

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1587 OF 2017

M/s Classic Fashion	...	Petitioner
Versus		
Mr. Gautam Tukaram Sonawane		
And Another	...	Respondents

.....

Mr. Aniketh Poojari for the Petitioner.
None for the Respondents.

.....

CORAM : PRASANNA B. VARALE, J.

DATE : 31 AUGUST 2017

P.C. :

. Heard learned Counsel appearing for the Petitioner.

2 By the present petition, the Petition has challenged the order dated 29 December 2015 passed by the learned Presiding Officer, 10th Labour Court, Mumbai as well as the order dated 6 April 2017, thereby rejecting the application seeking review of the order dated 29 December 2015.

3 Before proceeding to the facts giving rise to the petition, it would be necessary to refer to certain events, namely, the petition was before this Court on 3 July 2017. On 3 July 2017, at the request of learned Counsel

for the Petitioner, the petition was adjourned to 10 July 2017. On 16 August 2017 and 24 July 2017, this Court passed the following orders :

“16 August 2017-Due to paucity of time the matter is adjourned to 6 September 2017. Ad-interim relief if any to continue till then.

24 July 2017-Due to paucity of time the matter is adjourned to 14 August 2017. Ad-interim relief if any to continue till then.”

4 On 16 August 2017, the matter was adjourned to 6 September 2017. The petition was to be heard by this Court on 6 September 2017 and the same is circulated for urgent orders/admission before this Court today. Though this Court in the order dated 24 July 2017 and order dated 16 August 2017 stated that ad-interim relief, if any, to continue till then. Perusal of the record show that there is no ad-interim relief granted in the petition.

5 The Petitioner is challenging the order dated 29 December 2015, wherein the Petitioner/Applicant sought recasting of issue and hearing the preliminary issue.

Brief facts giving rise to the present petition can be summarized as follows :

6 The reference was filed before the Presiding Officer sometime in the year 2011. Perusal of the order dated 29 December 2015 show that the Petitioner/Applicant insisted upon for adding issue, namely, does the second party proves that there was an employer-employee relationship between first party and second party ? Learned Presiding Officer, Labour Court on hearing Counsel representing the parties, passed a detailed order. Learned Presiding Officer found that the issue pertaining to employer-employee relationship is already framed at Sr. Nos.1 and 4. Not only this, but the issue in respect of mis-joinder of party is also framed at Sr. No.5. After framing of these issues, the second party i.e. workman adduced his evidence by filing affidavit. The application was opposed on the ground that the reference was filed in the year 2011, issues were framed on 7 February 2012 and the application was filed on 10 April 2013. Thus the submission was that application firstly was made at the belated stage and secondly, the intention of the Applicant was to prolong the proceedings. Learned Presiding Officer by observing that the reference is pending since long and is ripe for final hearing of the parties, found no favour with the Applicant and resultantly, the application was dismissed. Being aggrieved by the order, the review application was filed. It was submitted in the review application that learned Presiding Officer failed to consider the

judgment relied on by the Applicant and committed an error in dismissing the application. In the review application also a detailed order is passed by learned Presiding Officer. Apart from the tenability of the review application, learned Presiding Officer also dealt with the submissions on merit as well as learned Presiding Officer referred to and considered the judgment relied on. Learned Counsel appearing for the Petitioner vehemently submitted that there is consistent view of this Court as well as the Hon'ble Apex Court for deciding the issue of relationship between the parties, namely, employer-employee as preliminary issue. Learned Counsel submitted that the Petitioner is not opposing for leading evidence before the Presiding Officer, but the Petitioner is willing to have a decision on the issue of employer-employee relationship as a preliminary issue. Learned Counsel also submitted that the learned Presiding Officer, though referred to the judgment of the Hon'ble Apex Court in the case of **D.P. Maheshwari Vs. Delhi Admn.**¹, the reference court failed to consider principles reflected in the judgment of the Apex Court. Learned Counsel also placed reliance on the judgment of this court in the case of **Municipal Corporation of City of Amravati Vs. Ashok Ramkrishna Kamble**² and the latest one as per submission of learned Counsel i.e. **Nashik Merchants' Co-op Bank Ltd,**

1 AIR 1984 SC 153

2 1994 II CLR 180

Nashik Vs. Madhukar Bhaurao Hingmire, Nashik³. After going through the material placed orally as well as after going through the judgments relied upon by learned Counsel for the Petitioner as well as referred to in the order passed by learned Presiding Officer dated 29 December 2015, I found no error committed by learned Presiding Officer in the order dated 29 December 2015. Though the learned Counsel for the Petitioner vehemently submitted that in view of the judgments of the Apex Court and this Court, the learned Presiding Officer ought to have decided issue of relationship of employer-employee as a preliminary issue and the learned Presiding Officer erred in placing reliance on the judgment of the Rajasthan High Court. I am unable to accept the submission of learned Counsel for the Petitioner. It would be useful to refer to the judgment of the Rajasthan High Court and the observations of the Apex Court referred to in the said judgment of the Rajasthan High Court.

“9. In the case of D.P. Maheshwari Vs. Delhi Administration And ors (supra), it was held by the Supreme Court that in the Industrial Tribunal there was a time when it was though prudent and wise policy to decide preliminary issues first, but the time appears to have arrived for a reversal of that policy. It was observed that the Industrial Tribunal should decide all the issues in dispute at the same time instead of trying some of them as preliminary issues, nor should High Court in exercise of jurisdiction under Article 226 of the Constitution stop proceedings before the Tribunal so that the preliminary issues may be decided by them.”

(emphasis supplied)

“It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Art 226 of the Constitution and to this Court under Art. 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art.226 and Art.136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. It is also worth while remembering that the nature of the jurisdiction under Art.226 is supervisory and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.”

7 Considering the observations of the Apex Court and on the backdrop of observations of the Apex Court, considering the facts of the present matter, namely, the reference is pending since the year 2011, the preliminary issue being framed by the learned Presiding Officer, 10th Labour Court, Mumbai, namely, employer-employee relationship between the parties and mis-joinder of the party, I am of the opinion that no error is committed by the Presiding Officer in dismissing the application by an order dated 29 December 2015. The petition thus being wholly meritless, deserves to be dismissed at the threshold, the same is accordingly dismissed.

(PRASANNA B. VARALE, J.)