

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

WRIT PETITION NO. 2078 OF 2018

M/S TILAKNAGAR INDUSTRY LIMITED THROUGH ITS GENERAL
MANAGER.

VERSUS

SURESH DNYANDEO KANASE AND OTHERS

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Advocate for the Petitioner : Shri Latange VP.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st February, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 20.11.2017 by which, the application Exhibit-79 filed by the Petitioner/ Management praying for deciding one issue as a preliminary issue, has been rejected.

2 I have considered the strenuous submissions of the learned Advocate for the Petitioner and have gone through the petition paper book with his assistance.

3 The contention is that Respondent No.1/ original Plaintiff is the Assistant Manager. There was employer-employee relationship between the Petitioner and the Plaintiff. The Plaintiff was terminated on account of his performance and for the reasons mentioned in the order of termination. He is not a "workman" under Section 2(s) of the Industrial Disputes Act, 1947. In this backdrop, the suit filed by the Plaintiff was not

maintainable before the Civil Court.

4 It is settled law that unless the employee is a "workman" under Section 2(s) and the employer is an "industry" under Section 2(j) of the Industrial Disputes Act, 1947, an ULP complaint under the MRTU & PULP Act, 1971 or a reference under Section 2-A r/w Sections 10 and 12 of the Industrial Disputes Act, 1947 would not be maintainable before the Labour Court or the Industrial Tribunal, as the case may be. It is thus, settled that such an employee can only have an option of approaching the Civil Court either for specific performance of the contract or for seeking damages or consequential reliefs.

5 The Plaintiff has preferred his suit in 2012. His application for temporary injunction to continue to occupy the residential accommodation granted by the Management, has already been rejected. The suit is almost five years old. The case is ready for recording of oral evidence.

6 Considering the above, I do not find that the impugned order dated 20.11.2017 could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.