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

CRIMINAL APPLICATION NO.1940 OF 2015

Appasaheb s/o Rambhau Gagare,
Age 56 years, Occu. Service,
R/o At & Post Kanadgaon, Tq. Rahuri,
District Ahmednagar

..APPLICANT

VERSUS

Pravara Medical Trust,
At Loni, Tq. Rahata,
District Ahmednagar,
Through its Trustee & Secretary

..RESPONDENT

Mr L.V. Sangit, Advocate for applicant;
Mr V.B. Jadhav, Advocate holding for Mr Ashwin Hon, Advocate for
respondent

CORAM : N.W. SAMBRE, J.

DATE : 18th April, 2016

ORAL ORDER :

Heard.

2. The applicant herein claims to be officer bearer of Vaidkiya Karmachari Sanghatana, Kolha, Taluka Shrirampur, District Ahmednagar – the respondent in Complaint (ULP) No.16 of 2011, initiated by respondent to the present application, namely, Pravara Medical Trust.

3. The issue sought to be raised in the present application is, whether after the main complaint preferred under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for

(2)

short "Act") is dismissed in default, of which cognizance is taken under section 48 (1) of the Act during the pendency of said complaint, would continue or merge into the final order of dismissal of the complaint.

4. On 14th March, 2011, the union of which the present applicant is an office bearer, suffered an order of injunction, which was subsequently modified on 7th April, 2011. The union was restrained from carrying out certain activities, as are mentioned in the orders, referred supra.

5. It is then claimed that since the office bearers of the trust have flouted orders, criminal complaint (ULP) No.8 of 2011, seeking cognizance under sections 48 (1), 38 and 39 of the Act was initiated before the Labour Court on 25th March, 2011. On 1st April, 2011, on the said criminal complaint, learned Judge, 2nd Labour Court, Ahmednagar passed an order issuing process as against the union and its office bearers including the present applicant, who is Vice President of the said union.

6. The main complaint in which an injunction was operating came to be dismissed in default on 30th March, 2012, which prompted the present applicant to prefer a revision before the learned Industrial Court, vide Revision (ULP) No.47 of 2011, questioning the legality and validity of the order dated 1st April, 2011 ordering issuance of process. Amongst other, the grounds raised were, once the complaint is dismissed in default, all the orders interim in nature passed during pendency thereof will merge into the final order. So as to substantiate the said contention, reliance is placed on

(3)

the judgment of the Apex Court, in the matter of **Premchandra Agarwal & anr. vs. U.P. Financial Corp. & ors.**, delivered in Special Leave to Appeal (Civil) No.15019 of 2008, on 23rd April, 2009. Reliance is also placed by the learned Counsel appearing on behalf of the applicant on the above referred aspect of merger, on the judgment of the Apex Court, in the matter of **Shiv Shankar & ors. vs. Board of Directors, U.P.S.R.T.C. & anr.**, reported in **1955 Supp. (2) SCC 726**. Mr Sangit then would urge that once the order granting interim relief merges in the final order of dismissal, cognizance as was taken pursuant to the provisions of section 48)(1) of the Act becomes redundant, as all orders including that of issuance of process shall merge with that of final order of dismissal in default. He would place reliance upon the judgment of this, Court in the matter of **Diners Club India Ltd. & ors. vs. Rajguru M.S. & ors.**, reported in **1996 (74) FLR 2082, (1998) III LLJ 934 Bom.**, so as to canvass that the proceedings initiated under section 48 (1) has to be declared as redundant, being merged into the final order of dismissal of the complaint.

7. Learned Counsel appearing on behalf of the respondent opposed the application on the ground that when the interim order passed by the learned Labour Court putting certain restraints on the rights of the union and its office bearers was in operation, a breach was noticed of which cognizance was taken by the Labour Court, pursuant to the statutory provision under section 48 (1) of the Act and the fact remains that even if the complaint is dismissed in default, the period for which the interim order was in operation, the breach as was alleged having been noted of and

(4)

being convinced, the Labour Court has rightly taken cognizance and the fact remains that the applicant has to face proceedings under section 48 (1).

8. With the assistance of the Counsel, I have perused the proceedings as were placed before me. From the same, it could be gathered that an ad interim order was passed against the respondent – union on 14th March, 2011, which was subsequently modified on 7th April, 2011. The complaint came to be dismissed in default on 30th March, 2012. On 1st April, 2011, breach on the part of the applicant was brought to the notice of the Labour Court, which has taken cognizance of the same under section 48 (1) of the Act ordering issuance of process.

9. It is then required to be noted that the order granting injunction against the applicant and in favour of the respondent remained to be in force and was holding the field till 30th March, 2012, i.e. the date till which the interim order dated 14th March, 2011 was holding the field. Mr Sangit was right in pointing out that the interim orders dated 14th March, 2011 and 7th April, 2011 have merged with the order dated 30th March, 2012. He has rightly placed reliance upon the judgments of the Apex Court, in the matter of Premchandra Agarwal and Shiv Shankar & ors. (supra) for the same.

10. However, if the second limb of submission of Mr Sangit is considered that the breach was committed during the operation of the interim order, it is required to be rendered redundant as the main

(5)

proceedings are dismissed in default, is liable to be rejected for the reason that the interim order dated 14th March 2011 and 7th April, 2011 were occupying the field till 30th March, 2012. It is prior to 30th March, 2012, the learned Labour Court, pursuant to the provisions of section 48 (1) of the Act has taken cognizance of and ordered issuance of process. The date on which the order of issuance of process was passed by the Labour Court in exercise of powers under section 48 (1), the fact remains that the main proceedings were also alive, so did the interim order. It is during the pendency of such proceedings and the orders, the alleged breach is taken note of. Just because the main proceedings are dismissed in default and interim order stood merged in the final order dated 30th March, 2012, the criminal liability of breach, in my opinion, would not wash away by dismissal of the main proceedings. The fact remains that the breach as was noticed during the operation of the judicial orders has to be dealt with in a manner as is provided under the statute and in answer to the same, under section 48 (1) was rightly taken recourse to. The said proceedings as are initiated against the applicant as such cannot be declared as redundant just because the main proceedings are dismissed in default on 30th March, 2012. The said proceedings under section 48 (1) will be required to be dealt with and decided, irrespective of dismissal of the main proceedings, as the breach as is reported was in relation to the order which was holding the field on the particular date.

11. In view of above observations, reliance placed by the learned

(6)

Counsel on the judgment of this Court in Diners Club India Ltd. (supra) will be hardly of any assistance.

12. In view thereof, Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

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