

Bhogale

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

WRIT PETITION NO. 10499 OF 2019

Managing Director
Rajarambapu Patil Sahakari Sakhar Karkhana Ltd. .. Petitioner
vs.

Jath Taluka Sakhar Kamgar Sanghatana & ors. ..Respondents

Mr. Ashutosh M. Kulkarni for the Petitioner.
Mr. S.D. Rayrikar, AGP for the State.

CORAM : M.S.KARNIK, J.

DATE : JANUARY 22, 2021

P.C.:-

Heard learned counsel for the parties.

2. The Petitioner-Rajarambapu Patil Sahakari Sakhar Karkhana Ltd. is the purchaser of Respondent No.2-Raje Vijaysingh Dafale Shetkari Sahakari Sakhar Karkhana Ltd. The Respondent No.1 Sanghatana claims to represent the workmen of the said Karkhana. The Respondent No.1 filed a complaint of unfair labour practice under Section 28(1) read with Item 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Industrial Court viz. Complaint (ULP) No.3 of 2012. The Respondent No.3 is the Maharashtra State Co-operative Bank

Ltd. and is the secured creditor who had conducted the sale of the Respondent No.2 in favour of the Petitioner.

3. After the sale of the Respondent No.2-Sakhar Karkhana in favour of the Petitioner, the Respondent No.1-Sanghatana filed an application for amendment for impleading present Petitioner as a party Respondent to the said Complaint (ULP) No.3 of 2012 before Industrial Court at Sangli. By the order dated 28.01.2019 the application for amendment came to be allowed.

4. Learned counsel for the Petitioner relying upon the decision of the Hon'ble Supreme Court in the case of **Sarva Shramik Sangh vs Indian Smelting & Refining Co. Ltd. & ors.**¹ contended that as the workmen are not their employees, the workers have to first raise an industrial dispute and get their status decided and only then complaint is maintainable. In my opinion, the decision of the Apex Court in the case of **Sarva Shramik Sangh** (*supra*) does not have any application to the facts of the present case. No doubt Their Lordships have held that in order to entertain a complaint under the Maharashtra Act it has to be established that the claimant is an employee of the employer against whom complaint is made, under the ID Act.

1 (2003) 10 SCC 455

However, in the present facts the Karkhana itself is purchased by the Petitioner and the claim of the workmen against erstwhile employer was already pending before the Industrial Court vide complaint of unfair labour practice.

5. Considering the reasons recorded by the Industrial Court in paragraph 5 and 6, I see no reason to interfere with the impugned order. Paragraph 5 and 6 reads thus :-

“5. It is also pertinent to note that my predecessor had passed order on Exh.U-2 and thereby directed the secured creditor bank not to account or apportion the amount of sale proceeds till disposal of the complaint on merit. The said order was challenged by the bank before Hon’ble High Court in the writ petition referred above. Admittedly, in the said writ petition third party Rajarambapu Patil Sahakari Sakhar Karkhana Ltd. was joined as party by way of amendment of writ petition. It means he was well aware that there are proceedings between union and erstwhile employer, secured creditor pertaining to the monetary reliefs of the employees. He was also well aware that being purchaser of the property of erstwhile employer through secured creditor whatsoever relief likely to be passed in the said proceeding will ultimately affect his interest and therefore, he joined the proceeding before Hon’ble High Court. Under these circumstances, in my view, if he is impleaded in the present proceeding as party Respondent then no substantial prejudice will be cause to him. He can very well put up his defence and resist the claim on legal as well as factual counts. The question is whether he would not be responsible on purchase of property by operation of law or whether he is in collusion with other Respondents tried to avoid his responsibility to pay the legal

dues of employees needs detail enquiry during course of trial. Similarly, other contentions about existence of employer employee relations between it and Complainant needs no consideration at this stage while considering the relief claimed in the present application. In other words, while deciding the question whether third party is a necessary party to the present proceeding, legal and factual defences available to him during course of trial of the complaint needs no consideration. Therefore, number of authorities cited by him on this aspect also needs no consideration.

6. Thus, taking over all view of the matter, in my view, third party is necessary party to the present proceeding. There cannot be appropriate execution of the award, if passed against third party and in that case the Complainant would be required to file separate proceeding. This will create multiplicity of the proceedings and very object of allowing amendment application is to avoid multiplicity of proceedings. Therefore, in my view, application deserves to be allowed. Hence, the following order.

: ORDER :

- 1) Application is allowed.
- 2) Complainant is directed to amend cause title by impleading third party as Respondent No.3 within 10 days as the matter is old one. Thereupon he should provide sufficient copies of amended complaint and also to pay required process fee so that office will be in a position to issue fresh notice of complaint to the newly added Respondent No.3.
- 3) Dictated and pronounced in open Court."

5. It cannot be said that the Industrial Court has committed a jurisdictional error or the view taken is so perverse so as to warrant interference in the exercise of writ jurisdiction under Section 227 of the Constitution of India. The Writ Petition is therefore rejected.

6. The Industrial Court has observed that other contentions about existence of employer employee relations between Petitioner and the Complainant needs no consideration at this stage meaning thereby that all these aspects, legal and factual defences available to the Petitioner will be gone into by the Industrial Court when the final adjudication of the complaint is made.

7. With these observations, the Writ Petition is dismissed.

(M.S.KARNIK, J.)