

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

WRIT PETITION NO.7392 OF 2019

M/s. Top Syringe Mg. Co.

.. Petitioner

Vs.

1. Ramlal Bhagwati Yadav

& Ors.

.. Respondents

Mr.V.P. Vaidya a/w. Ms. Shraddha Chavan i/b Mahednra Agavekar for petitioner.

None for respondent.

CORAM : N.J. JAMADAR, J.

DATE : 16TH OCTOBER 2019

P.C.

1. Heard the learned counsel for the petitioner.
2. The challenge in this petition is to an order dated 28th March 2019 passed by the learned Member, Industrial Court, Thane on an application (below Exh.C-6) for deciding the issue of maintainability and limitation as preliminary issues, whereby the learned Member, Industrial Court, Thane was persuaded to reject the said application.
3. The petition arises in the backdrop of the following facts :-

(a) Initially, a Complaint (ULP) No.114 of 2007 was filed by Maharashtra Samarth Kamgar Sanghatana Union against the petitioner. A settlement was arrived at between the complainant and the respondents therein. Pursuant to the said settlement, the said complaint stood disposed of as settled out of Court by an order dated 10th June 2010.

(b) The erstwhile employees, however, preferred an application being Miscellaneous Application (ULP) No.01 of 2013 in Complaint (ULP) No.114 of 2007 seeking restoration of the complaint under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (M.R.T.U. & P.U.L.P. Act, 1971) on the premise that the Union, which entered into the settlement in the said complaint, had not paid the workmen's dues and certain allegations were made as regards the deprivation of the legitimate dues of the workmen.

(c) The petitioner contested the application and filed written statement. The issues were settled by the Learned

Member, Industrial Court, Thane on 13th March 2019. The following issues were settled :-

“ISSUES

- 1] Whether the application is maintainable?*
- 2] Whether the application is within limitation?*
- 3] Whether the applicant is entitled to restoration of Comp. (ULP) 114 of 2007 which was withdrawn?*
- 4] Whether the applicant is entitled to the reliefs claimed ?*
- 5] What order?”*

4. The petitioner-opponent filed an application for deciding the issue of maintainability and limitation (Issue Nos. 1 and 2 above) as preliminary issue. It was contended that the determination of aforesaid issues was imperative to confer jurisdiction upon the Court to entertain and decide the application.

5. The learned Member was persuaded to reject the application as the learned Member was of the view that the instant application has been filed under the provisions of section 31(2) of MRTU & PULP Act, 1971, and thus Court would examine the issue as to whether the complaint is required to be restored. It was further observed that since the issue of maintainability and limitation have

already been framed, the opponent-petitioner will have adequate opportunity to deal with the said issues. Thus, the issue was not required to be determined as preliminary issue.

6. The learned counsel for the petitioner submitted that the very application was misconceived as the provisions contained in section 31(2) of the MRTU & PULP Act, 1971 envisage the situation of setting aside an order passed ex-parte. In the case at hand, the initially the complaint was filed by the Union and it came to be disposed of pursuant to the amicable settlement arrived at between the parties. Thus, the order dated 10th June 2010, whereby the complaint stood disposed of as settled out of Court, cannot be said to have been passed exparte, empowering the Court to set aside the same and restore the complaint to file. It was further urged that the petitioner-opponent cannot be vexed again over the same issue, which stood conclusively determined, and the employer has already discharged the liability in terms of the settlement.

7. The learned counsel for the petitioner further submitted that there is not even an application for condonation of delay in preferring the miscellaneous application to restore the complaint to

file. Sub-section (2) of section 31 prescribes period of 30 days for setting aside of the ex-parte order. In this backdrop, the issue of limitation must be decided as the preliminary issue.

8. The situation which emerges is that the workmen alleged that the settlement was arrived at by the Union, without adequate authority, and they were deprived of their legitimate dues. These workmen have sought restoration of the complaint. In this backdrop, the question as to whether the application is barred by limitation would squarely arise for consideration. The Industrial Court has already framed this issue. However, in view of the pronouncement of the Supreme Court in the case of *Nusli Neville Wadia Vs. Ivory Properties & Ors.*¹, the issue of limitation, which is often a mixed question of fact and law, cannot be decided as a preliminary issue. Even otherwise, having regard to the nature of the application and the question that would arise before the Industrial Court, the aspect of maintainability would also warrant consideration based on evidence. In any case, the said issue does not constitute a jurisdictional issue. In this view of the matter, the learned Member, Industrial Court, was justified in recording a finding that there was no warrant to determine the issue of maintainability and limitation as preliminary issue.

1 SLP (Civil) Nos.31982-31983 of 2013 dt. 4.10.2019

9. In the aforesaid view of the matter, the petition does not deserve to be entertained.

10. Hence the petition stands dismissed.

[N.J. JAMADAR, J.]