

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7275 OF 2022

Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd, through
the Managing Director, Ajni Chowk, Nagpur and others .**Vs.** Cotton Ginners Welfare
Association, through Omprakash S/o Jagannath Daga

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.V. Samarth, Senior Adv. a/w Shri V.P. Ingle, Adv. for the Petitioners.
Shri Ram Heda, Adv. a/w Shri A.G. Joshi, Adv. for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 02/05/2023

1. Heard.
2. In this writ petition, the order below Exh.107 dated 16.08.2022 passed by the District Judge-17, Nagpur rejecting the application filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure (C.P.C.), is under challenge.
3. The petitioner No.1 is a Federation and the petitioner Nos.2 to 12 are its Zonal Managers.
4. The respondent No.1 is an Association of the factory owners, who filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") before the District and

Sessions Court, Nagpur seeking direction to the petitioners to deposit Rs.12,35,56,444/- alleging that the petitioners have illegally deducted the amount received by the factory owners/members of the respondent No.1-Association for the Season 2019-20 and 2020-21.

5. In the said proceeding, the petitioners filed application Exh.107 under Order VII Rule 11 of the C.P.C. on the ground that, application under Section 9 of the Act of 1996, does not disclose any cause of action and thereby prayed for dismissal of the proceeding. The grounds raised for dismissal, is stated in paragraph Nos.2, 3 and 4 of the application which read thus:

“2. It is submitted that, in order to Institute any proceedings based on an Arbitration Agreement, the conditions as provided under Section 7, 8 & 9 are to be complied with. It is further submitted that, Section 2(h) define “party” mean a party to an Arbitration Agreement. The same analogy is applicable for the purpose of explaining what is an arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996. It is submitted that, the application is totally misplaced as there is no agreement whatsoever between the applicant association and the respondent. The application therefore being devoid of any substance or merit is liable to be dismissed in limine without further consideration.

3. It is further submitted that, as submitted earlier, at the cost of repetition that, the respondents have never ever entered into any agreement, much less an arbitration agreement with the applicant association. The application is therefore totally misplaced and is in abuse of the process of law,

which is liable to be dismissed with compensatory costs.

4. Without prejudice it is further submitted that, section 9 can be invoked only as an interim measure. In the present case there is neither any cause of action disclosed nor there is any occasion or urgency to file the application. The present application therefore is absolutely illegal and the application itself being not tenable in the eyes of law, the application is liable to be dismissed with heavy compensatory cost as the applicant has wasted the time of court for no reason whatsoever.”

6. From the above referred grounds raised in the application Exh.107, it is evident that the primary ground for dismissal of proceeding under Section 9 of the Act of 1996 was that the association of the factory owners cannot maintain the application for the reason that the federation had never entered into the agreement with the federation, but the agreement was with the individual factory owners.

7. It is pertinent to note here that the application for dismissal of proceeding under Section 9 of the Act of 1996 was moved by the petitioners on 04.04.2022 and prior to the same the factory owners moved a joint application under Order 1 Rule 10 of the Code of Civil Procedure for joining them as party/applicant on 10.03.2022. The said application came to be allowed on 16.08.2022 and thereby, the factory owners with whom the federation entered into the agreements were made party as applicant to the proceeding under Section 9 of the Act of

1996. The said order was challenged by the petitioners in Writ Petition No.7277 of 2022. The said writ petition came to be dismissed on 02.05.2023 holding that the learned Court below has rightly allowed the application under Order 1 Rule 10, making the factory owners as party/applicant.

8. In the circumstances, the primary ground raised by the petitioners in the application Exh.107 does not survive. Accordingly, to the said effect the lower Court below has recorded its finding in paragraph Nos.6 and 7 of the impugned order, while rejecting the application Exh.107.

9. In the circumstances, I do not find any perversity or illegality committed by the learned District Judge in rejecting the application Exh.107. Accordingly, the writ petition is **dismissed**.

JUDGE