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

CIVIL WRIT PETITION NO. 946 OF 2015

Punjab and Maharashtra Co-operative Bank Ltd. ... Petitioner.

V/s.

Mr. Namdev Ananda Karape and Ors. ... Respondents.

Mr. Abhay Nevagi i/b. Abhay Nevagi & Associates for the
Petitioner.

Mr. M.S. Topkar for Respondents 1 to 4.

CORAM : N.M. JAMDAR, J.

DATE : 31 AUGUST, 2015.

P.C. :-

By this Petition the Petitioner challenges the order passed by the Industrial Court, Kolhapur dated 5 August 2014 below Exhibit C-6, rejecting the contention of the Petitioner regarding the issue of maintainability and limitation, to be decided as a preliminary issue.

2. The Complaint has been filed by the Respondents – employees contending that they have filed the complaint under the capacity of Ex-employees of Kolhapur Janata Sahakari Bank.

Respondent – Employees have asserted that the said Kolhapur Janata Sahakari Bank has been amalgamated in the Petitioner – Bank.

3. Learned Counsel for the Petitioner submitted that the issue raised by the Petitioner goes to the root of the maintainability of the complaint itself and ought to have been tried as preliminary issue so as to save the time of the Court. He submitted that there is no discussion in the impugned order to support the conclusion that the case requires fuller trial.

4. The Industrial Court has taken note of the legal position that trial of a complaint of preliminary issue will depend on the prima-facie existence or otherwise of the dispute and its triability. It is open for the Industrial Court, if it finds that the complaint cannot be dismissed on the preliminary issue alone and requires a fuller trial, to order accordingly. Prima-facie, as regards issue of maintainability is concerned, there do seem to be pleadings in the complaint regarding amalgamation and consequently continuation of their right. This is not to comment on the merits of the controversy between the parties but only to come to the conclusion that the view taken by the Industrial Court that the matter requires trial, cannot be termed as perverse.

5. Furthermore in this equitable jurisdiction every error need not be corrected unless there also a resultant failure of

justice. The complaint has been filed by the erstwhile employees who since long retired. The complaint is yet to proceed. In the circumstances, I am of the opinion that this is not a fit case where equitable jurisdiction of this Court needs to be extended.

6. The Writ Petition is accordingly rejected. All contentions of the parties on merits will no doubt be considered at the time of the hearing of the complaint by the Industrial Court.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

“ I certify that this order uploaded is a true and correct copy of original signed order.”

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