

BEFORE A. M. PATANKAR, PRESIDING OFFICER,
THIRD LABOUR COURT AT THANE.
REFERENCE (IDA) No. 62/2017
CNR-MHLC040003762017

Shri Omsingh Sheth & Ors. ...The first party

And

Shri Santosh Surajprasad Tati ...The second party

ORDER BELOW EXH. U-6
(Dated : 16/01/2023)

By this Application the second party has taken objection for representation of the first party company through an Advocate/Labour Law Consultant. It is stated that the applicant/second party is a member of Lalbavta Powerloom Warper and Unauorganized Worker Union, Bhiwandi. Mr. Sunil Subhash Chavan is the president of Lalbavta Powerloom Warper and Unauorganized Worker Union, Bhiwandi. Hence, the applicant has objection for representation of the first party through Advocate/ Labour Law consultant.

2. The first party has given reply to the application below Exh. C-12. It is stated that the objection raised is mischievous and not maintainable in the eyes of law. The application being devoid of any merits is preferred to delay the expeditious hearing of the reference. Mr. Sunil Chavan is representing the second party without producing proper documents of the union. Mr. Sunil Chavan has good knowledge of Labour Law whereas the first parties are layman and require representation through an advocate to effectively representi

them. The issue in respect of objection upon an appearance of an advocate in such matters is before the larger bench of the Hon'ble Apex Court in '*Thyssen Krupp Industries India Pvt.Ltd. V/s. Suresh Maruti Chougule*' (order dtd. 21/08/2019). It will be unjust not to allow the first parties to be represented through an Advocate till the decision of the Hon'ble Apex Court in above referred matter. The Advocate of the first party filed his vakalatnama on 19/09/2017 alongwith memo of address. Thereafter on 02/11/2018 Mr. Suresh Kakde (U. R.) filed his appearance on behalf of the second party. Mr. Kakde had not taken any objection in respect of the appearance of the advocate on behalf of the second party. It is surprising that the second party has come up with such objection on 18/11/2022 i.e. after more that 5 years. Hence, the application is required to be rejected.

3. Heard both the sides. Perused the record of the proceeding. There appears no incorrectness in respect of the facts mentioned by both the sides. Section 36 of the Industrial Disputes Act, 1947 (hereinafter I. D. Act for short) lays down representation of parties in the matters filed under the said Act. Section 36(1) of the I. D. Act gives provision as to representation of workman whereas section 36(2) gives provision as to representation of the employer. Section 36(3) strictly lays down that no party to a dispute shall be entitled to be represented by legal practitioner in any conciliation proceeding under this Act or in any proceedings before a court. Thereafter lastly section 36(4) lays down that in any proceeding

before Labour Court, Tribunal or National Tribunal, parties to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal as the case may be.

4. The above statutory provision clearly shows that no party to the reference under I. D. Act may be represented by a legal practitioner unless consented by the other side and permitted by the court. In the matter on hand, the Ld. Advocate for the first party has filed his Vakalatnama way back in 2017. Thereafter, the earlier representative of the second party Mr. Suresh Kakde appears to have file his letter of authority on 02/11/2018. There appears no objection raised by the second party either himself or through his representative till the present application was filed on 18/11/2022. These circumstances show that the second party has kept silent for about 5 years and now come with an objection. In fact, by not raising any objection for a long time the second party has consented engagement of Advocate by the first party. It is also pertinent to note that my Ld. Predecessor has accepted the Vakalatnama on 19/09/2017 only vide order 'filed'. It shows that there are both the elements of consent of the other side and permission of the court to the appearance of the Ld. Advocate on behalf of the first party. After all the crux of the matter appears to be whether the second party can take such objection after lapse of huge period? The answer is in the negative for the reason that silence for long time has to be considered as

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deemed consent. Hence, in my considered view the objection raised by the second party is not just and proper and the same deserves to be rejected. Hence, the following order;

ORDER

The application is rejected.

Date : 16/01/2023
ppk/-

Sd/-
(A. M. Patankar)
Presiding Officer
Third Labour Court, Thane