

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

WRIT PETITION NO.4681 OF 2017

Hatim Glazing & Cladding Pvt. Ltd. and anr. ... Petitioners

V/s

State of Maharashtra and anr. ... Respondents

Ms.Vidhya Shet i/by M/s Vaid & Associates for the Petitioners.

Mr.A.R.Metkari, AGP for Respondent No.1.

None for Respondent No.2.

CORAM : S.C.GUPTE, J.

DATE : JUNE 21, 2018.

P.C. :

1. Heard learned counsel for the Petitioners. Respondent No.2 is absent though served. The Petitioners challenge an order passed by the Industrial Court at Mumbai in a Miscellaneous Application in a complaint of Unfair Labour Practices (Application Ex.C4), which was for framing of preliminary issue on jurisdiction. It was the case of the Petitioners before the Industrial Court that the Respondent herein (Original Complainant) was not an employee within the scope of the definition given under Section 3(5) of the M.R.T.U. & P.U.L.P. Act, 1971. It was submitted that he was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

The Industrial Court refused to frame a preliminary issue on this point. There is no infirmity in the order. Though the operative part of the order rightly rejects the prayer for holding of any preliminary inquiry on the issue of maintainability, the impugned order reflects some preliminary discussion bearing on the merits of the controversy as to the complainant's status. It needs to be clarified that the question whether the complaint is maintainable on account of the objections raised by the Petitioners herein, namely, the Complainant not falling within the scope of Section 3(5) of the M.R.T.U. & P.U.L.P. Act, 1971 read with Section 2(s) of the Industrial Disputes Act, 1947 is open to debate and will be considered by the Industrial Court at the final hearing of the complaint without reference to the impugned order.

2. The Writ Petition is, accordingly, dismissed with clarification as above.

(S.C.GUPTE, J.)