

R.C. S. No. 24/2020
Reliance Industries Ltd. vs.
Lokshasan Andolan Sangharsha
Samiti
CNR No. MHRG090001192020

ORDER BELOW EXH. 52

Present application is filed by defendants for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure. (Hereinafter shall be referred to as the C.P.C.) It is submitted that present suit is filed for declaration and permanent injunction with applications dtd.12.11.2020 and 23.11.2020 under Order 39 Rule 1 and 2 and section 151 of the C.P.C. to restrain defendants and their members, family members of the members of defendants from entering in the plaintiffs premises for carrying out agitation, shouting slogans, carrying out procession.

2. As per para 3 of the plaint, plaintiff is a company running petrochemical industry at Nagothane. Whereas, defendant No.1 is a registered trade union and defendant No.2 to 4 are its office bearers. It is further averred that defendant trade union is making illegal demands for employment of so called project affected persons, for providing employment to the family members of retired employees, making retirement age as 60 years and other demand pertaining to contract labours. They have arranged aggressive meetings and agitations against the plaintiff. They have also displayed hoardings for holding mass meetings. They are stuck up to their demands and have

arranged aggressive meetings at Kuhire gate to pressurize the office bearers of the company. They may form unlawful assembly and also possibly stop transportation of the material of plaintiff. Storage of dangerous material may lead to threat to life and property at nearby areas which will cause irreparable loss to the plaintiff and also to its employees, transporters and dealers. Thus, in view of the averments and allegation defendants have reason to believe that such averments and allegations are and can for, the subject matter of the complaint or an application to the Hon'ble Industrial Court or Labour Court under section 26, schedule III of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1972. (Hereinafter shall be referred to as the MRTU and PULP Act). Hence, in view of section 60 of the Act, jurisdiction of this Court is barred. Therefore, defendants have prayed to reject the plaint.

3. Application is opposed by the plaintiff by filing his say at (Exh.56). He submitted that present application is devoid of merits and the contents therein are false. He further submitted that the suit and all applications are filed against the '*Lokshasan Andolan Sangharsh Samiti*' and the publication of agitation which is made from 6th February till 21.11.2020 are in the name of said organization. The prayer raised in the present application is far away from the factual acts of defendants. The documents attached in support of the application are not of

defendant No.1. Hence, on these grounds, he has prayed to reject the application.

4. Heard, Ld. Advocates for respective parties. Ld. Advocate for defendants argued that all the averments in the plaint are against the union. There is a relationship of employer employee. The alleged acts of defendants and allegations in the plaint are subject matter of a complaint before the Labour Court. The MRTU and PULP Act covers registered and unregistered trade unions. The Industrial or Labour Court have the jurisdiction to grant relief. Plaintiff has only denied the application. He has not explained as to how section 60 of the MRTU and PULP Act is not applicable. Plaintiff has filed a complaint before the Industrial Court, at Thane. In which, similar kind of reliefs are sought by him. Therefore, plaintiff cannot agitate the same matter before two forums.

5. On the other hand, Ld. Advocate for the plaintiff argued that there is no employer–employee relationship between the parties. Defendants are not the members of the trade union. They are members of defendant No.1 which is not a registered trade union. Therefore, the bar under section 60 of the MRTU and PULP act is not attracted to the present case. Hence, Civil Court has the jurisdiction to try and entertain the suit.

6. Considering the rival contention, following points arise for my determination, which are produced below

alongwith my findings for the reasons stated therein as follows :

| Sr. No. | Points | Findings |
|----------------|--|--------------------------|
| 1 | Whether plaint is liable to be rejected? | In the negative. |
| 2 | What order? | Application is rejected. |

Reasons

As to Point No.1:

7. It is the case of the plaintiff that it is a public Limited company duly registered under the provisions of Indian Companies Act, 1956 having its factory by name as Nagothane Manufacturing Division. Defendant No.1 is a group of person, defendant No.2 is the unit president, Reliance Nagothane Manufacturing Division, defendant No.3 is unit general secretary and defendant No.4 is general secretary. The union is making illegal demands for the employment to the so called project affected persons, employment to family members of retired employees, making retirement age as 60 and other demands pertaining to contract labours. They have displayed a hoarding on 4.2.2020 in this regard. They have arranged aggressive meeting of agitation against the plaintiff near Kuhire bus stand which is about 100 meters away from the Kuhire gate of the plaintiff. Defendants have also published news in '*Daily Sagar*', Raigad edition dtd.6.2.2020. They are also circulating message on whatsapp groups inviting public at large to attend the meeting.

8. On 14.2.2020 defendants and their 200 to 300 supporters have carried out an illegal agitation by shouting slogans against the plaintiff. On 6th September defendants and their supporters gathered and carried procession in the village Velshet, Ambeghar and nearby villages carrying and displaying with the photos of the officers of the plaintiff company with garland of slippers on the photos. On 21st November 2020 defendant No.1 has circulated hand bill setting out its illegal demands. They also started Rathayatra with a 15 feet statue of the chairman and managing director of the company. On 27.11.2020 defendant No.1 alongwith it's supporters had started procession and gathered at material gate .

9. There are more than 350 members who have locked the exit of the truck parking area by sitting on the road, they have burnt flex of the plaintiff company, they are shouting defamatory and insulting slogans against senior executive of the company, they have prevented the entry of contract workers, due to which, their attendance has reduced by fifty percent. On 28.11.2020 they have pelted stones on the security control room in the truck parking area, they are cooking food by igniting fire in the truck parking area and they have abused and assaulted to security guard. Hence, by the present suit, plaintiff has prayed for declaration that the news, pamphlets and hoardings circulated by defendants in respect of agitation are illegal and bad in law and sought temporary as well as

perpetual injunction against defendants to restrain them from carrying any procession or agitation within 500 meters the boundaries of the plaintiff company.

10. Record reveals that plaintiff has amended the plaint as per order below Exh.57 and thereby deleted the words '*registered trade union*' and inserted the words '*group of persons*' in para 5 of the plaint. Thereafter, in view of order below Exh.77 plaintiff has amended the plaint and thereby inserted the averments in respect of all the events occurred after filing of the suit. In light of this factual matrix, admittedly, present suit is filed against the defendant No.1 *Lokshasan Andolan Sangharsh samiti*. Defendant No.2 to 4 appear to be its office bearers. Plaintiff has filed (vide list Exh.4) copy of the pamphlet issued by defendant No.1 which shows that defendant No.1 had organized public meeting near Kuhire bus stand in respect of the demands as mentioned in the plaint. Similarly, defendant No.4 also took a meeting. Copy of news published in the news paper 'Daily Sagar' dtd.6.2.2020 transpires the same. Thereafter, plaintiff has filed (vide list Exh.46) the handbill circulated by defendant No.1 which also shows that Rathayatra was organized by defendant No.1, in respect of the demands. Thus, considering these facts it is clear that plaintiff has sought relief against defendant No.1, its members, supporters as well as defendant No.2 to 4.

11. Basic contention of defendants is that all the allegation and averments are in respect of the union, which forms the subject matter of a complaint to be filed before the Hon'ble Industrial or Labour Court. In this regard, Ld. Advocate for defendants argued that plaintiff will have to be read as it stands without addition or subtraction. In support of this, he has relied on the Judgment of the Hon'ble Bombay High Court in **Merit Magnum Constructions vs. Nand Kumar Anant Vaity and ors. 2014(7) All M.R. 252**. In which, it is held that '*at the stage of deciding application under Order 7 Rule 11, pleadings have to be construed as they stand without addition or subtraction of words or by changing their apparent grammatical sense.*' On this count, Ld. Advocate for plaintiff has argued that, mentioning defendant No.1 as a registered trade union was a typological error. In fact, it is not a registered trade union. In light of this, admittedly plaintiff has deleted the words registered trade union in para 5 of the plaint. However, perusing the contents of the present application, defendants have nowhere stated that defendant No.1 is a registered trade union. Moreover, there is no document on record in this regard. Defendant No.1 appears to be affiliated to *Lokshasan Andolan Kamgar Union*. But mere affiliation does not recognize it as a trade union. Therefore, all these facts show that mentioning defendant No.1 as a '*registered trade union*' was a typological error. Therefore, with utmost respect, I am of the opinion that the judgment relied on by the Ld. Advocate for defendants is

not applicable to the present case.

12. It is the contention of defendants that all the averments in the plaint are covered under section 26, Schedule III of the MRTU and PULP Act. In this regard, Ld. Advocate for defendants has relied on the judgment of the Hon'ble Bombay High Court in **Nichani Hotels Corporation vs. Bombay Labour Union and others, 1981 MH. L. J. 711**. In which, it is held that *'suit for injunction restraining defendants from picketing or entering into hotel or preventing plaintiffs in any manner from carrying on business or causing nuisance, jurisdiction to entertain the suit is barred under section 60.'*

13. As per the facts of the aforesaid judgment, suit was instituted against the registered trade union. As per section 3(17) of the MRTU and PULP Act, a 'union' means a trade union of employees, which is registered under the Trade Unions Act, 1926. As per Schedule III of the MRTU and PULP Act, instances of unfair labour practices on the part of trade unions are mentioned. Those are in respect of only trade unions. Hence, considering the definition of 'union' under section 3(17) of the Act, it's Schedule III is applicable only to registered trade unions.

14. In present case, admittedly, defendant No.1 is not a registered trade union and defendant No.2 to 4 have been arrayed as defendants in the capacity of it's office bearers. Hence, I am of the opinion that remedy under the MRTU and

PULP Act can be sought only against registered trade unions. Therefore, with utmost respect, I am of the opinion that the judgment (*cited supra*) is not applicable to the present suit.

15. Defendants have filed (vide list Exh.97) copy of application filed by the plaintiff before the Hon'ble Industrial Court, Thane. It transpires that plaintiff has filed a complaint (ULP) No.45 of 2019 against '*Lokshasan Andolan Kamgar Union*' and defendant No.2 to 4 in the present suit. It further transpires that the averments in the present suit and in the said application are identical. The plaintiff had sought additional relief against the respondents and it appears that the Hon'ble Industrial Court was pleased to pass interim order on 5.3.2019 directing respondents, their members, servants to maintain peace within the premises of the company as well as within 100 meters radius of the premises of the factory. They are further directed not to obstruct ingress and egress of men and material in the complainant company.

16. Said application is filed against the '*Lokshasan Andolan Kamgar Union*' and not against the '*Lokshasan Andolan Sangharsh Samiti*' i.e. Defendant No.1 in the present suit. In this context, perusing the documents annexed with list (Exh.54) show that on 31.10.2018 '*Lokshasan Andolan Kamgar Union*' has submitted its charter of demands to the vice president (H.R.) Nagothane Manufacturing Division and Asst. Labour Commissioner. Thereafter, on 11.3.2020 the union has

intimated the Asstt. Labour Commissioner that if the union is not invited for the talks in respect of pending wage agreement, it will start agitation before the said office. Perusing the documents annexed with list Exh.62, on 29.7.2019 defendant No.1 has intimated to the Collector, Raigad about starting of 'लाक्षणिक ठिय्या धरणे आंदोलन'. On 14.9.2020, defendant No.1 has submitted it's charter of demands to the Collector, Raigad-Alibag, president, Reliance Industrial Nagothane and Asstt. Labour Commissioner. But, these documents nowhere disclose as to whether the defendant No.1 is registered trade union or not. It is pertinent to note that as per the contents of letter dtd.20.11.2020 annexed vide list Exh.72 issued by Lokshasan Andolan Kamgar Union, it is a registered trade union under the Trade Unions Act, 1926. There is a reference of the charter of demands submitted on 31.10.2018. It's contents further disclose that as the management of the plaintiff company has refused to consider the demands, it is decided to start agitation in the name of defendant No.1 i.e. '*Lokshasan Andolan Sangharsh Samiti*'. Thus, it shows that defendant No.1 has started agitation at a large scale which includes the members who are not employed with the plaintiff.

17. Admittedly, plaintiff has sought reliefs against the Kamgar union before the Hon'ble Industrial Court because it is a registered trade union. But, the agitation is started in the name of defendant No.1 which is not a registered trade union.

Therefore, plaintiff cannot seek relief against defendant No.1 under the provisions of the MRTU and PULP Act before the Hon'ble Industrial Court. Under these circumstances, plaintiff does not have any alternate remedy other than filing of the present suit. Hence, in light of these facts, though the averments in the plaint are in respect of the union i.e. Defendant No.1 but it cannot be termed as a union as defined under section 3(17) of the MRTU and PULP Act. Therefore, bar under section 60 of the said Act is not applicable to the present suit.

18. Ld. Advocate for the plaintiff has relied on the judgment of the Hon'ble Supreme Court in **Rajasthan State Road Transport Corporation and another vs. Bal Mukund Bairwa (2009) 4 Supreme Court Cases 299**. In which, it is held that, *'Civil Courts can try all suits, unless barred by a statute, either expressly or by necessary implication. Civil Court being a Court of plenary jurisdiction has the power to determine its jurisdiction upon considering averments made in the plaint but that does not mean that plaintiff can circumvent provisions of law in order to invest jurisdiction on Civil Court which it may not otherwise possess.'* In the present case, defendant No.1 is not a registered trade union. Hence, plaintiff cannot seek remedy against it under special statute. Therefore, this Court has the jurisdiction to try the suit. Hence, the judgment (*cited supra*) is applicable to the present case.

19. Ld. Advocate for defendants has relied on the judgment of the Hon'ble Bombay High Court in **Smt. Vijaya S. Palekar vs. Shri. Barnado Charlio Lobo, 2012 (7) All M. R. 316**. In which, it is held that '*on plain reading of sub section (d) of Order 7 Rule 11, Civil Procedure Code the plaint can be rejected in case the same is barred by any law. Though the application filed by the respondents is under section 9 of the Code of Civil Procedure, nevertheless the said application is to be considered under Order 7 Rule 11 of the Code of Civil Procedure.*' In the present case, present application is filed Order 7 Rule 11 of the C.P.C. Therefore, with utmost respect, I am of the opinion that the judgment (*cited supra*) is not applicable to the present case.

20. He has further relied on the judgment of the Hon'ble Bombay High Court in **Shahid S. Sarkar and Ors. Vs. Mangala Shivdas Dandekar and ors. 2019(1) All M.R. 129**. In which, it is held that, '*one must also not lose sight of the purpose and intention behind Order VII Rule 11(d). The intention appears to be that when the suit appears to be barred by any law, the Court will not unnecessarily protract the litigation and proceed with the hearing of the suit. The purpose clearly appears to be to ensure that where a defendant is able to establish that the plaint ought to be rejected on any of the grounds set out in the said rule, the Court would be duty bound to do so, so as to save expenses, achieve expedition and avoid the Court's resources being used up on cases which will serve no purpose.*' In the present case, plaint

does not appear to be barred by law. The bar under section 60 of the MRTU and PULP Act is not applicable to the present case. Hence, with utmost respect, I am of the opinion that the judgment (*cited supra*) is not applicable to the present case.

21. Thus, in view of the above reasons, as defendant No.1 is not a registered trade union, present suit is not barred under section 60 of the MRTU and PULP Act. Therefore, plaint cannot be rejected as prayed. Hence, for these reasons, point No.1 is answered in the negative and in answer to point No.2 following order is passed :

ORDER

1. Application (Exh. 52) stands rejected.
2. No order as to costs.

Date : 04/01/2021

S. D. Kamalakar
Civil Judge Junior Division,
Roha, Dist. Raigad.