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SUPREME COURT CASES

(2014) 15 SCC

**(2014) 15 Supreme Court Cases 192**

(BEFORE V. GOPALA GOWDA AND CHOCKALINGAM NAGAPPAN, JJ.)

CIMCO BIRLA LIMITED .. Appellant; *a*

*Versus*

ROWENA LEWIS .. Respondent.

Civil Appeal No. 10856 of 2010<sup>†</sup>, decided on November 27, 2014

**A. Constitution of India — Art. 136 — Scope of interference under in labour matters — Finality of order — Order dt. 25-3-1996 passed by Labour Court finding appellant guilty of unfair labour practice and consequently directing reinstatement of respondent with full back wages and continuity of service — Revision application filed thereagainst rejected by Industrial Court; writ petition filed dismissed for default; and application for restoration of petition also dismissed — Thus, award dt. 25-3-1996 passed by Labour Court attaining finality — However, since said award not implemented respondent workman approaching Industrial Court and the Court vide Order dt. 16-4-2007 directing appellant to comply with the award — Held, since award passed by Labour Court in favour of respondent had attained finality orders passed by court below refusing to interfere with Order dt. 16-4-2007 passed by Industrial Tribunal calls for no interference in exercise of appellate jurisdiction of Supreme Court — Labour Law — Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (1 of 1972) — Items 1(a), (b), (d) and (f), Sch. IV (Paras 12 and 3 to 7)** *b*

*Cimco Birla Ltd. v. Rowena Lewis*, LPA (St) No. 28316 of 2009, decided on 29-1-2010 (Bom); *Cimco Birla Ltd. v. Rowena Lewis*, WP No. 3135 of 2009, decided on 15-6-2009 (Bom), affirmed

*Cimco Birla Ltd. v. Rowena Lewis*, WP No. 6064 of 1996, order dated 2-4-2004 (Bom); *Cimco Birla Ltd. v. Rowena Lewis*, Civil Application No. 1104 of 2009 in WP No. 6064 of 1996, order dated 23-6-2010 (Bom), considered *e*

*Cimco Birla Ltd. v. Rowena Lewis*, SLP (C) No. 19307 of 2010, order dated 6-12-2010 (SC), referred to

**B. Civil Procedure Code, 1908 — S. 35 — Costs — Entitlement — Despite order of Labour Court directing reinstatement of respondent workman with full back wages and continuity of service attaining finality, appellant employer litigating and dragging workman from one court to another for about 27 yrs and thus, depriving him of receiving his legitimate monetary benefits causing great hardship and mental agony — Costs quantified at Rs 50,000 awarded to respondent — Labour Law — Relief — Frivolous and Vexations litigation — Award of costs (Para 15)** *f*

*Cimco Birla Ltd. v. Rowena Lewis*, WP No. 6064 of 1996, order dated 2-4-2004 (Bom); *Cimco Birla Ltd. v. Rowena Lewis*, Civil Application No. 1104 of 2009 in WP No. 6064 of 1996, order dated 23-6-2010 (Bom), considered *g*

Appeal dismissed with costs

P-M/A/54188/SL

Advocates who appeared in this case :

Shiv Khorana, Advocate, for the Appellant;

*h*

<sup>†</sup> From the Judgments and Orders dated 29-1-2010 and 15-6-2009 of the High Court of Judicature of Mumbai in Letters Patent Appeal No. 28316 of 2009 and in WP (C) No. 3135 of 2009

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Colin Gonsalves, Senior Advocate (Rakesh Sinha, Nirnimesh Dube and Ms Shweta S. Parihar, Advocates) for the Respondent.

- a** *Chronological list of cases cited* *on page(s)*
1. SLP (C) No. 19307 of 2010, order dated 6-12-2010 (SC), *Cimco Birla Ltd. v. Rowena Lewis* 195c, 195d-e
  2. Civil Application No. 1104 of 2009 in WP No. 6064 of 1996, order dated 23-6-2010 (Bom), *Cimco Birla Ltd. v. Rowena Lewis* 194a, 195g
  3. LPA (St) No. 28316 of 2009, decided on 29-1-2010 (Bom), *Cimco Birla Ltd. v. Rowena Lewis* 193c, 194e, 194g, 195b
  - b** 4. WP No. 3135 of 2009, decided on 15-6-2009 (Bom), *Cimco Birla Ltd. v. Rowena Lewis* 193c-d, 194c, 194d-e, 195b
  5. WP No. 6064 of 1996, order dated 2-4-2004 (Bom), *Cimco Birla Ltd. v. Rowena Lewis* 193g-h, 195f-g

The Judgment of the Court was delivered by

- c** **V. GOPALA GOWDA, J.**— The appellant employer has questioned the correctness of the impugned judgment and order dated 29-1-2010 passed by the Division Bench of the High Court in *Cimco Birla Ltd. v. Rowena Lewis*<sup>1</sup> in affirming the judgment and order dated 15-6-2009 passed by the learned Single Judge in *Cimco Birla Ltd. v. Rowena Lewis*<sup>2</sup> whereby the learned Single Judge dismissed the writ petition. The writ petition was filed by the appellant employer herein against the order dated 16-4-2007 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 588 of 1996 filed by the respondent workman.

- e** 2. The brief facts of the case in a nutshell are stated as under: the respondent workman filed Complaint (ULP) No. 339 of 1987 before the Labour Court, Mumbai under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the Act”, in short) questioning the legality of the order of his termination from service and alleging that it amounts to an unfair labour practice by the appellant and prayed for setting aside the same and passing an award of reinstatement and continuity of service with full back wages.

- f** 3. The Labour Court vide its award dated 25-3-1996 found the appellant guilty of unfair labour practice under Items 1(a), (b), (d) and (f) of Schedule IV of the Act, and allowed the said complaint directing the appellant to reinstate the respondent with full back wages and continuity of service.

- g** 4. Against the said award, the appellant filed Revision Application No. 72 of 1996 before the Industrial Court which was rejected vide order dated 8-10-1996.

5. Being aggrieved by the said award, the appellant filed Writ Petition (C) No. 6064 of 1996 before the High Court and the same was dismissed<sup>3</sup> by the High Court on 2-4-2004 for default. For restoration of Writ Petition (C) No.

- h**
- 1 LPA (St) No. 28316 of 2009, decided on 29-1-2010 (Bom)
  - 2 WP No. 3135 of 2009, decided on 15-6-2009 (Bom)
  - 3 *Cimco Birla Ltd. v. Rowena Lewis*, WP No. 6064 of 1996, order dated 2-4-2004 (Bom)

6064 of 1996 the appellant filed Civil Application No. 1104 of 2009 and the same was also dismissed vide order dated 23-6-2010<sup>4</sup>.

**6.** The said order not being challenged by the appellant, the award dated 25-3-1996 passed by the Labour Court in Complaint (ULP) No. 339 of 1987 has attained finality. The said award passed in the complaint having not been implemented, the second inning was initiated by the respondent workman by filing Complaint (ULP) No. 588 of 1996 before the Industrial Court seeking for implementation of the award dated 25-3-1996 passed by the Labour Court in Complaint (ULP) No. 339 of 1987. a

**7.** The Industrial Court vide order dated 16-4-2007 allowed Complaint (ULP) No. 588 of 1996 and directed the appellant to comply with the award dated 25-3-1996 of the Labour Court. b

**8.** The appellant being aggrieved by the said order, filed Writ Petition (C) No. 3135 of 2009 against the said order before the High Court urging various grounds. c

**9.** The learned Single Judge vide order dated 15-6-2009<sup>2</sup> dismissed Writ Petition (C) No. 3135 of 2009 after adverting to the factual aspects and legal contentions urged on behalf of the parties and rightly rejected the plea of alleged closure of the appellant's Bombay Office by recording its reasons which order was affirmed by the High Court in the earlier writ petition proceedings, thereby the plea that Bombay Office of the appellant was closed was not accepted and the same was concluded in the earlier round of litigation between the parties. d

**10.** Being aggrieved by the order dated 15-6-2009<sup>2</sup>, the appellant filed Letters Patent Appeal No. 28316 of 2009 before the Division Bench of the High Court. The Division Bench dismissed the said appeal vide its order dated 29-1-2010<sup>1</sup>, after giving valid and cogent reasons at para 4 of the impugned judgment. The relevant portion of para 4 is extracted hereunder: e

“4. ... The learned Single Judge while dismissing the petition has found that the Industrial Court has given cogent and sound reasons for rejecting the application for amendment of written statement. It is concurrently found that though an opportunity was available for raising the plea at earlier stage, the application for amendment was sought to be made at the fag end of the complaint filed by the respondent for implementation of the order passed in the earlier complaint. In any case, the issue before the learned Industrial Court in Complaint (ULP) No. 588 of 1996 was only with regard to the implementation of the order dated 25-3-1996 in Complaint (ULP) No. 339 of 1987 passed by the Labour Court.” f

**11.** Aggrieved by the order dated 29-1-2010<sup>1</sup> passed in the letters patent appeal, this appeal is filed by the appellant urging various legal grounds. g

**12.** Having heard the learned counsel on behalf of both the parties, we are of the view that the concluded lis between the parties with regard to the wrongful

<sup>4</sup> *Cimco Birla Ltd. v. Rowena Lewis*, Civil Application No. 1104 of 2009 in WP No. 6064 of 1996, order dated 23-6-2010 (Bom) h

<sup>2</sup> *Cimco Birla Ltd. v. Rowena Lewis*, WP No. 3135 of 2009, decided on 15-6-2009 (Bom)

<sup>1</sup> *Cimco Birla Ltd. v. Rowena Lewis*, LPA (St) No. 28316 of 2009, decided on 29-1-2010 (Bom)

a termination of the respondent from services in the earlier round of litigation and passing of an award of reinstatement with full back wages and continuity of service from the date of termination till the date of reinstatement since the said award was not deliberately implemented by the appellant, therefore, the respondent workman rightly approached the Industrial Court by filing a complaint in the second round of litigation seeking for implementation of the same. The award passed in favour of the respondent by the Labour Court has attained finality, hence, the judgment and orders passed by the learned Single

b Judge<sup>2</sup> and the Division Bench<sup>1</sup> of the High Court in not interfering with the order passed by the Industrial Court dated 16-4-2007 in the complaint filed by the respondent for implementation of the award by way of execution of the award do not call for interference by this Court in exercise of its appellate jurisdiction.

c **13.** This Court while granting leave in the said appeal passed the following order on 6-12-2010<sup>5</sup>:

d “... Hearing expedited. We have been informed that the respondent has since been reinstated. In that view of the matter only direction with regard to the payment of back wages shall remain stayed, subject to the appellant’s depositing in this Court the balance amount of back wages within two months. As and when, the said deposit is made, the same shall be put in a fixed deposit, initially, for a period of one year.”

e Pursuant to the said interim order<sup>5</sup>, it is stated on behalf of the appellant that the amount is deposited in this Court and the same is kept in fixed deposit initially for a period of one year and that came to be extended from time to time. The respondent is at liberty to withdraw the said amount including the interest earned thereon. The receipt of the said back wages deposited shall be adjusted towards the back wages awarded by the Industrial Court in its award and order dated 16-4-2007 passed in Complaint (ULP) No. 588 of 1996 wherein the appellant was directed to pay/deposit back wages with all attendant benefits up to date upon deducting Rs 2,98,213, and to pay interest @ 12% p.a. in case of non-compliance with the order within one month.

f **14.** The appellant employer has filed this appeal questioning the correctness of the order dated 16-4-2007 passed in Complaint (ULP) No. 588 of 1996. The award passed by the Labour Court in Complaint (ULP) No. 339 of 1987 has attained finality as the writ petition filed came to be dismissed on 2-4-2004<sup>3</sup> for default and restoration of the aforesaid writ petition also came to be dismissed vide order dated 23-6-2010<sup>4</sup> thereby the award has attained finality.

g **15.** The appellant employer has been litigating and dragging the workman from one court to another from 1987 till date which is nearly about 27 years. In

h <sup>2</sup> *Cimco Birla Ltd. v. Rowena Lewis*, WP No. 3135 of 2009, decided on 15-6-2009 (Bom)

<sup>1</sup> *Cimco Birla Ltd. v. Rowena Lewis*, LPA (St) No. 28316 of 2009, decided on 29-1-2010 (Bom)

<sup>5</sup> *Cimco Birla Ltd. v. Rowena Lewis*, SLP (C) No. 19307 of 2010, order dated 6-12-2010 (SC)

<sup>3</sup> *Cimco Birla Ltd. v. Rowena Lewis*, WP No. 6064 of 1996, order dated 2-4-2004 (Bom)

<sup>4</sup> *Cimco Birla Ltd. v. Rowena Lewis*, Civil Application No. 1104 of 2009 in WP No. 6064 of 1996, order dated 23-6-2010 (Bom)

this process the legitimate right of receiving the monetary benefits awarded in favour of the respondent is being denied by the appellant by taking untenable contentions thereby the respondent and her family members have been put to great hardship and mental agony. Therefore, it is a fit case for awarding the costs towards engaging the lawyers and hardship which has been faced by the workman from 1987. *a*

**16.** In view of the aforesaid reasons, we pass the following order:

**16.1.** The appeal is devoid of merit as none of the grounds urged are tenable in law hence the same is dismissed with costs of Rs 50,000 payable to the workman; *b*

**16.2.** The appellant is directed to comply with the terms and conditions of the order dated 16-4-2007 passed by the Industrial Court in Complaint (ULP) No. 588 of 1996 within four weeks from the date of receipt of the copy of this order.

**17.** Interlocutory Application No. 1 filed in this appeal is disposed of. *c*

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