

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5704 OF 2021

WITH

WRIT PETITION NO. 7233 OF 2021

Ramjan Ali Intzam Ali Shaikh & Anr. ... Petitioners

V/s.

M/s. M. K. Shah & Ors. ... Respondents

Mr. Akash Warang, Advocate for the Petitioners.

Mr. Rahul D. Oak i/b. Mr. B. S. Mahamulkar, Advocate for the Respondent Nos. 3 & 6.

Mr. Avinash Jalisatgi a/w. Mr. Vaibhav Jagdale, Advocate for the Respondent No.4.

CORAM : G. S. KULKARNI, J.

DATE : OCTOBER 27, 2021

PC :

1 Heard learned Counsel for the parties on these petitions for some time. By the impugned order dated 3rd April 2021 passed by the learned Member of the Industrial Court, Thane, the Industrial Court while deciding preliminary issue raised in regard to the maintainability of the complaint has dismissed the complaint filed by the petitioners as not maintainable in view of the provisions of Section 5 of Maharashtra Mathadi, Hamal and Other Manual Workers' (Regulation of Employment and Welfare) Act, 1969 with a

clarification that all observations in the order pertain to the scope and appreciation of maintainability of the complaint and other disputed issues were not considered on merit. The operative order passed by the Industrial Court reads thus :

“1. Complaint is dismissed as not maintainable in view of provisions of Section 5 of the Maharashtra Mathadi, Hamal and Other Manual Workers’ (Regulation of Employment and Welfare) Act, 1969.

2. It is clarified that all the observation, in the order, pertain to the scope and appreciation of maintainability of the complaint, and the other disputed issues are not considered on merit.

3. Parties to bear their own costs.”

2 Considering the nature of the impugned order, a prayer is made by the petitioner before this Court that as the complaint has not been decided on merits, hence the petitioners be permitted to withdraw the complaint for an appropriate and clear complaint to be filed to espouse a legitimate cause. Such request needs to be granted considering the facts and circumstances of the case. In my opinion, interest of justice would require that the petitioners cannot be precluded to do so and the proceedings on which the impugned order has been passed by the Industrial Court ought not come in their way in espousing their cause in appropriate complaint.

3. Needless to observe that if any such complaint or any proceedings as permissible in law is filed by the petitioners, the same shall be considered by the Industrial Court in accordance with law and on its own merits.

4 With the above observations, the writ petition is disposed of with liberty as observed above.

5 All contentions of the parties on any fresh complaint, if any, filed by the petitioners are expressly kept open.

6 No costs.

(G. S. KULKARNI, J.)