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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8639 OF 2014

SHRI SATPUDA TAPI PARISAR SAHAKARI SAKHAR KARKHANA LIMITED,
NANDURBAR

VERSUS

SUBHASH SAKHARAM CHAUDHARI

...

Advocate for Petitioners : Mr.Barde Parag Vijay.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th August, 2015

Per Court:

1 The Petitioner seeks to challenge the order dated 16.11.2013 delivered by the Labour Court, Dhule below application Exhibit U/4 in Application (IDA) No.2/2010.

2 The grievance of the Petitioner is that the Petitioner is squarely covered by the Bombay Industrial Relations Act, 1946 (presently, the Maharashtra Industrial Relations Act) and an application under Section 33C(2) of the Industrial Disputes Act, 1947 for recovery of money due from the Employer, is not maintainable. Yet, the Labour Court has not framed an issue and has entertained application Exhibit U/4 filed by the Respondent for production of documents.

3 Shri Barde, learned Advocate for the Petitioner, submits that without casting issues the Labour Court can be said to have proceeded with the recording of evidence since the impugned order has been passed directing the Petitioner to produce certain documents. He further submits that an issue with regard to the pleadings set out by the Petitioner and especially those touching the jurisdiction involved, needs to be cast.

4 I have considered the submissions of Shri Barde, who has criticized the impugned order. However, I do not find his submissions to be acceptable. In an application for recovery of money due from the Employer under Section 33C(2), there is no scope to file an application for interim relief. The application Exhibit U/4 seeking production of documents is resorted to by the Respondent prior to the framing of issues which can neither be said to be an anathema nor could it be said that the Labour Court has commenced the recording of evidence without framing the issues.

5 Needless to state, as has been observed by this Court in the case of *Permanent Magnets Ltd., Mumbai v/s Vinod Vishnu Wani* reported in **2002 (3) Mh.L.J. 413 : 2002 (93) FLR 32**, that the Court is expected to frame issues based on the pleadings of the litigating sides. It is thus, the duty of the Court to cast issues.

6 The observations of this Court in paragraph No.12 in the Permanent Magnets case (supra) read as under:-

“12. *The contention sought to be raised by the respondent in this regard is that the prayer to frame issue is restricted to the validity and legality of the Domestic Enquiry and, therefore, right reserved by the petitioner to lead evidence was only in case the enquiry is held to be not in accordance with the principles of natural justice. It cannot be disputed that strict interpretation of the pleadings would disclose a prayer to frame issue in relation to validity and legality of the Domestic Enquiry. The pleadings do not disclose a specific prayer for framing of any other issue. However, it is always to be remembered that framing of issue is primarily the function of the Court and it is not for the party to make prayer in that regard. The issues are to be framed based on the pleadings of the parties. Merely, because the party does not pray for framing of an issue, the Court is not absolved of its duty of framing the issues, which otherwise arise from the pleadings of the parties. This does not mean that the parties are forbidden from rendering necessary assistance to the Court in framing of issues. However, it is primarily the duty of the Court to frame issues, based on the pleadings. Viewed from this angle, mere absence of the prayer to frame issue cannot result in any prejudice to the petitioner. The Apex Court in Makhan Lal Bangal v. Manas Bhunia and others reported in 2001 AIR SCW 90, has ruled that an obligation is cast on the Court to read the plaint/ petition and written statement/ counter, if any, and then determine with the assistance of the learned counsel for the parties the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the Court in the process of framing of issues. Duty of the counsel*

does not belittle the primary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues.”

7 In the light of the above, ends of justice would be met by disposing of this Writ Petition with the observation that the Labour Court shall frame appropriate issues including the issue of jurisdiction looking at the preliminary objections raised by the Petitioner and shall decide the Application (IDA) No.02/2010 strictly on its own merit. The Writ Petition is disposed of.

(RAVINDRA V. GHUGE, J.)