

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 527 OF 2019

Bhimchava Kamgar Sangathana through
President Mr.Shambhau Gaikwad ... Applicant

Versus

The Poona Club Limited through
Authorised Representative Ashok B.
Sarkar and Ors. ... Respondents

— —
Mr. Suryajeet P. Chavan for the Applicant.
Mr. Sanjay D. Koban i/by Mr. Husen A. Patel for the Respondents.
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CORAM : SHARMILA U. DESHMUKH, J.

DATE : August 3, 2023.

P. C. :

1. Heard.
2. The challenge in the application is to the order dated 9th April, 2019 rejecting the application filed by the Applicant under Order 7 Rule 11 of the Code of Civil Procedure, 1908.
3. Regular Civil Suit No.347 of 2019 was instituted by the Respondent No.1 against the Petitioner and Respondent Nos.2 to 7 seeking interalia order of injunction restraining the Applicant and

the Respondent Nos.2 to 7 from committing any act of interfering with the normal functioning of the respondent no.1-Company, holding any meeting or demonstration, shouting slogans, intimidating any employees and for restraining the Applicant and the Respondent Nos.2 to 7 from entering inside or outside the premises within periphery of 1 k.m.

4. The Applicant-trade union filed an application under Order 7 Rule 11 of the CPC on 13th March, 2019 seeking rejection of the plaint as the dispute between the Petitioner and Respondent nos.2 to 7 on one hand and the respondent no.1 on the other hand, falls within the purview of Item 5 of Schedule III of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, “*MRTP and PULP Act*”), and under Section 60 of the MRTP and PULP Act the jurisdiction of Civil Court is barred. The application was opposed by the Respondent No.1 by contending that there was no employer employee relationship between the Respondent No.1 and Respondent Nos.2 to 6. The trial Court by the impugned order rejected the application, giving rise to the present application.

5. Heard learned counsel for the parties.

6. Learned counsel appearing for the Applicant submits that the Applicant is the trade-union and the application was filed by the trade union seeking rejection of the plaint, as the dispute falls squarely within Item 5 of Schedule III of the MRTP and PULP Act. He would further contend that under Section 5 of the MRTP and PULP Act, it is the duty of the Industrial Court to decide the complaint relating to unfair practice, except unfair labour practice fallen in Item 1 of Schedule IV. He has also drawn support from the provisions of Sections 26, 27, 28 and Section 60 of the MRTP and PULP Act. Relying on the said provisions he would contend that the jurisdiction of the Civil Court is barred in respect of the subject matter which may form the subject matter of the complaint or the application to the Industrial Court. He would contend that the averments of the plaint evidences an unfair labour practice within the meaning of Item No.5 of Schedule III of the MRTP and PULP Act, and as such, there is an embargo on the jurisdiction of the Civil Court.

7. *Per contra*, learned counsel for the Respondent no.1 has pointed out that the plaint has been instituted by the Respondent No.1 against the Applicant and the Respondent No.7, who are the employees of the Respondent No.1-Company, however, the Respondent Nos.2 to 6 are not the employees and as such, no action can be instituted as against Respondent Nos.2 to 6 in a complaint under the provisions of the MRTP and PULP Act. He would submit that the reliefs which were sought in the plaint are not only against the Applicant but also against the Respondent Nos.2 to 7 and as such, there cannot be part rejection of the plaint.

8. Considered the submissions.

9. The undisputed position is that the Respondent Nos.2 to 6 are not the employees of the Respondent No.1-Company. In such an event, there is no embargo on jurisdiction of the Civil Court in an action instituted against the Respondent Nos.2 to 6. It is settled position that the plaint cannot be rejected in part and if against Respondent Nos.2 to 6, no action can be taken under the provisions of the MRTP and PULP Act, only because the Applicant

and the Respondent no.7 are employees, the plaint which seeks mandatory injunction against all of them cannot be rejected by relying upon the provisions of Order 7 Rule 11 of the CPC. This position is settled by the Apex Court in the case of ***Sejal Glass Limited vs. Navilan Merchants Private Limited*** reported in ***(2018) 11 SCC 780***.

10. In view of the above, the rejection of the application by the trial Court cannot be faulted with. Civil Revision Application stands dismissed.

(Sharmila U. Deshmukh, J.)