

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

**WRIT PETITION NO.724 OF 2022**

**PRIYA  
RAJESH  
SOPARKAR**

Poona Texpin Industries  
V/s.

... Petitioner

Sarva Shramik Sanghatana

Through Smt.Medha Mukund Thatte and anr. ... Respondents

---

Digitally signed by  
PRIYA RAJESH  
SOPARKAR

Date: 2022.07.02  
10:20:48 +0530

Mr.Kiran Bapat alongwith Mr.Vipul Patel i/by M/s Haresh Mehta and Co., Advocates for the Petitioner.

Ms.Jane Cox i/by Mr.Ghanashyam R. Thombare, Advocates for Respondent No.1.

Mr.Varun Joshi i/by Mr.Chetan Alai, Advocates for Respondent No.2.

---

**CORAM : NITIN W. SAMBRE, J.  
DATE : JUNE 29, 2022.**

**P.C. :-**

1. The Petitioner is Respondent No.2 in complaint (ULP) No. 328 of 2019 preferred under section 28 r/w Item Nos.9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complaint is initiated by Respondent No.1-Union claiming following reliefs:-

“11. The Complainant, therefore, prays that the Hon’ble Court be pleased to :

- i) Allow the present complaint alongwith costs.
- ii) Allow the interim relief application,
- iii) Declare that the Respondent No.1 is engaged in unfair labour practice under item 9 and 10 of Sch.IV as alleged,
- iv) Declare that the alleged transfer of undertaking of Respondent No.1 to Respondent and or any agreement entered into between the Respondents No.1 and 2 for transfer of unit at Plot No.50, Hadapsar Industrial Estate is fictitious, bogus and sham and is not covered under/as per Sec.25FF of the Industrial Disputes Act,
- v) Declare that the workmen and members of the

Complainant Union are and the employees/workmen of the Respondent No.1 and direct the Respondent No.1 to continue their services as per the appointment letters issued to them on terms and conditions as existed prior to 11.11.2019,

vi) Declare that the notice and letters dated 11.11.2019 issued by the Respondent No.1 to the individual workmen are illegal and not tenable under law,

vii) Direct the Respondent No.1 to extend the benefit of continuity of service and all consequential monetary benefits to the members of the Complainant and workmen of the Respondent No.1.

viii) Pass such further orders as deemed just and necessary under the facts and circumstances."

2. Pursuant to the provisions of section 25FF of the Industrial Disputes Act (hereinafter shall be referred to as "The Act") the Petitioner took over an undertaking i.e. Respondent No. 2 herein vide an agreement dated 11<sup>th</sup> November, 2019.

3. In the aforesaid background, Petitioner took out an application Ex.CA-4 seeking deletion of its name from the aforesaid proceedings which came to be rejected by impugned order dated 22<sup>nd</sup> September, 2021 passed by the Industrial Court, Pune. As such, this petition.

4. Contention of Mr.Bapat, learned counsel appearing for the Petitioner are relief, if any, claimed in the complaint is as against Respondent No.2. As far as relief prayer clause (iv) is concerned, even if for the sake of argument same is accepted, still fact remains that for adjudicating such claim, the Petitioner is neither a proper nor necessary party. So as to substantiate this claim that there does not exist any employer-employee relationship, he has drawn my attention to the provisions of section 25FF of Industrial Disputes Act, so also the order passed below Ex.U2 i.e. prayer for grant of interim relief moved by Respondent No.1-Union.

5. According to him, in view of finding recorded in the said order rejecting the prayer for interim relief, as regards the absence of employer-employee relationship between Petitioner and the members of Respondent No.1, the court below-Industrial Court committed an error in not granting prayer of deletion moved by the Petitioner, as Petitioner is neither necessary nor appropriate party to the proceedings is failed to be appreciated by the court.

6. So as to substantiate his claim he has drawn support from the judgment of the Apex court in the matter of **Anakapalle Co-operative Agricultural and Industrial Society Limited Vs. Workmen and ors.** reported in **1963 Supp (1) SCR 730**, particularly paragraph No.17 so as to claim that the provisions of section 25FF operates in altogether different spheres which is alleged in the complaint and that being so, the Petitioner is not an appropriate nor necessary party. In addition, he has drawn support from the judgment of Apex Court in the matter of **Sarva Shramik Sangh Vs. Indian Melting and Refining Company Limited and ors.** reported in **(2003) 10 Supreme Court Cases 455** so as to substantiate his claim that in absence of employer-employee relationship, the complaint itself is not maintainable.

7. The counsel for the Respondents supported the aforesaid impugned order and would urge that considering the nature of relief claimed in the complaint, the Petitioner is a necessary party to the complaint and as such the Industrial Court was justified in rejecting the prayer for deletion.

8. I have appreciated the said submissions.

9. The complaint preferred by the Respondent No.1 in

categorical terms questions the legality and validity of transfer agreement *inter-se* between Petitioner and Respondent No.2 executed pursuant to the provisions of section 25FF of the Act. Admittedly, the Petitioner is a party to such an agreement and to decide validity of such agreement in the backdrop of the scheme of section 25FF of the Industrial Disputes Act the court below i.e. Industrial Court was justified in recording a finding that the Petitioner is not only a proper but necessary party. As a sequel, of above prayers may be Mr.Bapat is justified in claiming that the relief at the most can be ordered against the Respondent No.2, however this court cannot be ignorant of the fact that for deciding the issue as regards the validity of the agreement of transfer, the Petitioner is a necessary party to the proceedings. The Respondents are claiming above referred relief based on legal bases i.e. section 25FF of the Industrial Disputes Act.

10. For deciding such an issue as regards the validity of agreement as prayed in clause iv of the prayer clause (iv) of the complaint, the issue whether the members of the Respondent No.1-Union are the workmen and there exists employer-employee relationship is an ancillary issue .. the Respondent No.1. In that view of the matter, support drawn from the judgments of the Apex court in matters **Anakapalle Co-operative Agricultural and Industrial Society Limited** and **Sarva Shramik Sangh Vs. Indian Melting and Refining Company Limited** (supra) will be of hardly any significance. In the aforesaid background, the Industrial Court was justified in rejecting the prayer. That being so, no case is made out for grant of relief.

11. Petition is dismissed.

**(NITIN W. SAMBRE, J.)**

....