

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

WRIT PETITION NO.13052 OF 2019

M/s Vista Film Packaging	...	Petitioner
Versus		
Kamgar Congress	...	Respondent

.....

Mr. Jayant Bardeskar a/w Swarali Joglekar i/b Hrishikesh Mundargi
for the Petitioner.

Mr. Avinash Jalisatgi i/b Vaibhav Jagdale for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 27 FEBRUARY 2020

P.C. :

. This writ petition challenges a misc. order passed by the Labour Court at Thane on 28 July 2017 recasting issues framed in a complaint of unfair labour practice and a revisional order passed by the Industrial Court at Thane confirming that order. By the impugned orders, the courts below recast Issue No.2 framed in the complaint by casting the onus of proving that the workman represented by the complainant-union was an employee under Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“MRTU & PULP Act”) being a workman as per Section 2(s) of the Industrial Disputes Act 1947 (“IDA Act”) on the Petitioner employer. Learned Counsel for the Respondent-union

does not dispute that the onus to prove the status of the complainant as an employee under Section 3(5) of the MRTU & PULP Act or a workman as per Section 2(s) of the IDA Act is on the complainant, though as a matter of trial, the burden may shift. Accordingly, the impugned orders of the Labour Court and the Industrial Court are quashed and set aside and the original issue as framed, namely, Issue No.2, is restored. The Labour Court hearing the complaint is requested to decide all issues together and dispose of the complaint as expeditiously as possible and preferably within a period of six months from today. Both parties, accordingly, may appear before the Labour Court on 6 March 2020 and produce an authenticated copy of this order. The Labour Court may thereupon fix the schedule of hearings and decide the complaint. The writ petition is disposed of accordingly.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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by Rajesh V.
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