

Sayali Upasani

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

WRIT PETITION NO. 8559 OF 2023

Jabbar Nashir Shaikh

...Petitioner

Vs.

JCB India Ltd

...Respondent

Mr. Nitin Kulkarni a/w Mr. A. Betge, for Petitioner.

Ms. Anubha Rastogi a/w Ms. Rachita Padwal, for
Respondent.

CORAM:- N. J. JAMADAR, J.

DATED:- 11th JULY, 2023

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) The challenge in this Petition is to an order dated 22nd September, 2022, passed by the learned Presiding Officer, Labour Court at Pune, whereby the prayer of the petitioner - second party to lead evidence on the preliminary point of enquiry, came to be rejected.
- 3) Upon hearing the learned Counsel for the parties, the Court is of the considered view that the learned Presiding Officer

has correctly noted the ratio of the judgment of this Court in the case of **State Transport Co-operative Credit Society Ltd., Pune Division, S.T. Swargate Depot, Vs. Rajendra Sudhakar Mahalpure, B-6/12, Sarita Vihar Apartment**¹. However, the applicability of the said ratio to the facts of the case has not been adequately considered. The learned Presiding Officer simply observed that, in his view, the instant case was not an exceptional case.

4) Since the learned Presiding Officer has not delved into the aspect of the necessity of permitting the second party to lead evidence on the preliminary point, in the light of the facts of the case, it may be expedient to remit the matter back to the learned Judge for afresh consideration.

5) The Petition thus stands disposed in the following terms:-

- a) The impugned order dated 22nd September, 2022, passed on the application (Exh.U-5) stands quashed and set aside.
- b) The application (U-5) is restored to the file of learned Presiding Officer, Labour Court-1, Pune.
- c) The learned Presiding Officer is requested to decide the application afresh in the light of the decision of this

1 2018 SCC OnlineBom 6027

Court in the case of **State Transport Co-operative Credit Society Ltd.**, (supra), and the facts of the case.

d) The application be decided as expeditiously as possible and, preferably, within a period of two months from the date of communication of this order.

6) The Petition stands disposed.

7) No costs.

[N. J. JAMADAR, J.]