

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 433 OF 2019

Aban Offshore Limited

..Petitioner.

V/s.

Kingsley Joseph D'silva

..Respondent.

Ms. Mitra Das a/w Mr. Jayesh Desai I/b Desai and Desai Associates
for the petitioner.

Mr. Ramanuj S. Upadhyay for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : June 20, 2019.

P.C.:-

During the course of recording of evidence, the petitioner moved an objection on the issue of admissibility of certain evidence in absence of pleadings. Same is overruled by the Tribunal by impugned order dated October 1st, 2018.

2 Heard learned counsel.

3 The submissions are, in spite of the fact that it was

brought on record to the notice of the Tribunal that in absence of pleadings, the evidence should not to have been permitted to be recorded . So as to substantiate the said contention support is drawn from the judgment in the matter of **Shankar Chakravarti V/s Britannia Biscuit Co. Ltd. and Anr.**¹ Para 32 and 33 read thus,

“32. If such be the duties and functions of the Industrial Tribunal or the Labour Court, any party appearing before it must make claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence. The quasi-judicial tribunal is not required to advise the party either about its rights or what it should do or omit to do. Obligation to lead evidence or establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence and lead evidence. A contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would be

1 (1979)3 Supreme Court Cases 371

tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. This view expressed in [Tin Printers \(Private\) Ltd. v. Industrial Tribunal](#), commends to us. The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary.

33. Can it for a moment be suggested that this elementary principle does not inform industrial adjudication? The answer must be an emphatic 'no'."

4 The learned counsel for respondent supports the order.

5 In the order impugned at para 7 and 8 the Tribunal has made following observations.

“ 7. So far legal position is concerned, it cannot be disputed that the evidence without pleading is no evidence. The party cannot be allowed to lead evidence without pleading. Where the party does not make any pleading in

plaint or written statement, it cannot incorporate such pleadings in affidavit.

8. *In view of that it can be said that the evidence can be appreciated by considering all these facts and testimony of the witness in regard to inadmissible evidence can be excluded while appreciating evidence on record. But then the affidavit filed by the applicant is not to be struck off entirely without considering the aspect as to which part of evidence is in admissible and irrelevant. It is because the witness will be tendered for cross examination and then after considering the entire evidence the admissibility of evidence will have to be considered while appreciating his evidence. At this stage it cannot be said as to which part of his evidence is inadmissible and which part of evidence in his affidavit is without his personal knowledge and therefore, inadmissible. All the while, he will be subjected to cross examination and after entire evidence is recorded the appreciation of his evidence will be made. Hence at this stage the application is pre-mature and hence rejected.”*

6 As such, the objection which was raised by the petitioner is left to be decided at the time of analysis of evidence based on the pleadings of the respective parties. That being so, the petition against the interlocutory order, in my opinion, does not warrant any

interference.

7 As such Petition fails, same stand dismissed.

(NITIN W.SAMBRE, J.)