

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.32329 OF 2015**

Abbott Healthcare Pvt Ltd.	)	
D-Mart Bldg., Goregaon – Mulund	)	
Link Road, Mulund (West)	)	
Mumbai 400 080	)	..Petitioner

Vs.

1 Mahesh Yashwant Kulkarni	)
C/o Rhone Poulenc Employee's	)
Union, Mumbai Sharmaik Sangh,	)
Sangharsha Building, Quarry Road,	)
Bhandup, Mumbai 400 078	)

2 Rhone Poulenc Employees Union	)
Mumbai Sharmaik Sangh,	)
Sangharsha Building, Quarry Road,	)
Bhandup, Mumbai 400 078	)

3 Nicholas Piramal India Ltd.	)
(now known as Piramal Enterprises Ltd)	)
247, Business Park, A-Wing,	)
6th floor, LBS Marg, Vikroli (West)	)
Mumbai 400 083	)

4 Mr. D. B. Shelatkar	)
General Manager – Human Resources	)
Nicholas Piramal India Ltd.	)
(now known as Piramal Enterprises Ltd)	)
247, Business Park, A-Wing,	)
6th floor, LBS Marg, Vikroli (West)	)
Mumbai 400 083	)

..Respondents

Mr. Neel Helekar for the Petitioner

Mr. Prasad Kulkarni for the Respondent No.1

Mr. V. P. Vaidya a/w Mr. Mahendra Agavekar for the Respondent Nos.3 & 4

CORAM : R. M. SAVANT, J.
DATE : 17th OCTOBER, 2016

ORAL JUDGMENT

1 At the outset, the Learned Counsel for the Petitioner seeks deletion of the Respondent No.2 from the cause title of the Petition, in view of the fact that in the context of the challenge raised, the Respondent No.2 is a formal party. The Respondent No.2 is accordingly deleted. Amendment to be carried out forthwith.

2 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3 The Writ Jurisdiction of this Court is invoked against the order dated 18-8-2015 passed by the Learned Member of the Industrial Court, Solapur, by which order, the Revision Application filed by the Petitioner came to be dismissed and resultantly the directions as contained in the operative part of the impugned order came to be issued.

4 Shorn of unnecessary details a few facts can be stated thus: The Respondent No.1 herein along with the Respondent No.2 has filed the Complaint in question being Complaint ULP No.454 of 2003 in the Labour Court at Solapur. The cause for filing the said Complaint was the dismissal of the Respondent No.1 by the Respondent No.3 herein. The Respondent No.1

herein on the ground that the Petitioner has taken over the business of the Respondent No.3 herein, filed an application Exhibit U-10 for adding the Petitioner as a party to the said Complaint. The said application came to be heard on 22-11-2010 on which day the Petitioner was not present at the hearing of the said application and therefore not heard. It appears that the Advocate for the Respondent No.1 i.e. the Complainant submitted that the Respondent No.3 has been sold to the Petitioner herein and therefore all the workers of the Respondent No.3 are transferred to the said new company. The Advocate for the Respondent No.1 at the hearing of the said application sought deletion of the names of the Respondent Nos.3 and 4 and in their place the name of the Petitioner be substituted. Though the said application Exhibit U-10 was filed for adding the Petitioner as a party to the said proceeding surprisingly the Learned Judge of the Labour Court allowed the said application and directed the deletion of the Respondent Nos.3 and 4 and further directed their substitution by the Petitioner. This as indicated above has been done without the Petitioner being heard.

5 The Petitioner thereafter filed an application Exhibit C-10 for setting aside the order dated 22-11-2010. The said application was founded on the fact that the Respondent No.3 i.e. NPIL (PHL) continues with its operation and only those employees who were employed with the Healthcare Solutions Business and on the rolls of PHL on 8-9-2010 were transferred to the

rolls of the Petitioner Company. The said application Exhibit U-10 came to be rejected by the Learned Judge of the Labour Court, Solapur by order dated 27-2-2013. The gist of the reasoning of the Learned Judge of the Labour Court is that the Petitioner could raise such objections relating to its liability under the agreement between itself and the Respondent Nos.3 and 4 as also the defects in the Complaint and the same can be decided on merits.

6 The Order dated 27-2-2013 passed by the Learned Judge of the Labour Court was taken exception to by the Petitioner by filing Revision ULP No.62 of 2013. As indicated above, the Revision Application came to be dismissed by the Learned Member of the Industrial Court, a direction came to be issued amongst which was the direction to the Petitioner to file its Written Statement within one month from the said date. As indicated above it is the said order dated 18-8-2015 which is taken exception to by way of the above Petition.

7 Heard the Learned Counsel for the parties.

8 The question that arises in the instant Petition is whether the order dated 22-11-2010 which can be said to be the fountain head and cause for the subsequent orders, can be sustained. As indicated above the application Exhibit U-10 filed by the Respondent No.1 herein for bringing the Petitioner on

record as a party to the said Complaint ULP No.25 of 2010 and not for deleting his original employer i.e. the Respondent No.3. Hence the scope of the application was limited to the impleadment of the Petitioner as a party to the Complaint. However on account of the submission made on behalf of the Respondent No.1 that the Respondent Nos.3 and 4 came to be deleted and though the Petitioner was impleaded, the Petitioner substituted the original Respondent Nos.3 and 4. The subsequent orders passed by the Labour Court dated 27-2-2013 and 18-8-2015 are a consequence of the order dated 22-11-2010 however in my view, both the Labour Court and the Industrial Court erred in not exercising jurisdiction in a case where there was a conflict between the relief sought and the relief granted. Moreso in view of the fact that it was the case of the Petitioner that only part of the employees belonging to the Healthcare Solution Business were transferred to the Petitioner.

9 In my view, the interest of justice would be served if the order dated 22-11-2010, as also the order dated 27-2-2013 passed by the Learned Labour Court rejecting the application Exhibit C-10 as also the order dated 18-8-2015 passed by the Learned Member of the Industrial Court dismissing the Revision filed by the Petitioner are set aside and the matter is relegated back to the Learned Judge of the Labour Court for a denovo consideration of the application Exhibit U-10 by restoring the status-quo ante. The consequence would be that the Respondent Nos.3 and 4 would be reinstated as parties to

the Complaint ULP No.25 of 2010. The Learned Judge of the Labour Court would be well advised to hear all the parties and thereafter pass appropriate orders on Exhibit U-10 in accordance with law. Needless to state that the contentions of the parties in that regard are kept open for being urged before the Labour Court.

10 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]