

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1223 OF 2022

VISHAL
SUBHASH
PAREKAR

Ramnik D. Gala and Another

...Petitioners

vs.

Ladhaku Mazdoor Sangh and Another

...Respondents

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VISHAL SUBHASH
PAREKAR
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Mr. Vipul Patel a/w. Mr. Rachit Bharwada i/b. Haresh Mehta & Co.,
for the Petitioners.

Ms. Seema Chopda, for the Respondents.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 06, 2023

P.C.:

1. This petition under Article 226 of the Constitution of India assails the order passed by the Presiding Officer, Labour Court, Mumbai in Reference (IDA) No. 11 of 2012 dated 12th November, 2021 whereby the prayer of the petitioners to delete their names from the Reference was not allowed and instead an additional issue was directed to be framed in the following words :-

“Whether second party proves that, the first party nos. 1 and 2 are the necessary party to the present proceeding ?”

2. The petitioners had given galas on leave and license to M/s. Mark Garments of which respondent No. 2 is the sole proprietor. The respondent No. 1 is a trade union purportedly seeking to represent certain employees who were allegedly working as Tailors

in the firm M/s. Mark Garments which was carrying the operations from the petitioner's premises.

3. On 1st September, 2013 respondent No. 2 delivered back the possession of the said premises. In the meanwhile, on a Reference made to the Labour Court, notices were issued to the petitioners. On 14th May, 2019, the 4th Labour Court, Mumbai passed an award answering the Reference partly in the affirmative holding that the concerned seven employees were entitled for reinstatement with 40% back wages.

4. The petitioners assailed the said award in Writ Petition (L) No. 3001 of 2019. By an order dated 16th December, 2019 this Court was persuaded to set aside the order passed by the Labour Court dated 14th May, 2019 and remand the Reference (IDA) No. 11 of 2022 to the Labour Court for afresh hearing in accordance with law and the observations made in the said order.

5. The following observations bear upon the instant petition as well.

2]The Petitioners relied on a leave and license agreement executed by them in favour of Vimal Shah for carrying on business at the licensed galas in the name and style as "Mark Garments". In spite of their deposition that it was Vimal Shah, who was the

proprietor of Mark Garments, the case of the second party workman being that they were workmen of Mark Garments, the Labour Court appears to have gone ahead and passed an award against the Petitioners herein. The Labour Court, whilst passing it, has not considered whether the Petitioners were or any of them was either proprietor or partner of Mark Garments or whether the business in the name and style of Mark Garments was in fact carried on by them or any of them in the premises. The court in fact was informed by Vimal Shah himself, whose written statement was on record, that he was the sole proprietor of Mark Garments. Yet, the Labour Court did not choose to arraign Vimal Shah as a party to the reference. The court simply noted that though Vimal Shah claimed himself to be the proprietor of Mark Garments, he had not led any oral evidence. The Labour Court appears to have cast a negative burden on the Petitioners herein, observing inter alia that though they denied the employment of the concerned workmen, they did not produce anything on record to show that the workmen were not their employees. The impugned order of the Labour Court clearly is unsustainable and would have to be quashed and set aside and the reference remanded to it for impleading Vimal Shah alias Vora, as a sole proprietor of Mark Garments, to the reference and hear the reference afresh on merits.

6. Post remand, the petitioners preferred an application seeking deletion of their names from the Reference. By the impugned order, after noting the submissions of the parties, the learned Presiding Officer, Labour Court was persuaded to frame the additional issue, extracted above. The Presiding Officer was of the view that the High Court had remanded the Reference with a direction to implead Shri Vimal Shah @ Vora, the sole proprietor of Mark Garments, and hear the Reference afresh.

7. The question as to whether the petitioners had any nexus with Mark Garments, or for that matter were the employers of the concerned workmen, is a matter which is essentially rooted in facts. It is imperative to note that by order dated 16th December, 2019 in Writ Petition (L) No. 3001 of 2019 this Court considered it appropriate to implead the person who was stated to be the proprietor of Mark Garments and, therefore, remand the Reference to be decided afresh on merits. In this view of the matter, the learned Presiding Officer, Labour Court, was justified in framing the additional issue for determination.

8. I am, therefore, not persuaded to entertain the Writ Petition. Hence, the Petition stands dismissed.

9. It is, however, clarified that the Labour Court shall decide the additional issue without being influenced by any of the observations made hereinabove.

(N. J. JAMADAR, J.)