

Prajakta Vartak

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

WRIT PETITION NO.6409 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner

V/s.

Mr. Ashok Nanoba Kapase ...Respondent

AND

WRIT PETITION NO.6943 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner

V/s.

Mr. Hemantkumar Vyankappa Wadd ...Respondent

AND

WRIT PETITION NO.6953 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner

V/s.

Mr. Prakash Appaso Parmaj ...Respondent

AND

WRIT PETITION NO.6941 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner

V/s.

Mr. Nemgonda Rama Chougule ...Respondent

AND

WRIT PETITION NO.6932 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner

V/s.

Mr. Dhanyakumar Chandrakant Nille ...Respondent

AND

WRIT PETITION NO.6946 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner

V/s.

Mr. Sunil Purandar Adake ...Respondent

AND

WRIT PETITION NO.6937 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner

V/s.

Mr. Vasant Bapu Magdum ...Respondent

AND
WRIT PETITION (St.) NO.2010 OF 2020

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Mahadev Appaso Bulle	...Respondent

AND
WRIT PETITION NO.6948 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Akaram Balu Pujari	...Respondent

AND
WRIT PETITION NO.6929 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Sukumar Shamrao Tamgave	...Respondent

6AND
WRIT PETITION NO.6954 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Nemgonda Anna Patil	...Respondent

AND
WRIT PETITION NO.6949 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mahavir Rama Gomar	...Respondent

AND
WRIT PETITION NO.6955 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Prakash Dhanpal Gunde through LHR	
Smt. Akkatai Prakash Gunde & Ors.	...Respondent

AND
WRIT PETITION (St.) NO.2240 OF 2020

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Subhash Shivgonda Patil	...Respondent

AND
WRIT PETITION NO.6945 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Ravindra Bapusaheb Patil	...Respondent

AND
WRIT PETITION NO.6947 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Ms. Shakuntala Arun Patil	...Respondent

AND
WRIT PETITION NO.6959 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Arvind Appaso Patil	...Respondent

AND
WRIT PETITION (St.) NO.2262 OF 2020

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Dhanyakumar Adinath Jain	...Respondent

AND
WRIT PETITION NO.6951 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Smt. Mangala Mohan Limbekar	...Respondent

AND
WRIT PETITION (St.) NO.2294 OF 2020

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Miss. Kalpana Sanjay Patil	...Respondent

AND

WRIT PETITION NO.6944 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Neminath Bhupal Mandape	...Respondent

AND

WRIT PETITION NO.6952 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Bandu Devappa Adake	...Respondent

AND

WRIT PETITION NO.6939 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Mahavir Annaso Melvanki	...Respondent

AND

WRIT PETITION (St.) NO.2330 OF 2020

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Mahavir Bharna Aadanna	...Respondent

AND

WRIT PETITION (St.) NO.2334 OF 2020

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Dada Kalgaonda Patil	...Respondent

AND

WRIT PETITION NO.6935 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Jinpal Bandu Suryawanshi	...Respondent

AND

WRIT PETITION NO.1702 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Shashikant Dattatraya Gokave	...Respondent

**AND
WRIT PETITION (St.) NO.2339 OF 2020**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Ajit Vasantrao Limbekar	...Respondent

**AND
WRIT PETITION NO.6958 OF 2021**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Prabhakar Baburao Kapase	...Respondent

**AND
WRIT PETITION NO.6942 OF 2021**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Mahavir Neminath Narade	...Respondent

**AND
WRIT PETITION NO.6956 OF 2021**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Pramod Sahadev Parab	...Respondent

**AND
WRIT PETITION NO.6940 OF 2021**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Kumar Shamu Kumbhoje	...Respondent

**AND
WRIT PETITION NO.1703 OF 2021**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Milind Ganesh Kulkarni	...Respondent

AND

WRIT PETITION (St.) NO.2350 OF 2020

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner
V/s.
Mr. Prakash Chandrakant Altekar ...Respondent

AND

WRIT PETITION NO.6950 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner
V/s.
Sunanda Subhash Daragshetti ...Respondent

AND

WRIT PETITION (St.) NO.2352 OF 2020

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner
V/s.
Mr. Urjit Nilkantharao Japtanmulukha ...Respondent

AND

WRIT PETITION NO.6957 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner
V/s.
Mr. Dhanpal Shivappa Athane ...Respondent

AND

WRIT PETITION NO.6936 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner
V/s.
Miss. Kanchan Jaykumar Shendage ...Respondent

AND

WRIT PETITION NO.6931 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner
V/s.
Mr. Uday Sakharam Kulkarni ...Respondent

AND

WRIT PETITION NO.6938 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd. ...Petitioner
V/s.
Mr. Mahavir Kallappa Chougule ...Respondent

**AND
WRIT PETITION (St.) NO.2386 OF 2020**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Rajgonda Adgaonda Patil	...Respondent

**AND
WRIT PETITION NO.6960 OF 2021**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Laxman Dattatraya Shelke	...Respondent

**AND
WRIT PETITION (St.) NO.2515 OF 2020**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Prakash Tatoba Kagwade	...Respondent

**AND
WRIT PETITION (St.) NO.2519 OF 2020**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Prabhakar Vasudev Karade	...Respondent

**AND
WRIT PETITION NO.6930 OF 2021**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Balgonda Bapu Patil	...Respondent

**AND
WRIT PETITION NO.6928 OF 2021**

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Jinpal Raghoba Terdale	...Respondent

AND

WRIT PETITION NO.6934 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Suryakant Dhondiram Bindage	...Respondent

AND

WRIT PETITION NO.6926 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Mr. Vasant Tatoba Bhokare	...Respondent

AND

WRIT PETITION NO.6927 OF 2021

The Shamrao Vitthal Co-op. Bank Ltd.	...Petitioner
V/s.	
Ms. Rohini Bapusaheb Patil	...Respondent

Mr. Dhananjay Bhanage with Mr. Mayur Dilip Joglekar for Petitioner.
Mr. Akshay Patil with Ms. Neha Patil i/b. Akshay Vijay Kamble for Respondent.

CORAM : G. S. KULKARNI, J.
DATE : OCTOBER 20, 2021

PC :

1. This is a batch of writ petitions in which similar orders although passed on different dates by the learned Member, Industrial Court No.1, Kolhapur are challenged. These petitions hence are being disposed of by this common order. For convenience, the facts in the lead petition are being referred.

2. The impugned orders dated 2 December, 2019 are passed on applications as filed by the petitioner praying that a preliminary issue be framed inter-alia as to whether there is an employee-employer relationship between the petitioner-bank and the respondents-complainants. The

contention of the petitioner before the Industrial Court was to the effect that issues on principles of res-judicata/principle analogous to res-judicata and locus-standi of the complainant as raised by the petitioner be framed as preliminary issues. In the impugned order, the Industrial Court observed that earlier the Court had framed the following issues:-

- “1) Whether the Complainant is maintainable?
- 2) Whether the Complainant proves that the Respondent has engaged in unfair labour practices under items-5, 9 and 10 of Sch.IV of the MRTU & PULP Act, 1971?
- 3) Whether the Complainant is entitled to the reliefs as claimed?
- 4) What order?”

In view of the above issues being framed, it was observed by the Industrial Court that first issue as framed on maintainability of the complaint would cover all the issues which were raised by the petitioner to be framed as preliminary issues and hence it was not necessary to frame a separate issue on maintainability of the complaints as contended by the petitioner. It was observed by the Industrial Court that it would be proper and desirable if all the objections raised by the petitioner (respondents therein) in respect of maintainability of the complaints are dealt in the first issue as framed. The Industrial Court referring to the decision of the Supreme Court in **D.P Maheshwari v/s. Delhi Admn. And others** reported in 1983 LIC Page No.1629, rejected the petitioner’s application against which the present petitions have been filed.

3. Mr. Bhanage, learned counsel for the petitioner in assailing the impugned orders passed by the Industrial Tribunal, has drawn the Court’s attention to the decision which was rendered by the learned Single Judge of this Court in the previous round i.e. in **Dhanpal Parisa Khot vs. Shamrao Vithal Co-operative Bank Ltd.** reported in **2012 III CLR 163** which was on a

writ petition filed by one of the employees challenging the orders passed by the Industrial Court on an application filed under Section 33(C)(2) of the Industrial Disputes Act, 1947, which was rejected by the Industrial Court. A learned Single Judge of this Court in rejecting the said writ petition in paragraphs 24 and 25 had observed as under:-

“24. Therefore, when there are serious doubts and disputes raised with regard to the liabilities and so called obligations of the earlier Bank i.e. Mahavir Bank, there is no question of considering the same under Section 33(C)(2) of the I.D. Act. Therefore, the rejection of such applications need no interfere. All the Petitions are accordingly dismissed.

25. This in no way, be treated as denial of the Petitioner’s right to take out appropriate steps in accordance with law to claim and get their dues settled, if available.”

4. The decision of the learned Single Judge was confirmed by the Division Bench of this Court in a Letters Patent Appeal being a decision in **Shrikant Bhujaballi Bahirshet Kasargalli, Kolhapur Vs. Shamrao Vithal Co-operative Bank Ltd., Mumbai** reported in **2018 II CLR 111** case. The Division Bench while confirming the above observations of the learned Single Judge in paragraph 27 observed thus:-

“27. For the reasons recorded in the above lead matter, all the above Letters Patent Appeals being Nos.250 of 2013, 253 of 2013 to 284 of 2013, 286 of 2013 to 297 of 2013, 300 of 2013 to 309 of 2013 would have to be dismissed and are accordingly dismissed. However, it is clarified that all the Appellants would be entitled to follow the course of action which is proposed by the learned Single Judge in the impugned Judgment and Order of filing appropriate proceedings. If any such proceedings are filed, needless to state that the same would be tried on their own merits and in accordance with law.”

5. The respondents/employees espousing the liberty granted to them under the above orders of the learned Single Judge and the Division Bench have filed complaints in questions under the provisions of Section 28(i) of

MRTU and PULP Act, 1971. It is an admitted position that the complaint has proceeded to a stage where affidavits of evidence have been filed on behalf of the parties. At such stage, the application(s) in question came to be moved on behalf of the petitioner praying for framing of preliminary issues as noted above. The specific contention of the petitioner was that there was no employer-employee relationship between the petitioner and the respondents, however in raising such contention in the written statement, the following averments were made by the petitioner:-

“..... The Scheme of amalgamation (21/07/2006) had provided that the employees of the Transferor Bank would continue in the service of the Transferee Bank (Shamrao Vithal Cooperative Bank) unless the employee concerned intimated his intention to the Transferor Bank or to the Transferee Bank of not becoming the employee of the Transferee Bank. **The services of the Complainant were thus technically continued under the Scheme by Shamrao Vithal Cooperative Bank on and after 04/09/2006 i.e. the date of transfer.** The Complainant, however, expressed his desire not to be the employee of the Transferee Bank. He was, therefore, paid specified amounts on the date of his separation and the Complainant executed an undertaking that he had received the specified separation amount and that he would not raise any dispute for any further amounts including for the amounts now claimed by him in the present complaint in violation of his undertaking.”

(emphasis supplied)

6. On such basis, in the application praying for framing of preliminary issues, the petitioner has taken a position that there is no employer-employee relationship between the petitioner and the respondents-complainants. By the impugned order, the Industrial Tribunal has rejected the application as filed by the petitioner.

7. Having heard learned counsel for the parties and also having noted decisions (supra) as referred on behalf of the petitioner, in my opinion, considering the facts of the

case and the specific observations which are made by the learned Single Judge in **Dhanpal Parisa Khot** (supra) and by the Division Bench in **Shrikant Bhujaballi Bahirshet Kasargalli, Kolhapur** (supra), I am of the opinion that the interest of justice would be served if the Industrial Court is directed to delete the issue no.1 namely “Whether the complaint is maintainable?” and to substitute the same by the following specific issues:-

- “(a) Whether in view of the denial of employer-employee relationship by the Respondent Bank with the Complainant, this Court has the jurisdiction to entertain and decide the Complaint?
- (b) Whether the Complaint is barred by the principle of res-judicata or principle analogous to res-judicata?
- (c) Whether this Complaint is filed within limitation?
- (d) Whether the Complainant proves that he has the locus standi and a cause of action to file the present Complaint?”

8. Mr. Patil, learned counsel for the respondents/employees, on instructions, is agreeable for such course of action. Let all issues be adjudicated at the final disposal of the respective complaints. Ordered accordingly.

9. Considering that the parties are before the Court in different proceedings for quite sometime as also that the parties have assured that they would co-operate in early disposal of the proceedings, the learned Member of the Industrial Court shall make an endeavour to dispose of such complaints as expeditiously as possible and within a period of one year from today.

10. At the first instance, let the parties appear before the Industrial Court on a convenient date which may be fixed by the Industrial Court within a period of two weeks from today.

11. All contentions on merits of the pending complaints are expressly kept open.

12 All petitions stand disposed of in the above terms.

(G. S. KULKARNI, J.)

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