gone into the question of motive and recorded a finding that the closure was effected with the intention of selling the factory land. It is further submitted that once the closure is complete and final, no relief could have been granted by the Industrial Court. It is pointed out that, as stated in the Additional Affidavit dated 24 December 2025, the factory is no longer in existence. The petitioners have also placed on record details of the number of workmen and man-days for the relevant period to demonstrate that the average number of workmen per working day was 84.85, which is below the statutory threshold. In support of the above submissions, reliance is placed on the judgments in *Maharashtra General Kamgar Union vs. Indian Gum Industrial Ltd.2000 II CLR 509,, M/s. Indian Hume Pipe Co. Ltd. vs. Their WorkmenAIR 1968 SC 1002.*

9. Per contra, Mr. Shafi Kazi, learned counsel appearing on behalf of the respondents, submitted that the alleged shifting of the factory to Khalapur was merely a pretext and a device adopted by the petitioners to circumvent statutory obligations. According to him, the real intention of the petitioners was to dispose of the factory premises at Kanjurmarg for development purposes, as is evident from the Additional Affidavit dated 24 December 2025. It is submitted that the land has been converted from industrial to residential use and has been developed by constructing multiple buildings comprising a large number of flats, most of which have already been sold and occupied. It is contended that third-party rights have been created, rendering the closure irreversible.

According to the respondents, such conduct amounts to a clear violation of the provisions of the Industrial Disputes Act, 1947 and demonstrates that the plea of financial difficulty was merely a facade. It is further alleged that the settlements were engineered in collusion with a so-called union and its office bearers, including one Ms. Nasreen Shinde, and that the entire process was vitiated by mala fides and lack of transparency. Learned counsel for the respondents submitted that the material on record clearly establishes that the closure was a mere camouflage adopted to evade statutory obligations. It is contended that the action of the management was taken in collusion with a union and in disregard of orders passed in pending proceedings before this Court as well as the Industrial Court. It is further submitted that the Industrial Court has rightly held that the petitioners indulged in unfair labour practices under Items 9 and 10 of Schedule IV of the MRTU and PULP Act. It is further submitted that the Industrial Court has recorded a finding that the retrenchment of employees was in contravention of Sections 18, 25-N and 25-O of the Industrial Disputes Act, 1947, and has accordingly granted relief of 50 percent wages to the respondents from 21 June 2013 till their superannuation. Reliance is placed on the material forming part of the record of the writ petition. It is thus contended that the termination of services of the respondents under the guise of closure is illegal, mala fide and unjustified. Learned counsel further submitted that the alleged closure and retrenchment were effected during the pendency of proceedings and in violation of subsisting orders passed by competent courts. It is contended that

the petitioners failed to comply with such orders or to seek proper adjudication before taking such action. In these circumstances, the closure and termination are liable to be held illegal and in breach of statutory provisions. It is also contended that the petitioners have failed to comply with Section 30(2) of the Industrial Disputes Act, and that the plea of shifting of the factory cannot be sustained in the absence of genuine intention to continue industrial activity. It is therefore submitted that the writ petition is devoid of merit and deserves to be dismissed. In support of the above submissions, reliance is placed on the decisions in *Mackinnon Mackenzie and Company Ltd. vs. Mackinnon Employees Union,* MANU/SC/0188/2015*, Oswal Agro Furane Ltd. & Ors. vs. Oswal Agro Furane Workers Union & Ors.,* MANU/SC/0104/2005*, Yashwant Jagannath Ingawale & Ors. vs. Snowcem India Ltd. & Ors.,* MANU/MH/0578/1999*, and Pt. Mohanlal Sanatan Dharam Public School vs. Harjit Singh & Anr.,* 2026 I CLR 334.

REASONS AND ANALYSIS:

10. I have carefully considered the rival submissions and the material placed on record. The real dispute between the parties is not difficult to understand. The petitioners say that the factory was lawfully closed because the business had become uneconomic, most of the workmen had already resigned under settlements, the remaining strength was below the statutory limit, and therefore Chapter V-B of the Industrial Disputes Act, 1947 had no application. The respondents, on the other hand, contend that the so called closure was only a cover, that the real purpose was to hand over the land for development, and that the petitioners acted

in breach of the labour laws and in collusion with a union. Both sides have placed reliance on documents and on decided cases. But the Court has to see whether the findings recorded by the Industrial Court can stand on law and on facts.

11. The first matter which requires close attention is the very foundation on which the Industrial Court has proceeded to hold that the closure is illegal. The Industrial Court has referred to Sections 33, 18, 25-N and 25-O of the Industrial Disputes Act and has treated the case as if all these provisions were attracted. This, in my view, shows a somewhat mixed approach without first examining whether the basic conditions for applying these provisions were satisfied. Section 33 is not a general provision. It comes into play only when there is a proceeding of the nature specified in that section already pending before a competent Court or Tribunal. It is not enough to say that some dispute or some litigation is pending somewhere. The nature of the proceeding must fall within the scope of Section 33. Here, what was pending was a complaint under the ULP Act and at one stage a writ petition. These cannot automatically be treated as proceedings attracting Section 33. The petitioners are right in pointing this out.

12. There is one more difficulty. The complaint filed by the respondents does not clearly plead how Section 33 is said to be violated. There are no proper factual statements showing what proceeding was pending, before which forum, and how the action of closure was in breach of that provision. In law, a finding cannot be recorded in vacuum. There must be pleading, then evidence, and then reasoning. If the foundation itself is absent, the

superstructure cannot stand. The Industrial Court, therefore, was not justified in recording a finding of breach of Section 33 in the absence of clear pleadings and proof. This part of the reasoning cannot be sustained.

13. Coming to Section 18, which deals with settlements, the situation on record is quite clear though the Industrial Court has not properly appreciated it. Out of the total employees, as many as 125 persons accepted the settlement, tendered resignation and took the benefits. This covers almost the entire workforce. These persons did not challenge the settlement at any stage. On the contrary, they filed affidavits before the Industrial Court in the earlier complaint and got their names deleted. This shows that they acted upon the settlement and accepted it as final. In such a background, the present four respondents cannot be permitted to question those settlements as if they are speaking on behalf of all employees. They were not parties to those settlements. Their grievance, if any, is confined to their own termination.

14. The Industrial Court, however, appears to have gone beyond this and examined the validity of the settlements themselves. This was not necessary in the present complaint. The scope of Complaint (ULP) No. 248 of 2013 was limited. It was concerned with the alleged illegality of closure and the termination of the present respondents. The settlements with other employees had already worked themselves out. Once the employees accepted benefits and left service, that chapter had come to an end. It could not have been reopened indirectly in these proceedings. By doing so, the Industrial Court travelled beyond the scope of the

complaint and entered into an area which was not open for consideration at the instance of these respondents.

15. The issue relating to Chapter V-B requires even more careful examination. This is because the entire case of illegality of closure largely depends upon whether Section 25-O applies. But Section 25-O does not apply to every industrial establishment. It applies only if the establishment employs 100 or more workmen on an average per working day during the preceding twelve calendar months. This is a clear statutory requirement. It cannot be assumed. It must be established by evidence. In the present case, the petitioners have produced muster rolls and have worked out the average number of workmen as 84.85 for the relevant period. This is a specific figure based on record. The respondents, on their part, have not brought any convincing material to show that the number was 100 or more. The burden to prove this fact lies on the respondents because they are the ones who assert that Section 25-O applies. The Industrial Court has not recorded a clear finding on this aspect. There is no discussion showing how the figure of 100 was reached or accepted. In absence of such a finding, the conclusion that there is a breach of Section 25-O becomes unsustainable. The law requires the Court to first cross the threshold of applicability. Only thereafter can it examine compliance or breach.

16. The evidence of Respondent No. 1 further weakens the respondents' case. In cross-examination, he has stated that the figures mentioned in his affidavit regarding number of employees were based on instructions from his advocate and he could not

explain them properly. This is an important admission. It shows lack of personal knowledge about a crucial fact. When such is the position, the Court cannot rely upon such statements to hold that the statutory requirement of 100 workmen was satisfied. The Industrial Court has not properly weighed this aspect. The argument of the respondents that there were originally 129 employees also does not carry the matter further. The law under Section 25-K does not look at past strength at some earlier point of time. It looks at the average number of workmen during the immediately preceding twelve months. This distinction is important. After the settlements and resignations, the strength of the workforce reduced considerably. The petitioners have placed material to show this reduction. The respondents have not effectively rebutted it. Therefore, merely because at one stage there were 129 employees, it cannot be presumed that Chapter V-B continued to apply at the time of closure. The Industrial Court, in my view, did not undertake this precise examination which the law requires.

17. The finding regarding retrenchment of 129 employees also suffers from similar difficulty. The petitioners' case is consistent that 125 employees resigned voluntarily under settlements prior to closure. If that is accepted, then those 125 employees cannot be treated as retrenched. Retrenchment has a specific meaning in law. It does not include voluntary resignation. The respondents have alleged that the settlements were manipulated and not genuine. But such a serious allegation requires strong and reliable evidence. It cannot be accepted on mere suspicion or general statements.

The record does not show material of that quality.

18. It is true that the respondents have raised allegations of collusion with a union and have questioned the role of certain persons. However, the Court has to act on evidence and not on conjecture. When a large number of employees have accepted settlement benefits and have themselves sought deletion from proceedings, it becomes difficult to hold, without clear proof, that all those acts were sham or forced. The Industrial Court appears to have treated the entire sequence as if it was one composite act of retrenchment affecting all employees. That approach overlooks the distinction between voluntary exit and forced termination. On facts, the two stand on different footing.

19. The question of motive has also been discussed by the Industrial Court. It has observed that the closure was effected with a view to sell the factory land. The respondents have relied upon later developments such as change of user of land and construction of residential buildings. These circumstances may raise doubt in the mind. But the Court has to be careful. The legality of closure must be judged on the basis of the situation existing at the time of closure. Subsequent events may provide background, but they cannot by themselves prove that the closure was illegal when it was effected. If the business had become financially weak, if most employees had already left, and if the statutory provisions requiring prior permission were not applicable, then the closure cannot be held illegal only because later the land was put to a different use. The Industrial Court, in my view, has placed excessive reliance on subsequent development of the property and

has not sufficiently examined whether the legal conditions for closure were satisfied at the relevant time. Suspicion cannot take the place of proof.

20. The respondents have also argued that the petitioners acted during pendency of proceedings and in disregard of earlier orders. This submission also needs to be seen carefully. Pendency of proceedings does not mean that every action of the employer becomes prohibited. What has to be seen is whether there was a specific legal bar and whether that bar was violated. If the provisions like Section 33 or Section 25-O are not attracted, then the mere existence of proceedings elsewhere does not make the closure illegal. The Industrial Court has not clearly analysed this aspect. It has proceeded more on a general sense of impropriety rather than on strict statutory requirements.

21. The reference to Section 30(2) also does not advance the respondents' case in absence of necessary factual basis. The Court must first establish the facts which bring the case within that provision. Without that, the conclusion cannot follow. The reasoning of the Industrial Court does not show such a structured approach.

22. Finally, the relief granted also requires scrutiny. The Industrial Court has directed payment of 50 percent wages till the date of superannuation. Such a direction is based on the assumption that the closure was illegal and that the workmen were wrongfully deprived of employment. If the basic finding of illegality is not sustainable, the relief automatically loses its

foundation. Moreover, it is stated that the factory itself is no longer in existence. In such a situation, granting continuing wages till superannuation becomes difficult to justify in law. The remedy must be proportionate and based on correct legal findings. Here, the relief appears to have been granted without a firm legal basis. For all these reasons, the reasoning adopted by the Industrial Court does not stand to proper legal scrutiny. The findings on breach of statutory provisions, on retrenchment, and on motive are not supported by adequate pleading, proof and correct application of law. The conclusions, therefore, cannot be sustained.

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

(i) The Writ Petition is allowed;

(ii) The Judgment and Order dated 20 July 2016 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 248 of 2013 is quashed and set aside;

(iii) Complaint (ULP) No. 248 of 2013 filed by the respondents stands dismissed;

(iv) Rule is made absolute in the above terms;

(v) There shall be no order as to costs.

(AMIT BORKAR, J.)