



Received on	15	07	2025
Registered on	15	07	2025
Decided on	23	06	2026
Duration	00	11	08
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**THE COURT OF THE PRESIDING OFFICER,
LABOUR COURT AT VALSAD**

[Presided over by Mr. Chaitanya V. Limbachiya, Judge]

Recovery Application No. 38 of 2025

[Under Section 33C(2) of the Industrial Disputes Act, 1947]

Arising out of

**Reference T L.C.V. No.72 of 2017
Decided on 29-07-2022**

Exh-19

APPLICANT :

MANOJKUMAR RAJKISHOR VISHWAKARMA
Residing at Dungra Colony, Pirmora,
Dashrathbhai ni Chal, Room No.10,
Po.Dungra, Tal. Vapi, Dist. Valsad

% GUJARAT RAJYA KAMDAR SEVA SANGH
At Sai Plaza Complex, B-204, Second Floor,
Opp. Telephone Exchange, G.I.D.C.-Char Rasta
Vapi, Tal.Vapi, Dist.Valsad

VERSUS

RESPONDENT :

M/s K. AND C. ENGINEERING
At. Shed No. L - 715/9, 40 Shed Area, G.I.D.C.,
Vapi, Tal.Vapi, Dist.Valsad

Appearance :

For the Applicant Ld. Auth. Rep. Mr. R.M. Prajapati,
For the Respondent Ld. Adv. Mr. V.V. Dama.

ORDER**FACTS OF APPLICATION:**

1. Present application under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”) filed for recovery of the amount mentioned in the Schedule-A annexed with the application.
- 1.1. It is contended that said amount is alleged to be due and payable to the applicant by the respondent for the period from 21-12-2016 to 30-06-2025 as per the order dated 29-07-2022 passed in Reference T LCV No. 72 of 2017 as per statutory entitlement under the Act. It is stated that the said amount of the order remains unpaid despite demand. It is contended that the award was published on 05-12-2022 and the applicant had issued notice to the respondent dated 30-01-2023 for its compliance.
- 1.2. Thereafter, the Applicant filed a complaint before the Government Labour Officer on 11-01-2023 regarding the breach of the Award by the Respondent. Consequently, the Government Labour Officer issued a notice dated 19-01-2023 calling upon the Respondent to take appropriate legal action.
- 1.3. It is further stated that the Respondent had preferred Delay Condonation Application No. 49 of 2023 and Restoration Application No. 69 of 2023 for setting aside award and restoration of reference proceedings. Said restoration application was conditionally allowed on 19-04-2024 subject to payment of costs to the Applicant but the Respondent did not comply with the same.
- 1.4. Thereafter, the Applicant conducted an inquiry at the Respondent’s premises and discovered that the Respondent had changed the name of its establishment and is now running it under the name “M/s. Cami-Sol Corporation”.

- 1.5. Accordingly, the Applicant once again served a notice upon the Respondent at the said address calling upon them to comply with the order of the Hon'ble Court. Despite service, the Respondent neither complied with the order nor paid any due amount to the Applicant. Hence, the present application had been filed seeking prayer to direct the Respondent to pay due amount along with interest.

REPLY OF THE RESPONDENT :

2. Notice issued to the respondent was served and it appeared through the advocate. Respondent had filed a reply at Exh-14 denying facts of the application.
- 2.1. It is contended that the application is not maintainable and is an abuse of the process of law. All the contentions made in the application are concocted and devoid of any merits. It is stated that the present application is for recovery 33C(2) of the industrial disputes act. The Hon'ble labour court on 29-07-2022 passed an ex-parte order against the respondent in Reference (L.C.V) No. 72 of 2017 to pay wage @ 25% of the last wage to the applicant from 21-12-2016 till the day of reinstatement. The Hon'ble court also ordered the respondent to pay ₹ 1500/- separately as cost to the applicant.
- 2.2. Subsequently the respondent filed an application for condonation of delay to file an application to set-aside the order passed on 29-07-2022. The application for condonation of delay was allowed on 29-09-2023. It is further stated that the respondent filed the application to set aside the order passed on Reference (L.C.V) No. 72 of 2017 which was allowed on 19-04-2024. The Hon'ble court also passed an order to pay ₹15,000/- after the payment of which, the Reference (L.C.V) No. 72 of 2017 would be taken on board, and the further proceedings would be continued from the stage at which it had stopped.

- 2.3. Due to the late receipt of the Hon'ble court's order, workers changing their place of residence and working in another state not being available at their place of residence, and subsequent financial hardship faced by the present respondent, he was not able to pay the cost to the worker.
- 2.4. The present application for recovery 33C(2) is made to recover the award passed by the Hon'ble Court on Reference (L.C.V) No.72 of 2017, which has already been set aside by the Hon'ble Labour Court. An order once set aside by the Hon'ble court cannot be automatically vacated, unless an appeal or revision is filed against the set-aside order in the Hon'ble High Court or Hon'ble Supreme Court. Further the condition to pay ₹15,000/- to the worker was a condition set to take Reference (L.C.V) No.72 of 2017 on board for further proceedings, and was not a condition to set aside the order.
- 2.5. It is submitted that the the Hon'ble Apex court has stated, as per the settled proposition of law, in an application under Section 33(C)(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based.
- 2.6. In the present recovery application made under Section 33(C)(2), the applicant is seeking recovery for award in Reference (L.C.V) No. 72 of 2017. But the Hon'ble court has already set aside the order as it was tried ex-parte. Thus, where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to the entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Sec. 33C(2) of the Act.

- 2.7. The Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Sec. 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Sec. 33C (2) like that of the executing Court's power to interpret the decree for the purpose of its execution.
- 2.8. The Hon'ble court has no jurisdiction to hear this present application as the order on original Reference (L.C.V) No. 72 of 2017 has been already set aside and as there being no earlier adjudication or recognition thereof by the employer, the dispute relating to the entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Sec. 33C(2) of the Act. Hence, it is stated to dismiss the present application with costs.

CASE PROCEEDINGS:

3. Upon filing of the present application, the notice was issued to the Respondent. Initially the Respondent did not appear despite service of the Notice. Subsequently, the right to adduce reply of the Respondent was closed below Exh-9. Thereafter the respondent appeared through its advocate and only filed the Vakalatnama at Exh-10 but did not file any reply. Thereafter, the Applicant produced an affidavit at Exh-11 and the right of respondent to cross-examine the Applicant was closed below Exh-12. Again, the Respondent preferred an application to reopen its right to file a reply at Exh-13 which was allowed and the Respondent adduced its reply at Exh-14.

Despite having sufficient opportunity and imposing costs, neither the Respondent nor its advocate conducted the matter regularly. Thereafter, the Applicant filed the closing pursis at Exh-17. Right of Respondent to adduce evidence was closed below Exh-18. Thereafter, arguments of the Applicant's representative were heard and the matter was kept for the arguments of the Respondent. Thereafter, oral arguments of the Ld. Advocate for the Respondent were heard and the present matter was reserved for order.

EVIDENCE OF THE PARTIES:

4. In support of the claim, the applicant had produced the following evidence :

ORAL EVIDENCE

Exh	Description of Deposition
11	Manojkumar Rakishor Vishwakarma, Applicant

DOCUMENTARY EVIDENCE

Mark	Description of Document	Date
3/1	Copy of Award passed in Ref. T (L.C.V.) No. 72-2017	29-07-2022
3/2	Copy of publication of award	05-12-2022
3/3	Copy of the letter issued by the Applicant's Union to the Respondent	30-01-2023
3/4	Copy of the Postal Acknowledgment	-
3/5	Copy of the complaint filed by the Applicant before the Government Labour Officer.	11-01-2023
3/6	Copy of the letter issued by the Government Labour Officer	19-01-2023
3/7	Copy of the order in Delay Condonation Application No. 49-2023	29-09-2023
3/8	Copy of the order in Restoration Application No. 69-2023	19-04-2024
3/9	Copy of the letter issued by the Applicant's Union to the Respondent.	03-03-2025
3/10	Postal Acknowledgment	-

Respondent did not adduce any evidence. Hence, the matter is taken for the arguments.

POINT OF DETERMINATION :

5. Following points arises for determination of present application along with its findings :

Sr No.	Issue	Finding
1.	Whether the applicant is entitled for reliefs as claimed ?	In the Partly-affirmative,
2.	What order ?	As per final Order.

:REASONS & ANALYSIS:

ISSUE No. 1 & 2 :

6. *Firstly*, it was contended on behalf of the Respondent that the award is set aside and is not in effect or existence as the restoration application is allowed. A judgment of the Hon'ble Supreme Court in **High Court Bar Association, Allahabad Vs State of UP** was relied where the following observations are made :

".....the stay order granted in any proceedings would not automatically stand vacated on the expiry of a particular period until and unless an application to that effect has been filed by the other side and is decided following the principles of natural justice by a speaking order."

It was argued that an order to set aside an award is a final order and not an interim order. A final order cannot be vacated in a regular manner, and can only be done through an appeal or revision petition made to the High Court or Supreme court. It is contended that the operative order has already set aside the award and payment of cost is separate order. However, the order passed in restoration order was conditional order subject to payment of cost to the original workman. But nothing has been brought on record by the Respondent that it has

complied with the said order or is still willing to comply with the same. Even further, no application has been made in the present application as to whether it still wants to comply with the order or ready to pay the costs. As the cost is not paid, the condition is not fulfilled and therefore, the award passed cannot be said to have been set aside as the original reference is not restored to the original file. Hence, said contention about automatic set-aside of the award despite non-payment of costs is not tenable.

7. Secondly, it was contended that without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33(C)(2) of the Industrial Disputes Act. The Respondent has relied upon a judgment of **Municipal Corporation of Delhi vs. Ganesh Razak and Anr. (1995) 1 SCC 235** where it was held that the labour court's jurisdiction under Section 33(C)(2) of the Industrial Disputes Act is like that of an executing court. As per the settled preposition of law, without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33(C)(2) of the Industrial Disputes Act. However, an award passed clearly adjudicated the entitlement of back-wages. Therefore, said contention is not tenable.
8. **To prove entitlement**, the Applicant has reiterated contents of the application on oath at Exh-11 and produced a list of documents at Mark-3/1 to 3/10. Respondent has not disputed the documentary evidence produced by the Applicant.

9. Now, a Copy of the order in Restoration Application No. 69-2023 dated 19-04-2024 produced at Mark-3/8 indicates that the Respondent has succeeded in said application. As per the said order, the original reference file has to be restored upon payment of the costs. However, the Respondent has not brought anything on record that he has ever made any effort to comply with said order which itself means that the Award passed in Ref. T (L.C.V.) No. 72-2017 dated 29-09-2022 produced below Mark-3/1 has attained finality. Even further, the Respondent had not cross-examined the Applicant despite having sufficient opportunity. Therefore, there appears no ground to disbelieve the contention of the Applicant.
10. **On perusal** of the record, oral evidence of the Applicant and documents produced, it is crystal clear that:
- The Award dated 29-07-2022 passed in Original Reference T LCV No. 72 of 2017 was attempted to be set aside by the Respondent through Delay Condonation Application No. 49 of 2023 and Restoration Application No. 69 of 2023 for setting aside award and restoration of reference proceedings.
 - Said restoration application was conditionally allowed on 19-04-2024 subject to payment of costs to the Applicant but the Respondent did not comply with the same and it has not made any effort to comply with the same even in the present application.
 - Failure on the part of the Respondent to comply with the order of restoration application, the award passed in the reference has remained intact and attained finality.

- The Respondent has not disputed that it had changed the name of its establishment from “M/s K. AND C. ENGINEERING” and is now running it under the name “M/s. Cami-Sol Corporation”.
 - Nothing is brought on record by the Respondent that any portion of the claimed amount as mentioned in the Schedule-A had been paid to the applicant for the period from 21-12-2016 to 30-06-2025.
11. ***Considering the amount of back-wages***, it is clear that the Respondent has not disputed the calculation of the said amount with 10% increment. Therefore, the Applicant is entitled for ₹ 2,27,291/- being 25% of total back-wages of ₹ 9,09,164/- for the period from 21-12-2016 to 31-12-2022. Further, the Applicant is also entitled for ₹ 5,59,178/- being 100% of total back-wages for the period from 01-01-2023 to 30-06-2025. In addition to the same, the Applicant is also entitled for an amount of cost of ₹ 1,500/- as per the award.
12. ***Regarding Claim of Bonus***, the law is well settled as per ruling of Hon’ble Supreme Court in **HP State Electricity Board v. Ranjeet Singh, AIR 2008 SC (Supp) 1602** that the Labour Court has no jurisdiction under Section 33(C)(2) to determine entitlement to bonus or any benefit when the very basis of such entitlement is disputed; it can only compute a benefit flowing from a pre-existing right. Hence, a relief of Bonus cannot be given.
13. ***As far as relief of leave salary*** is concerned, no proof has been brought on record by the applicant that he is actually entitled to said benefits for the claimed period. Hence, relief claimed for salary of Earned Leave, Sick Leave and Casual Leave cannot be granted.

14. ***In conclusion***, it can be held that the Applicant is entitled to recover ₹ 7,87,968/- (*Rupees Seven Lakhs Eighty Seven Thousands Nine Hundred Sixty Eight Only*) for the period from 21-12-2016 to 30-06-2025 from the Respondent being the amount of backwages and cost as per the award passed instead of claimed amount mentioned in Annexure-A. Further, considering the original award, there is no specific order as to whether any interest will be applicable in case of default in payment. Therefore, it would not be proper to award interest on the claimed amount. However, it would be appropriate to impose costs of ₹ 5,000/- upon the Respondent being cost of the application.
15. In light of the aforesaid discussion, Issue No. 1 is answered in the Partly-Affirmative and the Issue No.2 shall have the following :

ORDER

1. The Present Recovery Application under Section 33C(2) of the Industrial Disputes Act, 1947 is hereby ***PARTLY-ALLOWED***.
2. Respondent is ordered to pay ₹ 7,87,968/- (*Rupees Seven Lakhs Eighty Seven Thousands Nine Hundred Sixty Eight Only*) to the applicant within 30 days of this order.
3. In case of non-payment within the stipulated period, a Recovery Certificate as per Section 33(C)1 of the ID Act is directed to be issued to appropriate authority for the above amount in favour of the applicant and against the respondent in accordance with law.

4. Respondent is directed to pay ₹ 5,000/- to the applicant separately towards costs.

Pronounced in open Court on 23rd June, 2026.

Place : Valsad
Date : 23-06-2026

[Chaitanya V. Limbachiya]
Presiding Officer & Judge,
Labour Court, Valsad.
Judge Code : GJ01556