

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

WRIT PETITION (L) NO. 3001 OF 2019

Ramnik D. Gala & Anr. ...Petitioners

vs.

Ladhaku Mazdoor Sangh & Anr. ...Respondents

Mr.Anand R. Pai with Afrin Dalal i/b. Haresh Mehta & Co. for Petitioners.
Ms.Seema K. Chopda for Respondent No.1.

CORAM : S.C. GUPTE, J.

DATE : 16 DECEMBER 2019

P.C. :

Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith by consent of Counsel.

2 This writ petition challenges an order passed by a Labour Court on a reference made to it under the Industrial Disputes Act. The reference concerned purported termination of seven workmen, who were admittedly working in a firm known as “Mark Garments”. It is the case of the Petitioners herein, who were arraigned as first party in the reference, that they had no connection with Mark Garments; that they were merely owners of the premises where the business of Mark Garments was carried on; that the business of the firm “Mark Garments” belonged to one Vimal J. Shah alias Vora. The Petitioners relied on a leave and license agreement executed by them in favour of Vimal Shah for carrying on business at the licensed galas in the name and style as “Mark Garments”. In spite of their deposition that it was Vimal Shah, who was the proprietor of Mark Garments, the case of the second party workman being that they were

workmen of Mark Garments, the Labour Court appears to have gone ahead and passed an award against the Petitioners herein. The Labour Court, whilst passing it, has not considered whether the Petitioners were or any of them was either proprietor or partner of Mark Garments or whether the business in the name and style of Mark Garments was in fact carried on by them or any of them in the premises. The court in fact was informed by Vimal Shah himself, whose written statement was on record, that he was the sole proprietor of Mark Garments. Yet, the Labour Court did not choose to arraign Vimal Shah as a party to the reference. The court simply noted that though Vimal Shah claimed himself to be the proprietor of Mark Garments, he had not led any oral evidence. The Labour Court appears to have cast a negative burden on the Petitioners herein, observing *inter alia* that though they denied the employment of the concerned workmen, they did not produce anything on record to show that the workmen were not their employees. The impugned order of the Labour Court clearly is unsustainable and would have to be quashed and set aside and the reference remanded to it for impleading Vimal Shah alias Vora, as a sole proprietor of Mark Garments, to the reference and hear the reference afresh on merits.

3 The impugned order of the Labour Court dated 14 May 2019 is, accordingly, quashed and set aside and Reference (IDA) No.11/2012 is remanded to it for a fresh hearing in accordance with law and in the light of what has been observed above. Considering the fact that the original reference was made in the year 2012, the Labour Court is requested to expeditiously hear the reference and pass an award and preferably within a period of one year.

4 The writ petition is disposed of accordingly.

(S.C. GUPTE, J.)