IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2310 OF 2007

The Court Receiver High Court, Bombay .....*Petitioner*

: Versus :

Mumbai Labour Union and Ors. ....*Respondents*

WITH
COURT RECEIVER REPORT NO. 318 OF 2025
In
Interim Application (L) No. 20717 OF 2024
In
WRIT PETITION NO. 2310 OF 2007

The Court Receiver High Court, Bombay .....*Petitioner*

: Versus :

Mumbai Labour Union and Ors. ....*Respondents*

WITH
INTERIM APPLICATION NO. 1 OF 2023
In
WRIT PETITION NO. 2310 OF 2007

Mumbai Labour Union .....*Applicant*

: Versus :

The Court Receiver High Court, Bombay
and Ors. ....*Respondents*

WITH

NOTICE OF MOTION (WRIT PETITION) NO. 103 OF 2018

In

WRIT PETITION NO. 2310 OF 2007

The Court Receiver High Court, Bombay .....*Applicant*

: Versus :

Mumbai Labour Union and Ors. ....*Respondents*

Mr. J.P. Cama, Senior Advocate *with Mr. K.P. Anilkumar, Mr. Amit Saple & Ms. Priyanka Kumar for the Petitioner.*

Mr. A.V. Bukhari, Senior Advocate *i/b Mr. Kishorekumar Shetty for Respondent No. 1.*

Mr. Kiran Bapat, Senior Advocate *with Mr. Sachin B. Thorat i/b Mr. Yogesh G. Thorat for Interveners.*

Mr. Z.A. Jariwala *i/b Thakor Jariwala & Associates, for Respondent No. 3a, 3b & 3c.*

Mr. Malcolm Siganporia *with Ms. Pranita Saboo & Mr. Bhavin Shah i/b Mr. Dev Tejnani for Respondent No. 5.*

Mr. Anand Pai *i/b Mr. Sahil S. Sayed for Respondent No. 6.*

Mr. N.C. Pawar, *Court Receiver, High Court, present.*

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESD. ON: 19 SEPTEMBER 2025.

JUDGMENT PRON. ON : 30 SEPTEMBER 2025.

JUDGMENT:

1) The Court Receiver of this Court, who has been appointed in a Suit for dissolution of Respondent No.2-Partnership Firm, has filed the present Petition challenging the judgment and order dated 27 February 2007 passed by the Member, Industrial Court, Mumbai in Complaint (ULP) No.434/2004. The Industrial Court has allowed the complaint of unfair labour practice filed by Respondent No.1-Union directing payment of full wages to the concerned employees from January 2002 with interest at the rate of 6% per annum. The Industrial Court has also directed opening of factory by permitting the concerned workers to report for duties at the factory premises.

2) Brief facts leading to filing of the petition are stated thus:

M/s. Ahmed Oomarbhoy was a partnership firm with Respondent Nos.3 to 6 as its partners. The firm was engaged in the business of manufacturing and marketing cooking oil and other edible oils under a well-known brand 'Postman'. Respondent No.2 had its factory and office located at 170-Moulana Shoukat Ali Road, Mumbai-400 008 and branch offices at Ahmedabad, Bangalore, Kolkatta and New Delhi. According to the Respondent No.1-Union, the Firm had employed more than 500 employees including permanent factory employees, office staff, officers and contract workers. Respondent No.1 is a Union formed by the factory workers and was representing about 230 permanent workmen.

3) The dispute arose amongst partners of Respondent No.2-Partnership Firm. Respondent No.3 filed Suit No.4913/2000 in this Court for dissolution of the firm. By order dated 6 December 2000, this Court appointed Court Receiver in respect of the business and assets of the Partnership Firm. According to the First Respondent-Union, despite appointment of the Court Receiver, business of the Partnership Firm continued. Various orders were passed in the Suit from time to time. By order dated 30 July 2001, this Court directed selling of assets of the Partnership Firm through inviting bids since the Partnership Firm was to be dissolved. According to Respondent No.1-Union, the Factory was to be sold as an ongoing concern. By further order dated 2 August 2001, this Court directed Court Receiver to take physical possession of assets of the Firm which was taken by the Court Receiver on 3 September 2001. According to the Union, the Court Receiver directed all the workers to leave the factory premises while taking over possession of the factory on 3 September 2001. A representation dated 3 September 2001 was made by the Union representative to the Court Receiver. That the gates of the factory were kept locked from 4 September 2001 preventing the workers from entering therein.

4) Respondent No.1-Union filed Chamber Summons No.1109/2001 in Suit No. 4913/2000 for its impleadment to the suit and seeking direction against the Court Receiver from taking physical possession of the factory premises and to allow employees to attend to duties. Notice of Motion No. 2107/2001 was also filed by the Respondent No.1-Union in the pending Suit seeking similar reliefs including the prayers for payment of salary. By order dated 17 August 2001, this Court directed payment of wages to the workers from the funds of the Firm. By further order dated 9 November

2001, directions were given for payment of salary for the month of October 2001. By further order dated 30 November 2001, this Court directed payment of salary for the months of November 2001 and December 2001. This Court also granted liberty to the Respondent No.1-Union to sue the Court Receiver in appropriate proceedings before the Competent Authority or Industrial Court for agitating their rights. Respondent No.1-Union filed Appeal No.203/2002 challenging order dated 30 November 2001 passed by the learned Single Judge. During pendency of the Appeal, the Court Receiver directed the security staff at the factory not to allow workers to sign the muster. By order dated 23 April 2002, the Division Bench heard Appeal No.203/2002 directing Court Receiver to explore the possibility of selling the factory as a going concern by inviting bids. Further order was passed by the Division Bench on 16 September 2002 directing Court Receiver to file a comprehensive report. The Court Receiver submitted a Report on 30 September 2002 seeking time of three months to complete the work of accounts. The members of the Union participated in the work of finalization of accounts for three years. The Division Bench passed Order dated 25 April 2003 directing the Court Receiver to invite bids for sale of assets and business of the Firm on alternate basis. It appears that suggestions were made by the Appeal Court for offering voluntary retirement to the workers of the Firm. According to the Respondent-Union, the Court Receiver and the partners of the Firm did not co-operate in finalization of amounts payable under the VRS which resulted in non-passing of any written order with regard to the VRS scheme. In the meantime, the Single Judge disposed of Notice of Motion No. 2107/2001 holding that since Chamber Summons for impleadment was yet to be decided, Notice of Motion seeking interim orders could not be entertained. Since Notice of Motion

itself got disposed of, Appeal filed before the Division Bench became infructuous. The Respondent-Union filed one more Appeal No. 1038/2003 challenging order dated 7 November 2003 passed by the Single Judge disposing off Notice of Motion. The Appeal came to be dismissed by the Division Bench on 8 December 2003. When Chamber Summons No. 1109/2001 came up for hearing before the learned Single Judge along with another Chamber Summons No.429/2004 taken out by the Association of officers of the Firm, the same were disposed of granting liberty to the Union and Association to adopt appropriate proceedings qua their grievances.

5) In the above background, the Respondent-Union instituted Complaint (ULP) No. 434/2004 before the Industrial Court, Mumbai by impleading the Court Receiver, as well as partners of the firm and sought a prayer not to terminate the services of the employees without first obtaining permission of the State Government under section 25-O and/or section 25-N of the Industrial Disputes Act, 1947 (**the ID ACT**). Further prayer was made for payment of wages from the month of January 2002 along with interest. The complaint was resisted by filing Written Statement by Respondent No.3. The Court Receiver also filed Written Statement. The other Respondents to the complaint chose not to file their Written Statements. The evidence was led by the parties. The Industrial Court, after considering the pleadings and evidence on record, passed judgment and order dated 27 February 2007 allowing the complaint filed by the Respondent-Union and holding that the Firm, its partners and the Court Receiver had engaged in unfair labour practices under Item-9 of Schedule-IV of the MRTU & PULP Act, 1971. The Industrial Court further directed payment of wages to the concerned employees from January 2002 with simple interest

at the rate of 6% per annum. The Industrial Court also directed opening of the factory for reporting for duties by the workmen.

6) Aggrieved by the judgment and order dated 27 February 2007, the Court Receiver has filed the present Petition. By order dated 25 January 2008, the Petition was admitted. This Court observed that the Court Receiver could not have been directed to take responsibility of running the factory. Accordingly, the impugned judgment and order of the Industrial Court has been stayed during pendency of the Petition. Interim Application (Lodg.) No. 20717/2024 was taken out by some of the members of Respondent No.1-Union contending that their membership was not continued by the Respondent-Union on account of non-payment of subscription fees. The workers therefore sought intervention in the Petition. By order dated 21 February 2025, this Court has permitted the said workers to intervene in the Petition. The Petition is called out for final hearing.

7) Mr. Cama, the learned Senior Advocate appearing for the Petitioner-Court Receiver would submit that the Industrial Court has grossly erred in allowing the complaint filed by the First Respondent-Union and in directing payment of salaries to the concerned workmen from January 2002 and to reopen the factory. He would submit that the Industrial Court could not have directed payment of salaries or opening of factory in ignorance of specific orders of this Court directing Court Receiver to sell the assets of the partnership firm. That the Suit has been filed for dissolution of the partnership firm and the Court Receiver has not been appointed for running of the business or factory. The appointment of the Court Receiver is for selling the assets of the Partnership Firm. That the

permission to sell assets granted by this Court envisages automatic closure of business of the Partnership Firm. That the partnership was dissolvable at the will of one of the partners. That accordingly, Respondent No.3 had issued Notice of Dissolution and has instituted Suit for dissolution of the partnership firm. That accordingly, the Partnership Firm itself stood dissolved upon service of dissolution notice as per Section 43 of the Indian Partnership Act, 1932 (Partnership Act). That upon dissolution of the partnership firm, it is not necessary to seek separate closure permission under section 25-O of the I.D. Act. That dissolution of the firm is effected as per the provisions of the Partnership Act and that subject dissolution does not depend on the provisions of the I.D. Act. He would rely upon judgment of this Court in ***Bombay Metropolitan Transport Corporation Vs. Employees of Bombay Metropolitan Transport Corporation Ltd. (CIDCO) and Others***[1] in support of his contention that in similar circumstances involving winding up of a company, this Court has taken a view that separate procedure for closure under section 25-O of the I.D. Act need not be followed. He would rely upon the order passed by this Court dated 22 December 2006 passed in Writ Petition No. 1557/2004 relating to the business of the same firm in which this Court, while dealing with claim of contract workers, has held that the business of the Partnership Firm stood dissolved and that the business stood closed. He would submit that the relief of permanency granted by the Industrial Tribunal to contract workers was set aside by this Court by holding that business of the Partnership Firm stood closed. Mr. Cama, would submit that the order passed by this Court on 22 December 2006 in case of contract workers would squarely apply to the present case as well. Mr. Cama would accordingly submit that the Industrial Court could

[1] 1990 SCC Online Bom 237

neither have directed opening of the factory nor payment of salaries to the concerned workers in absence of operation of business activities of the firm. Reliance is placed on judgment of this Court in ***Ramchand Daulatram Chhabria and ors Versus. Deputy Commissioner of Labour and Appellate Authority and ors***[2] in support of the contention that dissolution of the Partnership Firm brings to an end the service of the workers and that even if Court Receiver or agent of the Court Receiver restarts the business of the firm by continuing the same workers, it would amount to fresh appointment and not continuity with past service. He would pray for setting aside the impugned judgment and order passed by the Industrial Court.

8) Mr. Jariwala, Mr. Siganporia and Mr. Pai appear on behalf of the partners of the firm - Respondent Nos.3a to 3c, Respondent Nos.5 and 6 respectively. They have supported the Petition filed by the Court Receiver and would adopt the submissions of Mr. Cama.

9) The Petition is opposed by Respondent No.1-Union, as well as by the intervening workers. Mr. Bukhari, the learned Senior Advocate appearing for the Respondent No.1-Union has submitted that the Industrial Court has correctly directed payment of wages and opening of factory by the Court Receiver. That mere filing of Suit for dissolution does not effect in automatic closure of the factory in absence of following the procedure prescribed under section 25-O of the ID Act. That the Suit for dissolution of partnership firm is still pending and till the firm is dissolved by a decree passed by this Court, the same continues to subsist. That the factory operated by a partnership firm can be closed only after following the procedure

[2] 2007 (1) MH.L.J. 118

prescribed under section 25-O of the ID Act. Till procedure is not effected in accordance with law, liability of the employer to pay wages continues. That the Court Receiver was appointed essentially to sell the business of the Partnership Firm as a going concern and the partners of the firm are under obligation to pay wages to the workers in absence of any lawful closure.

10) Mr. Bapat, the learned Senior Advocate appearing for the intervening workers would submit that till date, there is no cessation of services of the concerned workers. Their services have not been terminated in any manner. That therefore employment of the concerned workers continues and the employer-firm/its Court Receiver is under legal obligation to pay wages to the concerned workmen. That mere filing of Suit does not result in automatic dissolution of the partnership firm. That the firm is yet to be dissolved. He would take me through various orders passed by the Division Bench contemplating sale of the firm as a going concern. He would rely upon judgment of the Apex Court in ***Banarsi Das Vs. Kanshi Ram and Ors.***[3] in support of his contention that mere filing of Suit for dissolution of the partnership firm does not result in automatic dissolution of the firm and the dissolution occurs only on passing of the decree. Mr. Bapat would submit that the concerned workmen have not been paid any benefits in respect of the long services put by them. That if closure was to be effected under the provisions of section 25-O of the I.D. Act, the workers would have received atleast retrenchment compensation, which is also not paid to them. That none of the workers are paid gratuity and that the partners of the firm have illegally withheld the gratuity fund operated by the firm. He would therefore pray for dismissal of the Petition.

[3] AIR 1963 SC 1165

11) Rival contentions of the parties now fall for my consideration.

12) The short issue that arises for consideration in the present Petition is whether the undertaking of a partnership firm, which is sought to be dissolved and in respect of which Court Receiver has been appointed for sale of its assets, and consequently whose business has come to a standstill, needs a separate closure permission under Section 25-O of the ID Act.

13) M/s. Ahmed Oomarbhoy, a partnership firm, was engaged in the business of manufacture and sale of edible oil under a famous brand name "Postman". The Partnership Firm was running a factory employing about 230 permanent workmen and several contract workers. It had over 500 workers working in its factory and offices. The business of the firm and its production activities were running smoothly. However it appears that disputes erupted between the partners of the Partnership Firm. One of the partners (Respondent No.3) therefore desired end of the partnership and served a notice for dissolution of the Partnership Firm. He has filed Suit No. 4913/2000 in this Court seeking dissolution of the firm and for accounts. Filing of suit for dissolution of the firm by one of the partners has brought the business of the firm to a grinding halt, exposing the workers to the vagaries of unemployment. The manufacturing actives of the factory were brought to a halt on account of disputes between the partners. There were no possible problems in running of the factory and the management had not decided to close down the same. However, the disputes between the partners and consequent action for dissolution of the Firm has resulted in a situation where the factory and business, which was

never intended to be closed, has been closed only on account of disputes between the partners. Various orders passed in the Suit for dissolution has envisaged selling the assets of the partnership firm. The workers felt aggrieved by the indirect closure effected by the management without following the procedure under section 25-O of the ID Act. Since the workers have lost their jobs, after making unsuccessful attempts in securing reinstatement by seeking running of operations of the factory by intervening in the Suit, the concerned workers finally approached the Industrial Court seeking relief of payment of wages. By the impugned judgment and order, the Industrial Court has allowed the complaint filed by Respondent No.1-Union directing payment of wages to the concerned workmen from January 2002 with further directions to recommence the production activities at the factory. Since the Court Receiver has been appointed in respect of the business and assets of the firm, if the order of the Industrial Court is to be implemented, the Court Receiver will have to run the factory solely for payment of wages to the concerned workers.

14) In the light of the above position, the broad controversy which arises for determination in the present petition is whether filing of Suit for dissolution of a partnership firm and appointment of a Court Receiver over business and assets of the Firm would obviate the need to secure closure permission under section 25-O of the ID Act. To paraphrase, whether filing of proceedings for dissolution of partnership firm and appointment of Court Receiver for sale of its assets would effect in automatic closure of establishment obviating the need to effect closure in accordance with the provisions of section 25-O of the ID Act.

15) To decide the issue in my view, it would be necessary to ascertain the exact status of the business of the partnership firm and the purpose for which Court Receiver has been appointed in dissolution Suit.

16) Respondent No.3, who has filed the Suit for dissolution of the firm, claims that the partnership was at will. Under Section 43 of the Partnership Act, when the partnership is at will, the firm can be dissolved by any partner by giving notice in writing to all other partners of his intention to dissolve the firm. The firm stands dissolved from the date mentioned in the notice and if no such date is mentioned, the date of communication of the notice becomes the date of dissolution of the firm. Section 43 of the Partnership Act provides thus:

> **43. Dissolution by notice of partnership at will.**—(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
> (2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

17) The Suit filed by Respondent No.3 is also for accounts of the firm. Since the business of the Partnership Firm has already come to standstill, the main enquiry that would be conducted by this Court while deciding the Suit would be to ascertain accounts of the Firm and to distribute its assets amongst the partners in proportion to their shares in the firm. It would be necessary to have a quick stock at some of the orders passed in Suit No. 4913/2000.

18) In his Suit, the Plaintiff therein (Respondent No.3) has sought the main prayer for dissolution of the firm w.e.f. 27 November 2000 which is the date of notice issued by him seeking dissolution of the firm. In Notice of Motion No. 3419/2000 filed in the Suit, Learned Single Judge of this Court passed order dated 6 December 2000 observing that the partnership is at will and the Plaintiff himself has issued notice of dissolution. The Court therefore appointed Receiver in respect of the partnership business and assets. Order dated 6 December 2000 reads thus :

> "At this stage I do not propose to issue any direction pertaining to appointment of any of the parties as agent of the Receiver sending the defendants and Plaintiff filing their respective Affidavits in support of their contentions that they are urging before this Court However, as the partnership is a partnership at will and as apparently all the parties have at some stage issue notice of dissolution of the partnership and/or filed suit for that purpose and in the instant case the plaintiff himself has issued notice of dissolution and has not filed the present suit, Receiver will have to be appointed as Receiver of the partnership assets. In the light of that till further orders the following order: -
>
> > i) Receiver of this Court is appointed as Receiver of the partnership business and assets.
> >
> > ii) Receiver to take an inventory of all the assets of the partnership.
> >
> > Stand over to 12th December, 2000 for further orders, parties to exchange affidavits in advance.
> > Receiver to act on an ordinary copy of this order duly authenticated by the Associate of this Court.
> > P.A. to give ordinary copy of this order to the parties."

19) On 30 July 2001, this Court directed sale of assets of the firm on the basis of agreement expressed between the contesting

parties. This Court recorded agreement between the parties in respect of list of the assets of the Firm and the order enumerates 14 immovable properties owned by the Firm at that point and based on the agreement between the parties, this Court directed taking over possession of the properties by the Receiver and sale thereof. For the purpose of the present dispute, it would be apposite to reproduce paras-1 and 2 of the order dated 30 July 2001 which reads thus :

> 1. I have heard the learned counsel for both the sides on previous dates as also today. On the basis of the submissions that have been made before me, the following appears to be the agreed position between the parties:-
>
> (1) As the firm is to be dissolved, the assets of the firm are to be sold by inviting the bids.
>
> (2) That the Court Receiver appointed vide Order dated 6th December 2000 is confirmed as Receiver of the assets of the firm.
>
> (3) It is also agreed that the Valuer, for the purpose of valuing the assets of the firm is to be immediately appointed.
>
> 2. It is also agreed between the parties that the Receiver, after completing the process of taking possession of the assets of the firm has to invite the bids for the sale of the assets of the firm. The bids could not be submitted by the Partners as also outsiders.

20) Thereafter, various orders were passed from time to time by this Court in the Suit regarding sale of assets of the partnership firm. Thus, the order dated 30 July 2001 clearly shows specific directions issued by the Court in the Suit for selling all assets of the firm. The order dated 30 July 2001 did not contemplate selling business of the firm as a going concern.

21) It appears that on account of directions issued by this Court for sale of assets of the Firm, the factory workers faced the prospect of termination of their services on account of stoppage of manufacturing activates at the factory since September 2001. The workers and their union decided to intervene in Suit No. 4913/2000 to seek remedies in respect of indirect discontinuation of their services and for payment of salaries. By order dated 9 November 2001, this Court directed Court Receiver to pay salaries to the workers for October 2001. By further order dated 20 December 2001 directions were issued for payment of salary upto December 2001 while observing that the partnership was dissolved. The relevant direction in the order dated 20 December 2001 reads thus :

> Purely as a interim measure and to avoid hardship to the employees who were on the role of partnership which is now dissolved, such employees who were on the role and covered by the present notice of motion and who had been paid upto the month of October, be paid upto the month of December, 2001.

22) This is how the workers have received wages upto December 2001, whereafter no wages are paid to them.

23) It is contended on behalf of the workers and their Union that this Court never contemplated sale of assets of the Partnership Firm and that the business was supposed to be sold as a going concern. My attention is invited to some of the orders passed by the Division Bench when the Union challenged the order passed by the Learned Single Judge by filing Appeal. No doubt, the Appeal Court did explore the possibility of selling the business of the firm as a going concern. However, it appears that the Appeal preferred by the

Respondent-Union was subsequently disposed of as infructuous as the Learned Single Judge refused to entertain Union's Notice of Motion for interim orders since the Respondent-Union's right of impleadment to the Suit was yet to be decided. Ultimately, the Respondent-Union has not been permitted to be impleaded in the Suit and was granted liberty to agitate the grievance of its members in appropriate Court in appropriate proceedings. Therefore, no inference can be drawn on the basis of some of the orders passed by the Appeal Court exploring the possibility of selling business of the Firm as a going concern that the Court Receiver was under legal obligation to run the factory and to pay wages to the workers. Thus the position that was obtained by January 2002, from when wages of the workers got discontinued, was that the Court Receiver was under orders to sell the assets of the Partnership Firm. The directions for sale of assets of the Firm are obviously for the purpose of finalising the accounts and for distribution of sale proceeds amongst the partners. The Court Receiver was never supposed to run the business himself nor was under direction to appoint any agent for the purpose of running the business of the Partnership Firm.

24) As observed above, Section 43 of the Partnership Act envisages dissolution of the partnership firm from the date indicated in the notice or from the date on which the notice is communicated by one of the partners. This is the reason why the observations can be seen in various orders about dissolution of the Partnership Firm. Thus, it is not that in every case, the partnership at will would stand dissolved only upon a decree passed by a Court. In a Suit filed for dissolution of partnership at will, whose business activity has come to a standstill, the real enquiry by the Court would be into accounts of the Partnership Firm for distribution of partnership assets and not

for recommencing the Firm's business. It may that where the business activities of a Partnership Firm continue despite sending of dissolution notice by one of the partners that the Court would enquire whether the dissolution is warranted or not. However in a case involving stoppage of business activities of the Firm, leading to passing of orders for liquidation of the firm's assets, the only inquiry would be towards distribution of sale proceeds amongst the partners. In my view, therefore, mere pendency of the dissolution Suit in the present case cannot be a ground for inferring that the firm is yet to be dissolved or its activity must continue, for the purpose of payment of wages to the workers.

25) It is contended on behalf of the Respondent-Union and intervening workers that closure of establishment of the firm can only be effected in strict compliance with the provisions of section 25-O of the ID Act. Chapter V-B of the ID Act applies to an industrial establishment in which not less than 100 workmen are employed. There is no dispute to the position that at the relevant time, more than 100 workmen were employed on average per working day in the establishment of the partnership firm. For closing down an undertaking to which Chapter V-B applies, Section 25-O envisages seeking of permission of the Appropriate Government. Relevant part of Section 25-O of the ID Act, as it applies to the State of Maharashtra, provides thus :

> *25-O. Application to be made for obtaining permission to close down any undertaking ninety days before closure.-*
>
> (1) An employer, who intends to close down an undertaking of an industrial establishment to which this Chapter applies, shall submit, for permission, at least ninety days before the date on which the intended closure is to become effective, an application, in the prescribed manner, to the appropriate Government, stating clearly

the reasons for the intended closure of the undertaking. A copy of such application shall be served by the employer simultaneously on the representatives of the workmen in the prescribed manner:

Provided that, nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams, or other construction works.

(2) On receipt of an application under sub-section (1), the appropriate Government, after holding such inquiry as it deems fit, and after giving a reasonable opportunity of being heard to the applicant and the representatives of the workmen, or if it is satisfied that the reasons given for the intended closure of the undertaking are may, for the reasons to be recorded in writing, by order grant the permission for closure not adequate and sufficient, or are not urged in good faith or are grossly unfair or unjust and in any case such closure would be prejudicial to the interests of the general public, it may, for the reasons to be recorded in writing, by order refuse to grant the permission the appropriate Government under this sub-section shall be sent by it simultaneously to A copy of any the representatives of the workmen.

(3) Where an application for permission has been made under sub-section (1), and the appropriate Government does not communicate the refusal to grant the permission to the employer, within a period of sixty days from the date of receipt of the application by it, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) Any employer or any workman affected by any order made under sub-section (2) or any workman affected by the permission deemed to be granted under sub-section (3), may, within thirty days from the date of the order or from the date from which the permission is deemed to be granted, as the case may be, prefer an appeal to such Industrial Tribunal as may be specified by the appropriate Government by notification in the Official Gazette for such area or areas or for the whole State, as may be specified therein. The Industrial Tribunal shall, after holding such inquiry as it deems fit, as far as possible within thirty days from the date of filing the appeal, pass an order, either affirming or setting aside the order of the appropriate Government or the permission deemed to be granted, as the case may be.

(5) Any order made by the appropriate Government under sub-section (2) or any permission deemed to be granted under sub-section (3), subject to an appeal to the Industrial Tribunal, and any order made by the Industrial Tribunal in such appeal, shall be final and binding on all the parties concerned.

(6) Any order refusing to grant permission for closure made by the appropriate Government under sub-section (2) shall remain in force for a period of one year from the date of such order, unless it is set aside earlier by the Industrial Tribunal in appeal.

(7) When no application for permission under sub-section (1) is made, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure, and the workman shall be entitled to all the benefits under any law for the time being in force, as if no notice has been given to him.

(8) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owning to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(9) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman in the said undertaking, who has been in continuous service for not less than one year in that undertaking immediately before the date of application for permission under this section, shall be entitled to notice and compensation as specified in section 25-N, as if the said workman has been retrenched under that section.

26) Closure of undertaking of an industrial establishment with less than 100 workmen can be effected under Section 25-FFA of the ID Act, which provides thus:

25-FFA. Sixty days' notice to be given of intention to close down any undertaking.

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-
(a)an undertaking in which-
(i)less than fifty workmen are employed, or
(ii)less than fifty workmen were employed on an average per working day in the preceding twelve months,
(b)an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2)Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

27) Section 25-FFF provides for payment of compensation to workmen in case of closing of undertakings. It provides thus:

25-FFF. Compensation to workmen in case of closing down of undertakings.

(1)Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25-F, shall not exceed his average pay for three months.

Explanation .-An undertaking which is closed down by reason merely of-
(i)financial difficulties (including financial losses); or
(ii)accumulation of undisposed of stocks; or
(iii)the expiry of the period of the lease or licence granted to it; or
(iv)in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which operations are carried on, hall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

(1-A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman

referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 25-F, if-

(a)the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

(b)the service of the workman has not been interrupted by such alternative employment; and

(c)the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1-B) For the purposes of sub-sections (1) and (1-A), the expressions "minerals "and "mining operations "shall have the meanings respectively assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).

(2)Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25-F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months.

28) Thus, while closing down an undertaking of an industrial establishment either under Section 25-FFA or Section 25-O of the ID Act, it is mandatory to pay compensation to the workmen who have put in not less than one year service as if they are retrenched under Section 25-F. Section 25-F of of the ID Act provides thus:

25-F. Conditions precedent to retrenchment of workmen.

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

> (a)the workman has been given one month 's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
>
> (b)the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay for every completed year of continuous service or any part thereof in excess of six months; and
>
> (c)notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

29) Thus upon closure of an undertaking of an industrial establishment, the workmen needs to be paid compensation at the rate of 15 days' wages per completed year of service. Only difference is about requirement of seeking prior permission for closure of the Appropriate Government depending on size of the undertaking of the industrial establishment.

30) The Respondent-Union and intervening workers rely on provisions of section 25-O of the ID Act to contend that there is no valid closure in the present case and that therefore the undertaking of the firm continues. The Industrial Court has also held continuation of the undertaking of the Firm on the basis of provisions of section 25-O of the ID Act. On the other hand, it is contended by the Petitioner as well as by the partners of the firm that dissolution of the firm automatically effects closure of the business and that a separate procedure for closure need not be followed under Section 25-O of the ID Act. The Industrial Court has recorded following findings:

> 13. So far as the dissolution of partnership firm is concerned, admittedly a suit for the purpose is pending before

the Hon'ble High a Court. Unless the suit for dissolution of partnership firm ends in decree, the partnership firm continues to exist. Admittedly the suit is pending and the Hon'ble High Court has not passed any specific verdict dissolving the partnership firm and therefore the partnership continues and in the eyes of law the partnership is still in existence. The Apex Court in the case of Banarasi Das and others Vs. Kashiram and others, reported in AIR 1963 SC page 1115 has clearly laid down that mere filing of suit for dissolution of partnership does not amount to notice of dissolution in case the partnership is at will of the partners. There is no contention in the instant case that the partnership of respondent Nos. 3 to 7 was at will. Apart from that the fact that the suit for dissolution of partnership is not yet been decided is sufficient to find that the partnership is not dissolved by the High Court by passing a decree in the suit filed for the purpose.

14. The respondents have harped upon the only point that on the Court Receiver taking over the possession of the respondent firm, the firm stood closed and therefore, the closure is by the Hon'ble High Court and the provisions of Industrial Disputes Act, 1947 are not applicable. Therefore, it is necessary to see if there is any order passed by the High Court directing the Court Receiver to close down the business of the partnership firm. The fact of the Hon'ble High Court passing various orders from time to time is not disputed. The copies of the orders are filed with the complaint itself. On carefully going through all these orders passed by the Hon'ble high Court, I failed to find any direction of the Hon'ble High Court as regards closure of the business of the respondent partnership firm. The Court Receiver was appointed by the Hon'ble High Court to take possession of the assets of the firm and impliedly look after the business of the firm. If the Hon'ble High Court had directed the Court Receiver to close down the business of the factory of the respondent firm, it should not have directed the Court Receiver to pay wages to the concerned employees till December, 2001. The Hon'ble Division Bench of the Bombay High Court vide order dated 23rd April, 2002 in Appeal No.203 of 2002 was pleased to direct that the Court Receiver should explore the possibility of selling the factory (Respondent No.1) as a going concern by inviting bids from the third parties with liberty to the partners of the firm to place their bids or to bring any bidders. A Copy of this

order is placed on record by the complainant at Exh.U-10 at running pages 321 to 323, which is part of Exh.U-20. The directions of the Hon'ble High Court in the said order may be reproduced. The are as under:

> "It is contended by the learned Counsel appearing for the Union that if the factory is sold as a going concern, then the jobs of more than 300 workmen can be protected. In our opinion, the suggestion made by the Learned Counsel is just and fair and deserves to be considered. We direct the Court Receiver to explore the possibility of selling the factory as a going concern....."

These directions to the Court Receiver by the Hon'ble High Court speak volume to find that the Court Receiver was directed to sale the factory as a going concern and not to close the factory. Therefore, the stand taken by the Court Receiver as to direction of the Hon'ble High Court for closure of the factory are too far from the truth.

15. It has been attempted to canvass by resorting to another order passed by the Hon'ble High Court, where in the Court Receiver was directed to calculate the legal dues payable to the concerned employees, that there were directions for closure. However, this contention of respondents 2 and 3 is nothing but an act of 'sailing close to the wind'. The relevant order in this regard speaks volume to find that the complainant was directed to ascertain that the employees would be agreeable to suggestion of accepting voluntary retirement scheme and also gave specific suggestion to respondent No.3 to 7 as to how the Voluntary Retirement Scheme shall work, and from that point of view, the legal dues were suggested to be calculated and not that there were directions of closure of the undertaking of respondent No.1 firm and legal dues on account of closure were directed to be calculated. Therefore, the pleadings of the respondents that the Hori'ble High Court directed to calculate the legal dues and the business of the respondent firm stood closed is nothing but a 'cock and bull story' of the respondents. The Voluntary retirement scheme suggested by the Hon'ble High Court was not acceptable to the contesting respondent No.3 and admittedly vide letter dated 29.10.2003 addressed to the Complainant's Advocate, he took a stand that he never offered or consented for any Voluntary Retirement Scheme and therefore the suggestion given by the Division Bench of the

Hon'ble High court for Voluntary retirement scheme could not be materialised and as such, the entire exercise of accounting and calculating the dues turned futile.

16. The contention of the respondents, particularly, the Court Receiver that the business of the firm was closed as ordered by the Hon'ble High Court is not at all substantiated by him by producing specific order on record. Therefore, the responsible officer like Court Receiver taking such stand is beyond my understanding and the actions on the part of the Court Receiver and the plea taken by him in this proceeding have to be considered as sort of tactics of respondent no.3, another contesting respondent, for it has sufficiently been brought on record in the evidence of witnesses examined by the complainant and alse supported by specific order of the Court Receiver, copies of which are on record, that the employees were initially allowed to sign the muster roll and record their presence in the factory and all of a sudden this practice was stopped and the gates of the factory were closed on the directions of respondent no.3. It speaks volume to find that the Court Receiver or his concerned representative and Respondent No.3 were hand in gloves in preventing the employees from reporting on duty by disallowing them to sign the muster roll to mark their presence by directly closing the entrence gates of the factory thereby totally preventing the employees from entering the premises. Thus, it is crystal clear that the factory was closed by the acts of respondents 2 and 3 and not by any order of the Hon'ble High Court or operation of law. By preventing the employees from entering the factory premises by closing the entrance gate, the right of the employees to work as per the contract of employment and the settlement between the complainant union and the respondents has been infringed. The right of the employees to work and earn wages has been denied without following due process of law.

17. The contention of the respondents and submissions in the arguments Exh.C-21 on their behalf as to closure of the business of the respondent firm stands on no foundation. The Hon'ble high Court has not directed to close the business of the firm. On the contrary, the Court Receiver was directed to explore the possibility of selling the factory as a going concern, thereby impliedly restraing the respondents from closing the

business and from depriving the employees of their right to work and earned wages. If at all, for the sake of aryument, it is assumed that the Court Receiver bona fide misinterpreted the directions of the Hon'ble High Court, i.e. closing of the firm on taking physical possession of the firm, the question is as to why he directed the employees to sign the muster roll and paid the wages. If at all he misconstrued the directions of the High Court to close the factory, the Court Receiver, being a law officer, well conversant with the laws, should at least have followed the due procedure of law while implementing his mis conceived interpretation that he was appointed as a Receiver not to run the business but to close the business.

18. Application of the industrial Disputes Act and factories Act to the concerned employers and employees cannot be disputed by the party unless it is shown that they are exempt from application thereof. The Industrial Disputes Act is a special enactment. On appointment of the Court Receiver to take physical possession of the respondent firm, undisputedly the Court Receiver assumes the powers, rights and liabilities of the employer i.e. the partners of the respondent firm. The
Court Receiver, after taking physical possession of Respondent No.1 firm steps into shoes of Respondents 3 to 7 as a person responsible to the liabilities and assets of the firm. Any act done by the Court Receiver is therefore an act done by the employer. The Court Receiver is not immune from application of the law. The provisions of the Industrial Disputes Act, 1947 equally bind the Court Receiver as they are binding on the other respondends. Section 25 (O) of the industrial Disputes Act provides that the employer who intends to close down an undertaking of industrial establishment has to apply for prior permission of the appropriate government at least 90 days before the date on which the intended closure is to become effective. Admittedly, no such application has been made by the respondents and therefore there is no closure of the firm in the eyes of law. Therefore the defence of the respondents that there is closure of the business of respondent no.1 firm and the concerned employees are no more employees of the firm is not at all acceptable.

31) The Industrial Court has thus rejected the contention of the Petitioner and partners that a requirement of a valid closure

would get dispensed with on mere filing of Suit for dissolution of the Partnership Firm. As observed above, Section 43 of the Partnership Act provides for dissolution of partnership at will on mere serving of notice by a partner to the other partners. Therefore, the main scope of enquiry in the Suit instituted by one of the partners for dissolution of the Firm is into accounts and entitlement of the partners to the assets of the Firm, especially in a case where assets of the firm are directed to be sold. Though the Suit for dissolution of the Firm still continues to remain pending, the fact remains that the business activities have come to a standstill.

32) In the context of Companies Act, the Division Bench of this Court has held in ***Bombay Metropolitan Transport Corporation Ltd*** (supra) as under :

> The relevant provision of the Industrial Disputes Act is section 25-O. Sub Section (1) reads thus:
>
> > "An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall be served simultaneously on the representatives of the workmen in the prescribed manner.
> > Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work."
>
> It will be seen that permission under section 25-O is required to be taken when an employer intends to close down an undertaking of his industrial establishment. The provision therefore, applies when the Industrial establishment, excluding the undertaking which is sought to be closed down, is intended to be operated by the employer. It, therefore, contemplates the continued existence of the employer and of the industrial

> establishment, less the undertaking which is intended to be closed down.
>
> On the other hand, an order for winding up a company commences the process of winding it up at the hands of the official liquidator and it operates eventually to dissolve the company. **As and from the date of the order, the company ceases to do business. Where the company is an industrial establishment, that establishment ceases to function upon the passing of the winding-up order. The winding-up order is deemed to be a notice of discharge of the officers and employees of the company. The services of the employees, therefore, come to an end by operation of law.**
>
> *(emphasis added)*

33) Thus, when it comes to winding up of a Company, the Division Bench of this Court has taken a view that the winding up order is deemed to be a notice of discharge of the officers and employees of the Company and that their services come to an end by operation of law. Thus, the interplay between the provisions of the Companies Act,2013 relating to winding up of the Company and section 25-O of the ID Act, as dealt with by the Division Bench of this Court, would indicate that a separate closure need not be effected under section 25-O of the ID Act when a company is wound up. Similar analogy can be adopted here. The only difference here is that an order for dissolution of the firm is yet to be passed. However the Partnership Act has a different statutory scheme under which a partnership at will is capable of being dissolved by issuance of notice under Section 43. There is no requirement of formal order of dissolution of a partnership firm. Thus dissolution of a partnership firm can be effected without intervention of a court. Therefore passing of a formal decree in the suit for dissolution of partnership at will is not necessary.

34) In the present case, the partnership is dissolvable at will and a declaration is sought in the Suit that the firm stood dissolved w.e.f. 27 November 2000. This Court has already directed sale of assets of the Partnership Firm and therefore there is no possibility of the factory of the Firm commencing its operations. Thus the business of the Partnership Firm is brought to an end on account of orders passed by this Court directing sale of assets of the Firm. Therefore considering the peculiar facts and circumstances of the case, in my view, a formal closure order under Section 25-O would not be necessary for effecting closure of undertaking of the industrial establishment of the Firm.

35) The Industrial Court has relied on the judgment of the Apex Court in ***Banarsi Das*** (supra) for the purpose of holding that mere filing of suit for dissolution of partnership firm does not amount to notice of dissolution in case of partnership at will. In case before the Apex Court, the partnership was at will. One of the partners instituted a suit for dissolution of partnership and for rendition of accounts in the year 1944. The Court Receiver was appointed by the Court. The mill of the firm was taken over by the District Magistrate under Defence of India Rules and one Kundan Lal was appointed as agent of the U.P. Government by issuance of lease. Thereafter, parties applied to the Court for execution of the lease in respect of the mill in favour of the Appellant, Banarsi Das, who obtained possession of the mill in September 1946. The Suit for dissolution of partnership was dismissed for default on 11 October 1947. On 8 November 1947, Sheo Prasad instituted a suit in Court at Bijnor against his brothers for injunction against Banarsi Das from acting as Receiver in the mill which was dismissed on 3 March 1948. On 7 October 1948, one Kundan Lal instituted a suit seeking a

declaration that partnership was dissolved on 13 May 1944. In the light of the above position, the issue before the court was whether the partnership stood dissolved merely on account of filing of the first suit for dissolution of the partnership on 13 May 1944. It is in the light of the above factual position, the apex Court held in para-12 as under :

> 12. In the plaint in the present suit, the plaintiff Kundan Lal alleged in para 10 that the partnership being at will it stood dissolved on May 13, 1944, when Sheo Prasad filed Suit No. 105 of 1944 in the court of the Sub-Judge, Lahore. No doubt, as pointed out by the High Court, Banarsi Das has admitted this fact in his written statement at not less than three places. The admission, however, would bind him only in so far as facts are concerned but not in so far as it relates to a question of law. It is an admitted fact that the partnership was at will. Even so, Mr. Veda Vyasa points out the mere filing of a suit for dissolution of such a partnership does not amount to a notice for dissolution of the partnership. In this connection, he relies upon 68, Corpus Juris Secundum, p. 929. There the law is stated thus: The mere fact that a party goes to court asking for dissolution does not operate as notice of dissolution. He then points out that under O. XX R. 15 of the Code of Civil Procedure, a partnership would stand dissolved as from the date stated in the decree, and that as the Lahore suit was dismissed in default and no decree was ever passed therein it would be incorrect even to say that the partnership at all stood dissolved because of the institution of the suit. On the other hand, it was contended on behalf of some of the respondents that the partnership being one at will, it must be deemed to have been dissolved from the date on which the suit for dissolution was instituted and in this connection reference was made to the provisions of sub-s. (1) of S. 43 of the Partnership Act which reads thus:
>
> "(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firms".
>
> The argument seems to be based on the analogy of suits for partition of joint Hindu family property with regard to which it is settled law that all the parties are majors, the institution of a suit for partition will result in the severance of the joint status of the members of the family. The analogy however cannot apply, because, the rights of the partners of a firm to the property of the firm are of a different character from those of the members

of a joint Hindu family. While the members of a joint Hindu family bold an undivided interest in the family property, the partners of a firm hold interest only as tenants-in-common. Now as a result of the institution of a suit for partition, normally the joint status is deem to be severed, but then, from that time onwards they hold the property as tenants-in-common i.e., their rights would thenceforth be somewhat similar to those of partners of a firm. In a partnership at will, if one of the partners seeks its dissolution, what he wants is that the firm should be wound up, that he should be given his individual share in the assets of the firm (or may that he should be discharged, from any liability with respect to the business of the firm apart from what may be found to be due from him after taking accounts) and that the firm should no longer exist. **He can call for the dissolution of the firm giving a notice as provided in sub-s. (1) of S. 43 i.e. without the intervention of the court, but if he does not choose to do that and wants to go to the court for effecting the dissolution of the firm, he will, no doubt, be bound by the procedure laid down in 0.20 R. 15 of the Code of Civil Procedure**, which reads thus:

"Where a suit is for the dissolution of a partnership or the taking of partnership accounts, the Court, before passing a final decree may pass a preliminary decree declaring the proportionate share of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, as much, accounts to be taken, and other acts to be done, as it thinks fit."

This rule makes the position clear. No doubt, this rule is of general application, that is, to partnerships at will as well as those other than at will; but there are no limitations in this provision confining its operation only to partnerships other than those at will. Sub-s. (1) of S. 43 of the Partnership Act does not say what will be the date from which the firm will be deemed to be dissolved. For ascertaining that, we have to go to sub-s. (2) which reads thus.

"The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice"

(emphasis added)

36) In ***Banarsi Das,*** the partner had not issued a notice for dissolution of Partnership, which is the requirement under section 43 of the Partnership Act and had straightaway filed a Suit for dissolution of the Firm. The Suit was dismissed for default. In

absence of a valid notice for dissolution of the firm, the Apex Court held that mere filing of the Suit did not amount to automatic dissolution of the firm. However the Apex Court has also held that a Partnership Firm at will can be dissolved by issuance of notice without intervention of the Court. The judgment in ***Banarsi Das*** is thus distinguishable and does not apply to the facts of the present case for multiple reasons. Firstly, in the present case, there is a notice for dissolution of the partnership firm issued by one of the partners. Secondly, the suit is filed in the present case seeking a declaration that the partnership stood dissolved from 27 November 2000. Thus the dissolution of the firm has already occurred with service of notice and declaration is sought only for the purpose of rendition of accounts and distribution of assets of the firm. In ***Banarasi Das*** the suit was filed not for declaration but for dissolution, without service of notice. Thirdly, the judgment in ***Banarsi Das*** does not deal with the issue of dissolution of Partnership in the context of requirement of closure of the undertaking under section 25-O of the ID Act. In any case the judgement also rules that a partnership at will can be dissolved by issuance of notice by partner without intervention of court. The Industrial Court has erred in placing reliance on judgment in ***Banarsi Das,*** which provides no assistance for deciding the issue involved in the petition.

37) The judgment of Single Judge of this Court in ***Ramchand Daulatram Chhabria*** (supra) provides some assistance for deciding the issue involved in the Suit. In case before this court, the Partnership Firm stood dissolved w.e.f. 5 March 1982. In the Suit for dissolution and for accounts, Court Receiver was appointed as receiver of business and assets of the firm and the Receiver was directed to invite bids from the parties for conferment of agency. The

agency agreement was executed by the Receiver in favour of some of the defendants to the Suit. In the light of the above position, where business of the Partnership Firm got transferred from the firm to the agent of the Court Receiver, this Court held that business of the partnership came to be end on the date of dissolution and that appointment of an agent of the Receiver did not operate as continuation of business of Partnership. The Court held that even if the agent of the Receiver continued some workmen, their continuation post appointment of agency amounted to fresh appointments. This Court held in para-13 as under :

> 13. In considering the rival submissions, it merits emphasis that the admitted position is that the partnership stood dissolved with effect from 5th March, 1982. In the suit for dissolution and accounts that was filed before this Court, the Court Receiver was appointed as Receiver of the business and assets of the partnership and the Receiver was directed to invite bids from the parties for the conferment of agency. The Fourth, Fifth and Sixth defendants to the suit who submitted the highest bid were admittedly appointed as agents of the Court Receiver and an agency agreement was entered into on 23rd January, 1990. The business of the partnership came to an end on the date of dissolution. The appointment of an agent of the Receiver in pursuance of the interim order of the Court does not operate as a continuation of the business of the partnership. An agent of the Receiver is permitted to utilise the assets of the partnership. The agent is not bound to either continue the same business or for that matter to engage the same set of employees. The order of the Division Bench presided over by Hon'ble Mr. Justice B. N. Srikrishna (as His Lordship then was) makes it abundantly clear that the liability of the erstwhile partnership in respect of the terminal dues of the workmen would have to be computed as of 24th March, 1982. The Division Bench clarified that even if the same set of employees was engaged by the agents to continue the business, that would amount to a *fresh contract* and, if the workmen were entitled to their terminal dues under that contract, such dues could not come out of the assets of the firm. Despite the clear observations contained in the order of the Division Bench, the Controlling Authority

> under the Payment of Gratuity Act, 1972 in its order dated 20th August, 2003 observed that since the order of the Learned Single Judge dated 28th November, 1996 was upheld in appeal, it was the order of the Single Judge that would have to be given effect to. The Controlling Authority proceeded to hold that "the Hon'ble Division Bench has nowhere mentioned that workmen were appointed as fresh recruits by the Agents and that they were not given continuity of service under the fresh contract". These observations are ex facie in the teeth of the order of the Division Bench. At the cost of repetition, it would be necessary to note that the Division Bench specifically observed that the employment of workmen subsequent to March 24, 1982 would amount to a fresh contract with the consequence that the terminal dues of the workmen for that period could not be borne out of the assets of the firm. Once the appointment of the workmen after 24th March, 1982 is held to amount to a fresh contract, it necessarily follows that in computing the terminal dues on account of gratuity for the workmen, the entire period of engagement cannot be regarded as being uninterrupted. As a matter of law and as a matter of fact, the services would have to be regarded as having been interrupted consequent upon the event of dissolution of the partnership on 5th March, 1982.

38) In my view, therefore, the Industrial Court has grossly erred in holding that business of the partnership firm would continue till decision of Suit No. 4913 of 2000. On account of appointment of Receiver for selling of assets of the Partnership Firm, the business of the Partnership Firm has come to an end. In the peculiar facts and circumstances of the present case, it is not possible to secure a separate closure permission under section 25-O of the ID Act.

39) It must also be noted that the scheme of section 25-O of the ID Act requires an ‘employer’ to make an application to the Appropriate Government seeking closure permission. After appointment of the Court Receiver in respect of the business of the Firm, it cannot be contended that the Receiver became employer of

the Firm. May be in a given case where Receiver appoints someone as agent for the purpose of running the business of the firm, and if the agent continues the work of the firm, the agent may become employer within the meaning of section 25-O of the ID Act. However, no final opinion is expressed on that issue as the same is not involved in the present case. Here, the Receiver has not appointed anyone as agent for running business of the firm. The business of the Partnership Firm has been closed down on account of direction for sale of assets of the Firm. Even the Respondent-Union and the workmen do not dispute the position that no manufacturing activity has been carried out at the factory after September 2001. In such circumstances, it would be absurd to treat the Court Receiver as 'employer' for the purpose of application of provisions of Section 25-O of the ID Act. Since there is no employer, there is no question of making any application under Section 25-O of the ID Act. In my view, therefore the Industrial Court has grossly erred in directing payment of wages to the workers from January 2002. The impugned judgment and order passed by the Industrial Court deserves to be set aside to that extent.

40) The further direction of the Industrial Court for opening the factory for the purpose of reporting of workmen on duties is something which was not even prayed for in the complaint. The Industrial Court could not have granted something which was never prayed by the workmen. Even otherwise, the Court Receiver, appointed for selling assets of the partnership firm, cannot be expected to run the factory. Therefore, the direction for opening of the factory for reporting of the workers is equally unsustainable and liable to be set aside.

41) However, this Court cannot ignore the position that the concerned permanent workmen of the partnership firm are left high and dry without any benefits in respect of the long services rendered by them. It appears that the contract workers of the partnership firm who had worked for several years through contractor had instituted proceedings before the Industrial Tribunal for grant of benefit of permanency. The Industrial Tribunal upheld the claim of the contract workers and directed permanency to the contract workers. One of the partners of the firm filed Writ Petition No. 1557/2004 challenging the award dated 6 February 2004 of the Industrial Tribunal directing grant of permanency to 108 contract workmen. The issue before this Court was whether the establishment of the firm had closed and whether award of permanency was warranted. This Court held in para-11 as under :

> The facts on the record show that the business of the erstwhile partnership has come to a standstill. By the ad-interim order of this Court in the suit for dissolution and accounts, the Court Receiver was appointed as Receiver on 6 th December 2000. The Court Receiver has taken possession of the business and assets. The business stands closed. There is in these circumstances, no question of the workmen being granted benefits of permanency in so far as future benefits are concerned. Upon the closure of the business occasioned by the dissolution of the partnership, the services of the workmen will stand terminated. At the same time, it is just and proper that the workmen should be paid their closure compensation, gratuity and terminal benefits in accordance with law. The difficulty which arises in the matter is in regard to the computation of the closure compensation in the absence of any specific material in regard to the length of service of each individual workman. In order to obviate this difficulty, all the Counsel have joined in stating before the Court that it would be appropriate and proper if the First Respondent is permitted to produce before the Court Receiver documentary material evidencing the length of service in respect of each individual workman. Counsel appearing on behalf of the First Respondent

stated that the relevant records such as those relating to Provident Fund and ESI would be available from which the length of service can be deduced. Within a period of four weeks from today, the First Respondent will be at liberty to produce before the Court Receiver such documents as are available in respect of each individual workman, for the purposes of computing the period during which each workman had been engaged in the establishment of the erstwhile partnership. At this point of time, it would also be appropriate and proper if the computation of closure compensation is made on the basis of the average salary drawn by the permanent workmen of the erstwhile partnership. The statement which is available on the record of the Court Receiver shows that the average salary of the regular workmen would be in the vicinity of Rs.5,000/- per month. This figure pf Rs.5,000/- per month would serve as a fair index of wages for computing closure compensation, in order to obviate a fresh controversy and another long drawn litigation. Fairly, none of the Counsel has expressed any reservation, since the effort of the parties before the Court is to ensure that the dues of the workmen are resolved without further delay. The workmen have not received their terminal dues since 2001. The Court Receiver shall proceed to compute the closure compensation on the basis of a last drawn salary of Rs.5,000/- per month having regard to the length of service that would be verified by him in respect of each individual workman. In the event that in the case of any particular workman no documents are forthcoming regarding length of service, the workman will be treated to be in service from 19 th September 1993 which is the date on which the last contract was entered into by the erstwhile partnership with the Contractor, M/s. Varsha & Co. Dues on account of gratuity shall also be computed. The Court Receiver shall carry out the aforesaid exercise within a period of three months and then submit a report to the appropriate Court to ensure expeditious disbursal of the terminal dues payable to the workmen on account of closure compensation and gratuity.

42) Thus, when it came to contract workers, this Court set aside the Award for grant of permanency by recording a specific finding that the business of the Partnership Firm stood closed. Applying the same analogy, the Industrial Tribunal could not have directed payment of wages to the permanent workmen from January

2002. However, in Writ Petition No. 1557/2004 relating to contract workmen, this court directed payment of closure compensation to them. If contract workers can be paid compensation, I see no reason why closure compensation cannot be paid to the permanent workmen. In my view therefore, considering the fact that the business of the Partnership Firm has been closed, the least that needs to be paid to the permanent workmen is closure compensation. Though the dissolution of the firm may obviate the requirement of seeking prior permission of the Appropriate Government for closure of undertaking of an industrial establishment, the firm would still be liable to pay closure compensation to the workmen. There is no dispute to the position that closure compensation would be wages for 15 days per completed year of service. In my view, following the ratio of the order passed in Writ Petion No. 1557/2004 in case of contract workers, even permanent workers need to be paid closure compensation.

43) Mr. Bapat has complained that the permanent workmen are not paid gratuity and that a separate gratuity fund has been withheld by one of the partners. Mr. Cama has disputed this position and has claimed that gratuity of the workers has already been paid. In my view, irrespective of the manner of closure effected by the Partnership Firm/court receiver, the permanent workmen cannot be denied statutory benefit of gratuity under the provisions of the Payment of Gratuity Act, 1972. Considering the fact that the workers are engaged in long legal battle, it would not be appropriate to drive them to another round of litigation before the Controlling Authority under the Payment of Gratuity Act, 1972. It would therefore be appropriate to direct payment of gratuity to each of the permanent workmen if not already paid. The Petitioner-Court

Receiver needs to make an enquiry about existence of gratuity fund and its status. In any case regardless of existence or otherwise of the gratuity fund, the Firm is liable to pay gratuity to the workers, which liability needs to be discharged by the Court Receiver on behalf of the Partnership Firm.

44) Mr. Cama has opposed payment of compensation and gratuity to the workers through the assets of the firm. He has relied on provisions of Section 48 of the Partnership Act in support of his contention that the payment must be made to all creditors on *pari pasu* basis. In my view, it is not necessary to delve deeper into this issue. Closure compensation has been paid to the contract workers and when the turn of payment of closure compensation to permanent workers has arrived, the defence of Section 48 cannot be raised. Also Section 48 governs mode of settlement of accounts between partners. The same would have relevance while deciding the issue of rendering of accounts while deciding the suit finally. It can have no application for determining the firm's liability to pay closure compensation and gratuity.

45) The last issue is about interest. The amounts of closure compensation and gratuity were payable to the workers in the year 2000. However the same is unlawfully denied to them. Following the principle of restitution, in my view some interest deserves to be paid to the workmen. As it is they are being paid paltry sums towards closure compensation. They were not drawing very high wages in December 2001 and therefore the principal amount of closure compensation would not have much value in the year 2025. On amount of gratuity statutory interest is payable. However keeping in mind the fact that the business of the firm is closed, in my

view payment of simple interest @ 6% p.a. on amounts of gratuity and closure compensation would meet the ends of justice.

46) The petition succeeds partly and I proceed to pass the following order :

a. The judgment and order dated 27 February 2007 passed in Complaint (ULP) No. 434/2004 is set aside.

b. It is however directed that the Court Receiver shall pay to each of the concerned workmen of the Partnership Firm closure compensation calculated at the rate of 15 days wages per completed year of service.

c. The Respondent No.1-Union/concerned workmen shall lodge claims in respect of the closure compensation with the Court Receiver within a period of four weeks.

d. The Court Receiver shall take assistance of partners of the Partnership Firm, as well as of the Respondent No.1-Union for ascertainment of exact years of service put in by the workmen as well as last drawn wages by them in December 2001 and accordingly proceed to determine the amount of closure compensation and pay the same forthwith to the concerned workman.

e. Additionally, the Court Receiver shall also pay to each of the concerned workman, the amount of gratuity

under the provisions of the Payment of Gratuity Act, 1972, if not already paid.

f. Petitioner-Court Receiver shall pay the amounts of closure compensation and gratuity to the workmen along with simple interest @6% p.a. from 1 January 2002 till the date of payment.

g. If sufficient funds are available with the Court Receiver for payment of closure compensation and gratuity, the payment shall be made within the outer limit of four months. In the event it is found that the Court Receiver does not possess sufficient funds for payment of closure compensation and gratuity, the Court Receiver shall proceed to sell the required assets of the Partnership Firm after securing permission to that effect from the Court in Suit No. 4913/2000 and thereafter satisfy the claim of the workers towards closure compensation and gratuity.

47) With the above directions, the Petition is **partly allowed and disposed of.** With disposal of the Petition, nothing survives in the Interim Application, Court Receiver's Report and Notice of Motion. The same also stand disposed of.

[SANDEEP V. MARNE, J.]