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IN THE HIGH COURT OF BOMBAY AT GOA

**CIVIL REVISION APPLICATION NO.4 OF 2019
WITH
WRIT PETITION NO.494 OF 2018**

M/S J.M. BAXI & CO.
THROUGH ITS DULY CONSTITUTED
ATTORNEY MR. SUSHIL MATHUR
HAVING OFFICE AT 2ND FLOOR,
COLACO BUILDING, SWATANTRA
PATH, VASCO DA GAMA, GOA.
(Registered address)

... Applicant/
Petitioner.

Versus

1. SHRI VERESSIMO FERNANDES
SON OF LATE CONSTANCIO
FERNANDES, AGED 51 YEARS,
SERVICE, R/O OF H. NO.
68/4, DUESUEA, CHICALIM,
VASCO DA GAMA, GOA
(DELETED AS PER ORDER
DATED 20/11/2017)

2. SHANTARAM PARADKAR,
SON OF LATE VASUDEV
PARADKAR, AGED 52 YEAR,
SERVICE, R/O H. NO. 11,
NR. GOVT. HIGH SCHOOL,
HEADLAND SADA, MORMUGAO,
GOA

3. SHRI DAYANAND B. RANE,
SON OF BHASKAR RANE, AGED
52 YEARS, SERVICE, R/O H.
NO. 11, 31/110/G.L.2,
WARD NO. III, BHATWADI,
HEADLAND SADA, MORMUGAO,

GOA

4. SHRI PRAKASH KAVATHANKAR
SON OF VITHAL KAVATHANKAR
AGED 58 YEARS, SERVICE,
RR/O H. NO. 123, WARD NO.
II, HEADLAND SADA,
MORMUGAO, GOA

5. SHRI SATISH AROSKAR,
SON OF GANGARAM AROSKAR,
AGED 54, SERVICE, R/O H.
NO. 103, NR. SANTOSH ICE
CREAM FACTORY, HEADLAND
SADA, MORMUGAO, GOA

6. SHRI MORGAN J. COUTINHO,
SON OF J. COUTINO,
AGED 53 YEARS, SERVICE,
R/O H. NO. 59/A, NEAR
RAILWAY STATION,
SERAULIM, GOA

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7. SHRI MINGUEL RODRIGUES,
SON OF MATUES RODRIGUES,
AGED 52 YEARS, SERVICE,
R/O H. NO. SF-4, 2ND
FLOOR, CHASE CHAMBERS,
SWATANTRA PATH, VASCO DA
GAMA, GOA

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8. SHRI JOAQUIM COUTINHO
SON OF JONNY COUTINHO,
AGED 46 YEARS, SERVICE,
R/O H. NO. 260, VASCO DA
GAMA, GOA

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9. SHRI DANIAL FERNANDES,
SON OF REMEDIAS
FERNANDES, AGED 53 YEARS,

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SERVICE, R/O H. NO.
239/A/8, FLAT NO. 2,
DESTERRO WADO, VASCO DA
GAMA, GOA

REPOUNDENT NO. 6 TO 9 ARE
DELETED AS PER ORDER
DATED 20/11/2017

10. SHRI UMESH TARI,
SON OF ATMARAM TARI, AGED
49 YEARS, SERVICE, R/O
H. NO. 161, PANDAV WADA,
HEADLAND SADA, MORMUGAO,
GOA

11. SHRI SANJAY M RANE,
SON OF MARUTI RANE,
AGED 54 YEARS, SERVICE,
R/O H. NO. 94, NR. MARUTI
TEMPLE, HEADLAND SADA,
VASCO DA GAMA, GOA
(all are registered addresses)

... Respondents.

Mr Parag Rao with Mr A. Parrikar, Advocates for the
Applicant/Petitioner.

Mr E. Dias with Ms Esther Dias do Rosario, Advocates for
Respondent Nos.2 to 4.

Mr Shivraj Gaonkar with Mr P. Sirvoicar, Advocates for
Respondent Nos.5, 10, 11.

CORAM:

BHARAT P. DESHPANDE, J.

RESERVED ON:

31 August, 2023

PRONOUNCED ON:

07 September, 2023

JUDGMENT:

1. Admit.
2. Heard Mr Parag Rao appearing with Mr A. Parrikar for the Applicant/Petitioner, Mr E. Dias appearing with Ms Esther Dias do Rosario for Respondent Nos.2 to 4 and Mr Shivraj Gaonkar appearing with Mr P. Sirvoicar for Respondent Nos.5, 10, 11.
3. By way of present revision, Applicant/Defendant is challenging the impugned order passed by the learned Trial Court dated 29.09.2017 by which application filed under Order 7 Rule 11(d) CPC was rejected.
4. The learned Counsel Mr Parag Rao would submit that suit filed by the Respondents/Plaintiffs claiming the relief therein is impliedly covered under Section 2(k) of Industrial Disputes Act and that the Respondents/Plaintiffs are the workmen who challenged their transfer orders before Civil Court. He would submit that from the reading of plaint in a meaningful way, it is clear that the entire dispute is covered under the Industrial Disputes Act between the workmen and its employer. The plaint discloses about settlement, charter of demands and other conditions under which Respondents/Plaintiffs were working. He then would submit that the appointment letters issued by the Applicant/Defendant to the Respondents/Plaintiffs would clearly go to show that there is condition that the said workmen will have to work at the place and as per the exigencies of the work and therefore, transfer of the said workmen is clearly an industrial dispute which ought to have been raised before the concerned Labour Court or the Industrial Court as

the case may be and not before the Civil Court. He claimed that there is implied bar of the Civil Court to entertain such dispute.

5. Mr Rao placed reliance on the following decisions:-

(1) *Management of the Syndicate Bank Ltd. vs. Workmen*; AIR 1966 SC 1283, (2) *Workmen M/s Dharam Pal Prem Chand vs. Dharam Pal Prem Chand (Saugandhi)*; AIR 1966 SC 182, (3) *The Premier Automobiles Ltd. vs. Kamlekar Shantaram Wadke of Bombay and Ors.*; (1976) 1 SCC 496, (4) *Chandrakant Tukaram Nikam and Ors. vs. Municipal Corporation of Ahmedabad and Anr*; (2002) 2 SCC 542, (5) *Rajasthan State Road Transport Corpn. and Ors. vs* (2005) 7 SCC 447, and (6) *Milkhi Ram vs. Himachal Pradesh State Electricity Board*; (2021) 10 SCC 752.

6. Per contra, learned Counsel Mr Dias appearing for Respondent Nos.2 to 4 contended that there was memorandum of settlement before the Assistant Labour Commissioner, however, appointment letter issued to the Plaintiffs nowhere shows that there was any condition of transfer. He would submit that the Plaintiffs were only required to work at Mormugao Port and therefore, such transfer is mala fide and would not cover industrial disputes *per se*. He then submitted that the dispute is between industrial workmen and the employer though suit is filed jointly by the Plaintiffs. He then would submit that such transfer being mala fide, the Civil Court is the only forum under Section 9 of CPC which is having jurisdiction to decide such aspect.

7. Mr Gaonkar appearing for other Respondents strongly contended that under the schedule of Industrial Disputes Act and more particularly considering the definition in Section 2(k), there is no entry of transfer

which could be considered as unfair labour practice. He would submit that Section 2(A) which was subsequently introduced permit individual workmen to raise industrial dispute but only under four categories wherein transfer of such workmen is not covered. He, therefore, would submit that the dispute raised by the Plaintiffs in the suit is not an industrial dispute and therefore, Civil Court is the only forum to decide such aspect.

8. Mr Dias and Mr Gaonkar relied upon the following decisions:-

(1) *S. Partap Singh vs. State of Punjab*; AIR 1964 SC 72, (2) *Karam Chand Thapar and Bros. (C.S.) Ltd., Calcutta vs. Life Insurance Corporation of India*; (2006) 5 BomCR 709, (3) *Bombay Union of Journalists and Ors. Vs. 'Hindu' Bombay and Anr.*; AIR 1963 SC 318, (4) *Rajasthan State Road Transport Corporation and Anr. vs. Krishna Kant and Ors.*; (1995) 5 SCC 75, and (5) *Singapore Airlines Ltd. and Anr. vs. Quentin Rodrigues*; 2007 SCC OnLine Bom 1350.

9. In rejoinder, the learned Counsel Mr Rao forcefully submitted that the suit is filed by the Plaintiffs jointly claiming to be workmen and that the decisions cited by Mr Gaonkar and Mr Dias refer to only one single workman.

10. The rival contentions now come up for consideration as under.

11. The basic question in the present matter is whether the suit is filed by individual workmen or jointly by the workmen. Secondly, the question is whether the dispute raised in the present suit is covered under Section 2(k) of Industrial Disputes Act thereby impliedly taking away the jurisdiction of the Civil Court.

12. In order to decide the first question as to whether the suit is filed jointly by 13 workmen, the pleadings in the plaint clearly go to show that the suit is jointly filed by 13 workmen and not in their individual capacity. All of them are challenging the order of transfer dated 31.03.2016 issued by the Defendant/Applicant herein.

13. Para 1 of the plaint clearly goes to show that the Plaintiffs are the workers and shall be hereinafter referred as “workmen”. The entire plaint clearly goes to show that the impugned order of transfer is issued to all 13 workmen on the same date and thereafter they were prevented from entering the workplace on the ground that they have to report to their respective place as mentioned in the transfer order. The entire plaint clearly goes to show that suit is filed jointly by 13 workmen not in their individual capacity but as a group. Thus, it is clear from the pleadings itself that the dispute which is sought to be raised in the plaint is not by a single workman but jointly and severally by 13 workmen. Accordingly, the decisions in the case of *Bombay Union of Journalists* (supra) and *Singapore Airlines Ltd.* (supra), will not be of any help to the Respondents as both these cases refer to dispute raised by only one single workman and not by a group or by the union.

14. In the case of *Bombay Union of Journalists* (supra) and *Singapore Airlines Ltd.* (supra), the Supreme Court while considering whether the dispute is between single employee and the employer or whether it is a dispute between group of employees and the employer, observed by considering its earlier decision in the case of *The Newspapers Ltd. vs. The State Industrial Tribunal, U.P.; (1957) S.C.R. 754*, wherein the

applicability of the Industrial Disputes Act to an industrial dispute as distinguished from a dispute involving a group of workmen was considered. In that case, it was observed that it was an industrial dispute of one employee with the management and on that basis, it was considered that it was not covered under Section 2(k).

15. In the case of *Singapore Airlines Ltd.* (supra), the learned Single Judge while considering similar aspect in para 10 has observed that whether there is industrial dispute between employees and employer, between workmen and workmen, which is connected with the employment or non-employment or the terms of employment. In this respect, after considering the definition, it has been observed in para 10 that in order to fall the dispute within the definition of industrial dispute, the dispute must be between employer and employees and not between employer and a single employee. However, it was further observed that the fact that certain individual disputes can be deemed to be industrial disputes as mentioned in Section 2-A of Industrial Disputes Act which require to decide in respect of discharge, dismissal, retrenchment or termination wherein single employee is entitled to raise industrial dispute. Thus, it is clear from the above decision that if a dispute is between employer and employees, it cannot be considered as industrial dispute and it comes within the definition of Section 2(k) of the Industrial Disputes Act.

16. Section 2(k) of the Industrial Disputes Act, 1947 reads thus:-

“2(k) – “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

17. The plain reading of the plaint clearly goes to show that a group of 13 workmen/employees jointly and severally challenged the transfer order and refusal by the employer to allow them to enter the workplace at Mormugao. Thus, it is not an industrial dispute of a workman with the employer but it is a dispute between the workmen and their employer which is connected with the employment or the terms of employment or with the conditions of labour.

18. It is the contention of the employees that there is no provision for transfer in their appointment order and therefore, such transfer orders are illegal. At this stage, the pleadings in the plaint itself show that these workers were absorbed by the Applicant Company on the basis of some settlement agreement. Fresh appointment orders were issued to all of them. It is the contention of the said employees that there is no reference to any transfer. The letters of appointment are dated 16.08.1991. Clause No. 7 and 8 of these letters of appointment read thus:-

“7. You have to report for duty at designated places as indicated from time to time and as and when needed by your Employer.

8. You will have to accept the duties allotted to you by your Superiors within the framework of assignment of duties, in Stevedoring, Clearing and Forwarding of Cargo in the Port of Mormugao.”

19. If we read both the clauses together and the letter of appointment issued by the Applicant Company, it is clear that the Applicant Company is having Head Office at Bombay and they are working as Steamship Agents, Stevedores and Transport Forwarders. The letters of appointment also show that the Applicant Company is having branches at all East and West Coast Ports in India. Thus, the contention of the learned Counsel for the Respondents that in view of Clause 8, the company was required to provide work only at Mormugao Port, is unacceptable. Such condition needs to be read with Clause No.7 of the appointment letter which clearly goes to show that the employees were required to report for duty at designated places as indicated from time to time and as and when needed by the employer.

20. Thus, the transfer orders issued to all the Plaintiffs on the same day would clearly go to show that they were directed to report to their transferred post as part and parcel of their employment and in view of Condition No.7 of the appointment order. Though the Plaintiffs/ Respondents claimed that such orders were issued with mala fide intention, it is clear that when there is a dispute between workmen and their employer in connection with service conditions, the same has to be considered as an industrial dispute itself.

21. In the case of *The Premier Automobiles Ltd.* (supra), the question of ouster of jurisdiction of Civil Court qua the industrial dispute was considered by a Bench of three Hon'ble Judges. After deliberating on the earlier decisions, the principles laid down in paras 23 and 24 reads thus:-

“23. To sum up, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter V A then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

24. We may, however, in relation to Principle No. 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2-A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle No. 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle No. 3 stated above.”

22. The Principles No.1 and 2 as mentioned in above para 23, will not be applicable to the matter in hand. First of all, it cannot be said that the

dispute raised in the suit is not an industrial dispute and that it does not relate to enforcement of any other right under the said Act. Secondly, even if it is an industrial dispute arising out of the right of liability, it cannot be said that the dispute which is raised in the present suit by the Plaintiff is arising out of general or common law and not under the Industrial Disputes Act.

23. In fact, Clause No.3 of para 23 is applicable to the matter in hand as the industrial disputes relate to enforcement of a right and/or obligation created under the Industrial Disputes Act and therefore, the remedy is available to get it adjudicated only under the Industrial Disputes Act.

24. Para 24 quoted above clearly explains as to how Principle No.2 would apply and under what circumstances. Therefore, the dispute which has been raised in the present matter is clearly covered under Principle No.3 of *The Premier Automobiles Ltd.* (supra) and therefore, such dispute has to be entertained only as per the remedy provided under the Industrial Disputes Act and not by a Civil Court.

25. The learned Trial Court while considering the application under Order 7 Rule 11(d) of CPC failed to read, in meaningful way, the pleadings wherein the Plaintiffs claimed themselves as workmen of the Defendant/Applicant herein. Therefore, in such circumstances and even otherwise, there was no question of relying on the letter dated 13.04.2016 issued by company denying status of the Plaintiff as workmen. Even this denial of the Applicant Company regarding the status of workmen qua

the Plaintiffs is also considered to be an industrial dispute as it directly relates to the employment or non-employment or the terms of employment. The Plaintiffs have placed reliance on certain memorandum of settlement which clearly goes to show that the Plaintiffs were demanding wage settlement as per their charter of demands. Thus, from the plaint itself, the case put forth by the Plaintiffs is that of workmen and the company/employer. The dispute is regarding transfer of the Plaintiffs from Mormugao Port to different places in India. Such transfer is directly related to the employment conditions. Thus, from all angles, the matter is directly covered under Section 2(k) of the Industrial Disputes Act.

26. The learned Trial Court committed error in rejecting application under Order 7 Rule 11 CPC. The dispute raised in the said suit is in fact an industrial dispute between the workmen and their employer in connection with the terms of employment and therefore, in view of the principles laid down in para 23 of *The Premier Automobiles Ltd.* (supra) and more particularly Clause No.3, the jurisdiction of Civil Court is impliedly ousted.

27. The impugned order, therefore, needs interference. Accordingly, the impugned order is quashed and set aside. The application filed by the Applicant/Defendant at Exhibit 33 for rejection of plaint under Order 7 Rule 11(d) in Regular Civil Suit No.27/2016 pending on the file of Civil Judge Senior Division, Vasco, is hereby allowed. Plaint in Regular Civil Suit No.27/2016 pending on the file of Civil Judge Senior Division,

Vasco, hereby stands rejected under Order 7 Rule 11(d) of CPC. Parties shall bear their own cost.

28. Civil Revision Application No.4/2019 is disposed of in the above terms.

29. Writ Petition No.494/2018 was kept along with Civil Revision Application No.4/2019 as both matters are between same parties and arising out of the same civil suit.

30. The Writ Petition challenges impugned order dated 10.01.2018 passed in Miscellaneous Civil Appeal No.84/2017 by the learned District Judge-1, Margao thereby confirming the order passed by Civil Judge Senior Division, Vasco dated 29.09.2017 in Regular Civil Suit No.27/2016. By such impugned order, the learned Civil Judge restrained the Petitioner/Defendant from executing/implementing the transfer order dated 31.03.2016 and from stopping the salary of the Plaintiffs till disposal of the suit.

31. The interim orders passed in the Regular Civil Suit No.27/2016 will not survive in view of the rejection of the plaint itself. Consequently, Writ Petition becomes infructuous.

32. Accordingly, Writ Petition stands disposed of in view of the above discussion.

BHARAT P. DESHPANDE, J.