

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

WRIT PETITION NO. 3565 OF 2024

President Mumbai -IHCL Selettions

Knons As Vivanta By Taj President

... Petitioner

Versus

Shramjivi Kamgar Sabha And Ors.

... Respondent

**WITH
WRIT PETITION NO. 3573 OF 2024**

M/S Indian Hotels Company Ltd.

... Petitioner

Versus

Shramjivi Kamgar Sabha And Ors.

... Respondents

**WITH
WRIT PETITION NO. 12816 OF 2024**

M/s. Kenwood Interiors and Anr.

... Petitioners

Versus

Shramjivi Kamgar Sabha And Ors.

... Respondents

Mr. Hemant S. Telkar *for the Petitioner in WP/3565/2024 & WP/3573/2024.*

Mr. Mayuresh Nagle *for Respondent in WP/3565/2024 & WP/3573/2024 for the Petitioner in WP/12816/2024.*

CORAM : SANDEEP V. MARNE, J.

DATE : 10 OCTOBER 2024.

P.C. :

1) At the very outset it must be observed that these Petitions are absolutely misconceived. In a complaint relating to unfair labour practices filed at the instance of Respondent No.1-union, the Petitioner raised dispute about existence of employer-employee relationship. In the light of the said dispute being created by the Petitioners, the learned Member of the Industrial Court has embarked upon an enquiry about maintainability of the complaint by framing a preliminary issue as under:

“(1) Whether this complaint is maintainable in view of the object raised by the respondents in regard to existence of relationship between the persons on whose behalf the complaint is filed and the respondents?”

2) The learned Member merely wants to decide whether the complaint would be maintainable in the light of dispute raised by Petitioners about existence of employer-employee relationship. In my view, the Industrial Court cannot be prevented from making an enquiry about maintainability of the complaint. It is sought to be urged before me that in view of dispute about existence of employer-employee relationship, the Industrial Court loses its jurisdiction and in that regard reliance is placed on judgment of this Court in ***Hindustan Coca Cola Bottling S/W Pvt. Ltd. Vs. Bhartiya Kamgar Sena &***

Ors.¹ In my view, this contention needs to be raised before the Industrial Court while deciding the preliminary issue framed by it. The Industrial Tribunal is not conducting enquiry into existence of employer-employee relationship. It is only examining whether the complaint is maintainable in the light of dispute created about existence of employer-employee relationship. If Petitioners demonstrate that existence of such dispute bars jurisdiction of the Industrial Court, I do not see any reason why the Court would not hold the complaint as non-maintainable. Before the Industrial Court answers the Preliminary issue relating to maintainability of the Complaint, Petitioners want this Court to directly hold that the Complaint is not maintainable. Filing of these Petitions is thus unnecessary, which is the reason why I have observed that the Petitions are misconceived and amount to gross abuse of process of law. Writ Petitions are accordingly **rejected**.

[SANDEEP V. MARNE, J.]

¹ 2001 III CLR 1025