

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.69 OF 2015

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|----|--|---|
| 1] | Ravindra Yadav |] |
| | An adult Indian Inhabitant |] |
| | Aged about 46 years, Occ : Service |] |
| | Having working address |] |
| | T.No.52658N, C.No.70/MER Dept. |] |
| | Naval Dockyard, Shaheed Bhagat |] |
| | Singh Road, Mumbai 400 023 |] |
| | (residential address not known) |] |
| | |] |
| 2] | Jogendra Pratap Singh, |] |
| | An adult Indian Inhabitant |] |
| | Aged about 61 years, occ : Social work |] |
| | Having address 24/32/33, Ibrahim |] |
| | Mension, Dr. Ambedkar Road, |] |
| | Parel (East), Mumbai 400 012 |] |
| | |] |
| 3] | Nandkumar Vasant Patil |] |
| | An adult Indian Inhabitant |] |
| | Aged about 52 years, Occ : Service |] |
| | Having address 204, Chaitanya CHS |] |
| | Sardar Nagar No.1, behind Samah |] |
| | Mandir Hall, Sion Kolivada |] |
| | Mumbai – 400 022 |] |
| | |] |
| 4] | Yogendra Kumar |] |
| | An adult Indian Inhabitant |] |
| | Aged about 41 years, Occ : Service |] |
| | Having address Otr. No.1/15 |] |
| | NCH Colony Powar, Kanjurmarg(W) |] |
| | LBS Marg, Mumbai 400 078 |] |
| | |] |
| 5] | Aishwarya Raturi |] |
| | An adult Indian Inhabitant |] |
| | Aged about 39 years Occ : Service |] |
| | Having address 346/102, |] |
| | Smristi Kalpataru, Sector -3 Phase-3 |] |
| | Mira Road (East), Thane – 401 107 |] |

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|----|------------------------------------|---------------------|
| 6] | Jay Prakash Kadian |] |
| | An adult Indian Inhabitant |] |
| | Aged about 37 years, Occ : Service |] |
| | Having address 227/7, Chunnabhati |] |
| | NAD Karanja, Taluka Uran, |] |
| | Dist – Raigad, Navi Mumbai 400 702 |] |
| | |] |
| 7] | Shiv Karan Singh |] |
| | An adult Indian Inhabitant |] |
| | Aged about 47 years Occ : Service |] |
| | Having address B-302, Surekha |] |
| | Apartment, Mothe Nagaon, Taluka |]..... Applicants. |
| | Uran, District – Raigad |](Orig. Defendants) |

versus

- | | | |
|----|---|---------------------|
| 1] | Rashtriya Raksha Karmachari Sangh |] |
| | A Trade Union registered under the |] |
| | Trade Unions Act, 1926 having its |] |
| | Registered office at 06-C, Islami Bldg. |] |
| | Jacob Circle Mahalaxmi (East) |] |
| | Mumbai 400 011 |] |
| | |] |
| 2] | Ombir Yadav |] |
| | An adult Indian Inhabitant |] |
| | Aged 46 years, Occ : Service |] |
| | President of the Defendant No.1 |] |
| | Union having its registered office at |] |
| | 06-C, Islami Building, Jacob Circle |]..... Respondents. |
| | Mahalaxmi (East), Mumbai 400 011 |](Orig. Plaintiffs) |

Mr. V P Vaidya i/by Mr. M M Agvekar for the Applicants.

Mr. P M Palshikar for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 20th February 2015

ORAL JUDGMENT

1 Admit, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The revisionary jurisdiction of this Court is invoked against the order dated 23/12/2014 passed by the learned Judge, City Civil Court, Greater Bombay by which order the learned Judge has ruled that the jurisdiction of the City Civil Court is not barred in view of Section 28(1-A) of the Trade Unions Act, 1926.

3 The facts necessary to be cited for adjudication of the above Civil Revision Application can in brief be stated thus :- The Respondent No.1 herein is a Trade Union registered under the Indian Trade Unions Act, 1926 (Hereinafter referred to as “the said Act”) and the object of the Union is to organize and unite the civilian employees of the naval establishment in Mumbai and regulate their relation with the employer i.e. the naval establishment in Mumbai. The Respondent No.2 is a person who claims to be the President of the Respondent No.1 – Union. The Respondent Nos.1 and 2 are the Plaintiff Nos.1 and 2 to the suit in question being S.C. Suit No.3008 of 2014. The parties would be referred to as per their status in the suit in question. It is averred in the plaint that the Plaintiff No.1 was registered under the said Act with the Registrar of Trade Union on 23/5/2000 after its constitution was approved by the Registrar. It has been averred that any person who is employed in the units of the headquarters of Western Naval Command, Mumbai and who has attained the age of 18 years shall be entitled

to become an ordinary member of the Plaintiff No.1 Union. A reference is made to the constitution of the Plaintiff No.1 Union. It has also been averred that the General Body Meeting of the Union is to be called by the President or General Secretary of the Union. It has further been averred that if any office bearers or member of the Managing Committee is to be removed, he has to be removed in the General Meeting by simple majority if it is found that he has committed any fraud or acted against the interest of the Union provided he has been given adequate opportunity to explain his conduct. It has been averred in the plaint that the Plaintiff No.2 – the President of the Union had restrained the Defendant No.5 i.e. the Applicant No.5 herein from acting as Joint General Secretary by suspending him from the above post vide letter dated 26/03/2014. It has further been averred that the Special Meeting of the Managing Committee was held on 28/03/2014, and in the said meeting it was decided to hold an Annual General Meeting on 15/4/2014. The cause for the said decision has been averred as some of the Managing Committee members including the Defendants behaved in a indecent manner and caused to obstruct the voting process in the meeting. In respect of the said meeting dated 15/4/2014 a notice was given on 31/3/2014 along with the agenda and one of the agenda was to take action against the show caused Defendants and also to amend the Bye-Laws of the Plaintiff No.1 Union. It has further been averred that the Defendant No.2 i.e. the Petitioner No.2 herein one Jogendra Pratap Singh had called the office bearers meeting of the Union on 2/4/2014 and in

the said meeting a decision was taken to expel the Plaintiff No.2. The authority of the said Jogendra Pratap Singh to call the said meeting has been questioned in respect of which the averments are appearing in Paragraph 9 of the plaint. It has further been averred that in the Annual General meeting of the Union held on 15/4/2014, 172 members were present and in the said meeting 4 resolutions were passed, amongst which was the resolution expelling the Defendant Nos.2, 4, 6 and 7 as the members of the said Union. It has further been averred that the said resolutions passed were communicated to the Flag Officer Commanding-in-Chief, Western Naval Command, Mumbai vide a letter dated 16/4/2014. It has further been averred that the Registrar of Trade Unions was also intimated regarding change of office address of the Plaintiff Union vide letter dated 19/4/2014 and the decision taken in the Annual General meeting held on 15/4/2014. It has also been averred that on 29/4/2014 another meeting was held by the Defendant No.2 Jogendra Pratap Singh and 4 members owing allegiance to the Plaintiff No.2 Ombir Yadav were expelled. It has been averred that the said meeting called and conducted by the Defendant No.2 Jogendra Pratap Singh was illegal as he had already been removed by the resolution passed in Annual General Meeting held on 15/4/2014 from the primary membership for a period of 5 years. It is on the said basis that the authority of Jogendra Pratap Singh was questioned. A reading of the plaint therefore discloses that the Plaintiff No.2 Ombir Yadav and 4 persons owing allegiance to him have been expelled in the

two meetings which were held on 2/4/2014 and 29/4/2014.

4 The substantive reliefs sought in the suit in question are the prayer clauses (a) and (b) which for the sake of ready reference are reproduced herein under :-

(a) That this Hon'ble Court may be pleased hold and declare that the meetings dated 02/04/2014 and dated 29/04/2014 are illegal, improper and bad in law;

(b) That this Hon'ble Court may be pleased to hold and declare that resolutions passed in the said meetings dated 02/04/2014 and 29/04/2014 are illegal and bad in law.

5 In the suit in question, it appears, the Plaintiffs have filed Notice of Motion for injunction against the Defendants for restraining them from acting as office bearers of the Plaintiff No.1 Union. The said Notice of Motion was replied to on behalf of the Defendants by filing Affidavit in Reply dated 20/11/2014. The Defendants questioned the jurisdiction of the Civil Court to entertain the suit in view of the bar as contained in Section 28(1-A) of the said Act. The Defendants also question the locus standi of the Plaintiff No.2 on behalf of the Union. It was the case of the Defendants that the Plaintiff No.2 having already been expelled on 2/4/2014 could not represent the Plaintiff No.1 Union. A reference in the said Affidavit in Reply was made to the redressal forum which is provided for by the Defence Authorities which is

contained in the letter dated 3/11/2006 addressed by Adjutant General to the various Commands in the Army. It has been averred that if the Plaintiffs have any grievance as regards their expulsion or as regards which faction has the legal sanctity, they have to approach the Apex Body of the Union. The Plaintiffs have filed the suit question without following the said modality.

6 To the said reply of the Defendants, rejoinder was filed by the Plaintiffs. In the said rejoinder the factum as to how the Plaintiff No.2 has become President was averred, though the said fact did not find a place in the original averments as contained in the plaint. The sum and substance of the case of the Plaintiff No.2 was that he has been co-opted in the place of one Mr. S K Singh who had resigned of his own volition. It is the case of the Plaintiffs that in the said meeting the Defendant No.2 was personally present and had signed the minutes.

7 In the background of the jurisdiction of the Civil Court being questioned by the Defendants, the Trial Court framed the issue as regards the jurisdiction of the Civil Court on the touchstone of the Section 28(1-A) of the said Act. As indicated above the said issue has been answered by the Trial Court by ruling that the jurisdiction of the City Civil Court to try and decide the suit is not barred in view of the Section 28(1-A) of the said Act. The gist of reasoning of the Trial Court as can be seen from the impugned order is that

having regard to the reliefs which are claimed viz. declaration in respect of the two meetings as also the resolutions, the jurisdiction of the Civil Court is not barred. The Trial Court as can be seen from its impugned order observed that the dispute is about the expulsion of the members of the union belonging to the two factions i.e. belonging to the Plaintiff No.2 and the Defendant No.2. In so far as the said expulsion is concerned, the parties are at liberty to move the appropriate forum. Thereafter the Trial Court has gone on to observe that since the relief sought is as regards the declaration in respect of the meetings as well as the resolutions, the City Civil Court would have jurisdiction. As indicated above it is the said order dated 23/12/2014 which is impugned in the above Civil Revision Application.

8 Heard the learned counsel for the parties. The learned counsel appearing on behalf of the Applicants/Defendants Shri Vaidya would contend that the Plaintiffs by seeking the declarations sought what the Plaintiffs are actually challenging is their expulsion which is done by the resolutions which have been passed in the said two meetings dated 2/4/2014 and 29/4/2014. The learned counsel would question the locus standi of the Plaintiff No.2 to file the suit on behalf of the Plaintiff No.1 Union. The learned counsel would contend that in terms of the mechanism for redressal of the grievances which has been provided by the Defence Authorities, it is the faction headed by the Defendant No.2 which has been recognized by the federation. In so far as

joining the Plaintiff No.1 Union as a party to the suit, the learned counsel would contend that it is only to get over the bar as contained in Section 28(1-A) of the the said Act, that the Plaintiff No.1 Union has been so joined. The learned counsel for the Applicants would contend that entertaining the suit would mean that the Civil Court is entertaining a dispute that would lie in the domain of the Industrial Court under Section 28(1-A) of the said Act. The learned counsel would contend that the reliefs have been couched in a particular manner so as to get around the Section 28(1-A) of the said Act, and therefore, the Trial Court ought not to have entertained the suit and dismissed it as not maintainable on the touchstone of the Section 28(1-A) of the said Act.

9 Per contra, the learned counsel appearing on behalf of the Respondents/Plaintiffs Shri Palshikar would contend that the impediment to prosecute the suit arises only if the reference to be made to the Industrial Court as regards the expulsion of any member. It is in the said context that in terms of subsection (4) of the said provision that the Civil Court would not have jurisdiction. In the instant case as there is no pending reference, the Civil Court has its jurisdiction to entertain the suit. The learned counsel would contend that if the Defendants were having any grievance as regards the exercise of the jurisdiction by the Civil Court, they ought to have approached the Registrar under the said Act and it is only after the reference is made, that the impediment would have arisen for the Civil Court to proceed with the suit.

The learned counsel would seek to make submissions on the merits of the case. As regards the Plaintiff No.2 filing the suit on behalf of the Plaintiff No.1 Union, the learned counsel would contend that in the meeting appointing the Plaintiff No.2 as President, the Defendant No.2 was very much present and had signed the minutes in acknowledgement of having attended the said meeting. The learned counsel would contend that having regard to the two declarations sought, the suit is maintainable and sought to place reliance on the unreported judgment of a learned Single Judge of this Court in Writ Petition 4253 of 2012 dated 10/07/2012 in the matter of Mr. Ashok Shinde and others v/s. Mr. K V J Rao and others. The learned counsel also sought to place reliance on judgment of the Apex Court reported in (2001) 1 SCC 350 in the matter of Borosil Glass Works Ltd Employees Union v/s. D D Bamode and others wherein the Apex Court has held that the jurisdiction of the Civil Court is barred under Section 28(1-A) of the said Act only in respect of the matters which have been referred to the Industrial Court under Section 28(1-A) of the said Act.

10 Having heard the learned counsel for the parties, I have consider the rival contentions. The question that arises for consideration in the above Civil Revision Application is whether the jurisdiction of the Civil Court is barred in view of Section 28(1-A) of the said Act. Whilst answering the said question it would be apposite to refer to the said provision :-

Section 28(1-A) :- Power of Industrial Court to decide certain disputes – (1) Where there is a dispute as respects whether or not any person is an office-bearer or a member of a registered Trade Union (including any dispute relating to wrongful expulsion of any such office-bearer or member), or where there is any dispute relating to the property (including the account books) of any registered Trade Union, any member of such registered Trade Union for a period of not less than six months may, with the consent of the Registrar, and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1946, for decision.

(2) The Industrial Court shall, after hearing the parties to the dispute, decide the dispute; and may require an office-bearer or member of the Registered Trade Union to be appointed whether by election or otherwise under the supervision of such person as the Industrial Court may appoint in this behalf or removed, in accordance with the rules of the Trade Union:

Provided that the Industrial Court may, pending the decision of the dispute, make an interim order specifying or appointing any person or appointing a Committee of Administration for any purpose under the Act including the purpose of taking possession or control of the property in dispute and managing it for the purposes of the Union pending the decision.

(3) The decision of the Industrial Court shall be final and binding on the parties and shall not be called in question in any Civil Court.

(4) No Civil Court shall entertain any suit or other proceedings in relation to the dispute referred to the Industrial Court as aforesaid, and if any suit or proceeding is pending in any such Court, the Civil Court shall, on receipt of an intimation from the Industrial Court that it is seized of the question, cease to exercise jurisdiction in respect thereof.

(5) Save as aforesaid, the Industrial Court may, in deciding disputes under this section, exercise the same

powers and follow the same procedure as it exercises or follows for the purpose of deciding industrial disputes under the Bombay Industrial Relations Act, 1946.

Hence from a reading of Section 28(1-A) one can get the scope or ambit of the said provisions. The said provisions provide for following disputes to be adjudicated. A dispute as respects whether or not any person is an office-bearer or a member of a registered Trade Union including any dispute relating to wrongful expulsion of any such office bearers or member, or where there is any dispute relating to the property including the account books of any registered Trade Union. In the context of the submission made by the learned counsel Shri Palshikar subsection 4 assumes importance. In so far as subsection 4 is concerned it postulates that the jurisdiction of the Civil Court is barred in respect of any matter which is referred to the Industrial Court in terms of subsection (1). It further postulates that if any suit or proceeding is pending in any Civil Court, the Civil Court shall on receipt of an intimation from the Industrial Court cease to exercise jurisdiction in respect thereof. Subsection 4 therefore makes it clear that in respect of disputes which are referred to the Industrial Court, the jurisdiction of the Civil Court is barred. The disputes which can be referred to the Industrial Court are mentioned in Subsection (1) which has been extracted herein above. At the cost of repetition it is required to be mentioned that one of the disputes which can be referred to is in respect of expulsion of any member. It is in the said context that the above Civil Revision Application would have to be adjudicated.

11 At this stage the contention of the learned counsel appearing for the Applicants/Defendants as regards locus standi of the Plaintiff No.2 to file the suit roping in the Union as Plaintiff No.1 would have to be addressed. Though this Court is not a forum to adjudicate the issue as regards which is the faction which has the legal sanctity i.e. faction belonging to the Plaintiff No.2 or the faction belonging to the Defendant No. 2 Jogendra Pratrap Singh. However, a bare minimum inquiry is required to be conducted in the context of the issue that has arisen as regards the maintainability of the suit. It is required to be noted that the faction headed by the Defendant No.2 seems to have received recognition of the federation which can be extracted from the letter dated 22/05/2014 addressed by the federation. In fact in the said letter it has been mentioned that the correspondence addressed by the Plaintiff No.2 Ombir Yadav should not be entertained. Hence there is a serious dispute as to whether the suit could have been filed on behalf of the Plaintiff No.1 Union by the said Ombir Yadav. It is required to be noted that under Section 28(1-A) of the said Act a dispute can be raised by a member of the Union who is a member of not less than six months standing . It is probably in view of the requirements of the said provision that the Union seems to have been roped in the suit as Plaintiff No.1 otherwise the reliefs sought in the suit by way of declaration in respect of the two meetings and the resolutions can be said to be personal to the Plaintiff No.2 and the members owing allegiance to him i.e. the

4 other members who have been expelled in the meeting dated 29/4/2014. Hence there is merit in the submission of the learned counsel for the Applicants Shri Vaidya that the Plaintiff No.1 Union has been roped in the suit just to get over the bar as contained in Section 28(1-A) of the said Act in so far as the maintainability of the suit is concerned. If the Plaintiff No.1 would not be roped in the suit, the suit filed by the Plaintiff No.2 would have directly come within the mischief of Section 28(1-A) of the said Act. In my view, therefore roping of the Plaintiff No.1 Union as Co-Plaintiff in the suit when the reliefs which are sought can be said to be personal reliefs to the Plaintiff No.2 and the members owing allegiance to him is only to get over the bar as contained in Section 28(1-A) of the said Act in so far as the maintainability of the suit is concerned. Hence the fact that the suit having been filed by the Plaintiff No.1 i.e. the Union would have to be kept out of consideration whilst deciding the preliminary issue.

12 Now coming to the aspect as to whether in view of the challenge to the legality of the meetings and the legality of the resolutions the suit is maintainable. It is required to be noted and has been mentioned herein above that the suit is founded on the fact of the meetings being held on 2/4/2014 and 29/4/2014 by the faction belonging to the Defendant No.2 Jogendra Pratap Singh and the Plaintiff No.2 and four members owing allegiance to him being expelled. The factum of expulsion of the Plaintiff No.2 and the four

members owing allegiance to him is therefore ex-facie clear from the reading of the plaint. The Trial Court as can be seen has also appreciated the fact that there are expulsions and counter expulsions, however, curiously observed that in respect of the expulsions the parties can approach the proper forum, however, in respect of the declaration sought the suit is maintainable. The expulsion of the Plaintiff No.2 and the four persons owing allegiance to him are the outcome of the meetings and the resolutions which are passed are by way of endorsing the said expulsion. Hence by challenging the legality of the meetings as well as the resolutions what the Plaintiffs are in fact seeking to do are laying a challenge to the expulsion of the Plaintiff No.2 and his supporters. The legality of the meetings and the resolutions cannot be decided in a vacuum and the Trial Court therefore was required to consider as to what would be the outcome if the declarations sought by the Plaintiffs are granted. The couching of the reliefs in the manner done in the instant matter can be said to be by way of clever drafting and can be said to be by way of getting over the bar as contained in Section 28(1-A) of the said Act. In so far as expulsion is concerned, the same is directly covered by the said provision and therefore the suit if filed challenging to the expulsion is not maintainable, and it is for the said reason the the prayers are couched in the manner as has been done in the present suit. In my view, therefore, the Plaintiffs are seeking to do something indirectly which they cannot do directly. The Trial Court therefore ought to have appreciated the jurisdictional facts in their proper perspective and ought

to have adjudicated the said preliminary issue accordingly.

13 In so far as the judgment of a learned Single Judge of this Court in Writ Petition No.4253 of 2012 is concerned, the facts involved in the said case was that the declaration was sought in respect of a meeting. The learned Single Judge was not concerned with a case where direct effect of the declaration sought would impinge upon the expulsion of the concerned members. In my view, therefore, the judgment of the learned Single Judge in *Ashok Shinde's* case (supra) would not aid the Applicants. In so far as the judgment of the Apex Court in *Borosil Glass Works Ltd Employees Union's* case (supra) is concerned, the said judgment would also not further the case of the Applicants as in the said case the dispute was sought to be raised by a person who was not a member. It is in the said context that the Apex Court held that the jurisdiction of the Civil Court is not barred. However, such is not the case in the instant matter as in the instant case if the declarations sought are granted by the Civil Court, they would directly impinge upon the expulsion of the members which is a matter covered by Section 28(1-A) of the said Act. Similarly the contention of the learned counsel appearing for the Respondent Nos.1 and 2 Shri Palshikar that only if a reference is made, then the jurisdiction of the Civil Court is barred cannot be accepted. It is for the Plaintiffs who have rushed to the Civil Court to invoke the jurisdiction of the Registrar under the Trade Union and it is only thereafter that the jurisdictional bar as contained in

subsection 4 would come into play. However, having chosen not to invoke the jurisdiction of the Registrar, the learned counsel for the Respondent Nos.1 and 2 wants to contend that the jurisdiction of the Civil Court is not barred, in view of the fact that there is no reference. This in my view is a total misreading of the said provision, the bar comes into play if there is a reference, hence a party who is required to raise a dispute before the Legislature and seek a reference, cannot contend that since there is no reference, the jurisdiction of the Civil Court is not barred. If such an interpretation is accepted, Section 28(1-A) of the said Act would be turned otiose.

14 In that view of the matter, there is a jurisdictional error committed by the Trial Court in entertaining the suit which is ex-facie barred under Section 28(1-A) of the said Act. The impugned order dated 23/12/2014 is therefore required to be quashed and set aside, and is accordingly quashed and set aside. Resultantly, the preliminary issue is answered against the Plaintiffs. The Suit is accordingly dismissed as not maintainable. The above Civil Revision Application is allowed to the aforesaid extent with parties to bear their respective costs of the Civil Revision Application.

[R.M.SAVANT, J]