

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

C.P.No.S- 418 of 2012

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of MA 5444/2012.
2. For hearing of main case.

22.01.2019.

Mr. Altaf Sachal Awan, Advocate for respondent No.2.
Mr. Wali Muhammad Jamari, Assistant A.G.

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None present for the petitioner. Similar was the case on last date of hearing. Counsel for respondent No.2 is present alongwith respondent and states that the no illegality or patent error appears to have been committed in the impugned order.

Facts of the case are that the respondent No.2 made an application u/s 15 of Payment of Wages Act, 1936, stating that he was employed in the M/s Agar Textile Mills Pvt. Ltd Site Kotri as Peon Card No.53 and was workmen; that the Manager of Mills was responsible for payment of wages U/s 3 of the said Act. The appellant claim was that wages and other dues have not been paid to the tune of Rs.72200/-. The said claim was contested by the respondents who filed legal objections and reply statement and denied the claim. The petitioner stated that the claim was illegal and false and the respondent No.2 had received wages for the period upto February 2006 and the chapter was closed thereafter. The

petitioner claimed that respondent No.2 was legally stopped to make any further claim as no employment relationship existed between them from March 2006. It was further stated that there was no production in the mills from 01.02.2007. The trial Court after recording the evidence proceeded with the application and dismissed the same by the order impugned in the appeal.

The Labour Appellate Court after hearing the parties and perusal of record upheld the claim of the appellant in respect of withheld wages for the period from March, 2006 till August 2007. The respondent denied the claim and stated that appellant had received wages up-to February 2006 and thereafter no employment relationship existed between the parties from March 2006. The appellant denied in his affidavit in evidence that factory was closed from 01.02.2007. He placed on record a copy of notice dated 24.08.2006 wherein he demanded un-paid wages from March to June 2006 at the rate of Rs.3000/- per month and from July 2006 at the rate of Rs.4000/- per month. Appellant denied under cross examination that he ceased to be employee of respondent's mills from March 2006 and claimed that he worked even after March 2006 and until he filed the case and worked in the factory. The respondent No.2 also did not file any record regarding closure of mills w.e.f 01.02.2007, nor any termination letter of the appellant, nor his alleged resignation in order to prove the facts stated in reply statement as well as in affidavit-in-evidence, therefore, per appellate Court, the trial Court failed to give proper findings in respect of the appellant's claim. The appellate Court also noted that the respondent's witness stated under cross

examination that applicant had resigned and also received the legal dues but no document regarding payment of legal dues was produced in the record of the trial Court or before the Appellate Court nor the copy of resignation was produced and in the absence of any such documents the contention of appellant that he worked with the respondent's mills for the period covered under the claim was proved and the copy of notice dated 24.08.2006, Annex:A/1, claiming un-paid wages also support his contention, under these circumstances, appeal was allowed.

A review of the impugned order dated 07.03.2012, shows that it is based on material available on record and upon giving cogent reasons, the appellate Court reached to the conclusion that the respondent, who had lost his right arm in a mishap which occurred in the premises of the petitioner's factory was entitled to wages to the tune of Rs.69,000/-

Being cognizant of the fact that in the exercise of Constitutional jurisdiction, it is not the duty of the High Court to enter into the merits of the evidence, as it has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is in challenge and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order. That's why if someone invokes such jurisdiction he must show not only that a jurisdiction error has been committed by the court below, but also that the interests of justice call for interference by the High Court, as the Constitutional powers of the court are to be exercised in the interests of justice alone where the

High Court could legitimately hold that the court below had exceeded its jurisdiction or had refrained from exercising a jurisdiction vested in it or it acted illegally or with material irregularity in the exercise of that jurisdiction, i.e. committed an error of procedure or of a mandatory procedure and that such an error had resulted in failure of justice.

A review of the impugned order shows that neither the Appellate Court decided the case perversely, nor it could be said that it acted illegally or with material irregularity in the exercise of its jurisdiction, nor it appears that the findings given by the said Court are based on non-reading or misreading of evidence, erroneous assumption of facts, misapplication of law or excess / abuse of jurisdiction. Where a forum passes an order in exercise of its jurisdiction, the High Court in its Constitutional jurisdiction is not to interfere with it, unless the order if allowed to stand, is likely to occasion a failure of justice, which are not the cases in sight. In the absence of any defect in the impugned order, interference of High Court would amount to improper exercise of Constitutional jurisdiction.

In the given circumstances, the instant Constitutional Petition for the reasons detailed hereinabove, merit no consideration and the same is dismissed alongwith pending application. Resultantly, the impugned order dated 07.03.2012 is not interfered with.

JUDGE