

BEFORE THE MEMBER INDUSTRIAL COURT, MAH., AT SANGLI

Complaint (ULP) No.14 Of 2019

Shri Madhukar Gajanan Kadam ..Complainant

V/s

- 1) Managing Director,
Vasantdada Shetkari Sahakari Sakhar
Karkhana Ltd., Sangli and Anr. ..Respondents

Order Below Ex.C-11

(Date : 25th April 2022)

By filing this application the respondent No.2 has raised preliminary objection with regard to maintainability of complaint as against respondent No.2. It is the contention of respondent No.2 that there is no employer-employee relationship in existence between the respondent No.2 establishment and complainant nor was it in existence earlier at any point of time. The complainant is retired employee of respondent No.1 sugar factory and has filed the present complaint claiming his final legal dues as against respondent No.1. The respondent No.2 is not aware about the alleged legal dues. Since there is no employer-employee relationship in existence the complainant has no locus standi to raise any claim against respondent No.2, hence complaint is liable to be dismissed against respondent No.2.

2. It is the contention of respondent No.2 that the respondent sugar factory was given on lease for a period of ten years to the respondent No.2, however, it has only received factory and some part

of office on lease basis. The complainant has no connection with the said lease which was entered into from July 2017 onwards. It was taken under public auction deed floated by financial institution under Securitisation Act being highest bidder and since then the respondent No.2 is running the factory on lease basis. According to respondent the respondent No.2 cannot be made a party to the proceeding as the respondent No.2 has no knowledge about any facts on record pertaining to the dispute in question. Hence respondent No.2 is not even necessary party to the present proceeding. The complaint itself is not maintainable and hence it is liable to be dropped as against respondent No.2.

3. While filing this preliminary objection respondent No.2 has also stated in the application that its right to file detailed written statement and say is reserved. The respondent No.2 has lastly prayed to dismiss the complaint with costs against respondent No.2.

4. The complainant has filed his say on this application at Ex.U-8 and came with a case that the respondent sugar factory is admittedly given on long term lease of 10 years from July 2017 as respondent No.1 could not repay the loan of Sangli DCC Bank Ltd. According to complainant there is tripartite agreement between respondent No.1, respondent No.2 and Sangli DCC Bank executed on 17/07/2017 and under the said agreement the respondent No.2 has undertaken to continue all workers of respondent No.1 karkhana and to pay their

wages and other monetary dues. It is contended that in view of said agreement the respondent No.2 has also paid gratuity etc. of many retired workers. Hence the respondent No.2 is successor in interest of respondent No.1. Since the respondent No.2 has stepped into the shoes of respondent No.1 he cannot avoid his legal liability by raising technical pleas. Since the respondent No.2 has stepped in the shoes of respondent No.1 the relationship of employer-employee relationship is continued with respondent No.2. It is therefore prayed that application be rejected.

5. Heard both the parties at length the respondents have relied upon following Judgments.

- (i) Indian Seamless Metal Tubes Ltd. v/s Sunil Rambhau Iwale (2001 III CLR 728- Hon'ble Bombay High Court)**
- (ii) The 20th Century Fox Corporation v/s F.H. Lal and Ors.(1974 III LLJ 156 – Hon'ble Bombay High Court)**
- (iii) Quadricon Pvt. Ltd. v/s Maxi D'souza (2004 III CLR 530 – Hon'ble Bombay High Court)**
- (iv) Maharashtra General Kamgar Union v/s Royal Western India Turf Club Ltd. (2006 (2) Mh.L.J. 115- Hon'ble Bombay High Court)**
- (v) Sarva Shramik Sangh v/s Janprabha Offset Works (2008 I LLJ 271- Hon'ble Bombay High Court)**

In support of its contention the Judgments are produced alongwith list Ex.C-18. In the Judgment of Hon'ble Bombay High

Court in the case of *Sarva Shramik Sangh v/s Janprabha Offset Works Ltd.* (supra), the Hon'ble Division Bench has considered the law laid down in the case of *Vividh Kamgar Sabha v/s Kalyani Steel Ltd., Indian Seamless Metal Tubes Ltd. Ahmednagar v/s Sunil Rambhau Iwale (2002 (4) LLJ (Suppl) 1220 (NOC), Hindustan Coca Cola Bottling S/W Pvt. Ltd. v/s Bharatiya Kamgar Sena (2002 (1) LLJ 380- (Bom), Sarva Shramik Sangh v/s Indian Smelting and Refining Co. Ltd., Cipla Ltd. v/s Maharashtra General Kamgar Union, Indian Express Newspaper Employees Union v/s K.M. Desai (1991 I LLJ 70- Bom.)*. In the said case Hon'ble Bombay High Court has held that there is no jurisdiction available with the Industrial Court to investigate issue of employer-employee relationship and if the relationship is disputed such question cannot be enquired into by the Industrial Court under MRTU & PULP Act, 1971. It is settled principle of law laid down by the Hon'ble Bombay High Court in the case of *Vividh Kamgar Sabha v/s Kalyani Steel Ltd. (2001 (2) SCC 381)* and *Cipla Ltd. v/s Maharashtra General Kamgar Union (2001 I CLR 754)* that if the employer-employee relationship is disputed or disputable complaint filed under MRTU & PULP Act, 1971 is not maintainable before the Labour Court or Industrial Court. However, in the present matter the respondent No.2 has simply forwarded an application to dispute the relationship. It is settled law that the respondent coming with a plea has to take a specific pleading by way of written statement and to produce

material before the court in support of its pleading. Basically the provisions of Civil Procedure Code can be taken note of though CPC is not strictly applicable. Therefore, in order to frame any specific issue or even a preliminary issue parties are required to file a specific pleading so as to enable the court for frame any specific issue. In this regard Judgment of the Hon'ble Bombay High Court in the case of *Dr.Gosavi Hospital & Obstretics and Gynaec Nursing Home v/s Mallappa Bapu Kamble* in Writ Petition No.742/2022 delivered on 25/01/2022 can be referred in which it is held by the Hon'ble Bombay High Court as under -

“5. Order XVI Rule 1 of the CPC provides for the settlement of issues and determination of the Suit on issues of law or on issues agreed upon. Though the CPC is not strictly applicable to the Labour and Industrial Courts, in principle, the Courts do fall back upon the provisions of the CPC when it comes to framing of the issues.

6. The Labour Court as well as the Industrial Court has refused to grant relief to the petitioner on the ground that without the filing of the written statement, an application C-6 was filed, alleging that the preliminary issue be framed. Both the Courts have rejected the Application on the ground that there is no written statement on record.

7. In view of the above and in light of the statement made by the learned Advocate for the petitioner that the written statement is now filed, it goes without saying that the learned Labour Court would now rely upon Order

XIV Rule 1 of the CPC for framing of the issues in the light of the rival pleadings of the parties and the material available before it.

8. *In view of the above, this Petition is dismissed."*

6. In the light of law laid down by Hon'ble Bombay High Court in the above referred Judgment it is not possible to consider the plea of respondent No.2 of non-maintainability of the complaint in absence of specific pleading to be taken in the written statement. From the record it appears that since the inception the respondent No.2 has not filed written statement there is no written statement filed by respondent No.2 till today and there is one order of no written statement passed against respondent No.1 on 10/01/2020. Therefore, it is not possible to entertain the request of the respondent No.2 filing its preliminary objection at Ex.C-11 to dismiss the complaint as against respondent No.2. Therefore, the application filed by respondent No.2 deserves to be rejected. However, the respondent No.2 has granted liberty to file application, if any at appropriate stage after filing written statement. Hence the following order.

Order

- i) Application stands rejected.
- ii) Dictated and pronounced in the Open Court.



Sangli.

Date : 25th April 2022.

(D.M. Patil)
Member,
Industrial Court Sangli

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