

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

WRIT PETITION NO.7277 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 and others

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 respondents.

CORAM : ANIL S. KILOR, J.

DATED : 02/05/2023

1. Heard.

2. In this writ petition, the petitioners have raised the challenge to the order below Exh.8 dated 16.08.2022 passed by the District Judge-17, Nagpur, allowing the application Exh.8 and thereby permitting the applicants/factory owners to be joined as applicants.

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. Since the said application was moved by the Association and agreement was with individual factory owners, the application was moved by the respondent Nos. 2 to 88 under Order 1, Rule 10 of the Code of Civil Procedure (C.P.C.) for joining them as respondent Nos.2 to 88.

5. In the application, it was categorically stated that the agreement with the respective Zonal Officers of the federation, was signed in their individual capacity and the notices for deduction were issued to all the factory owners are based on identical reasons. It is therefore, submitted that as the factory owners individually are the sufferer of illegal action, they be made party as applicants to the application under Section 9 of the Act of 1996.

6. The said application was opposed by the petitioners on the ground that the deductions were made for excess trash is in accordance with clause 7 and 8 of the agreement. It was also opposed on the ground that there was no cause of action to file such proceeding.

7. The learned Court below allowed the application on the ground mentioned in the paragraph Nos.5 and 6 which read thus:

“5. This instant application is moved by the factory owners to permit them to add as applicants as the issue involved in the application directly affected their legal rights. For complete and full adjudication being necessary and proper party, they want to submit their submission. This instant application has been moved on 14.04.2022 immediately on the date of returning of notice. The main application is at initial stage. When the main application is at initial stage, this application is being moved by the factory owners prior to moving application under Order-VII Rule-11 of CPC by non-applicants. Under Order-I Rule-10 of CPC, the Court has power to add any party as plaintiff or defendant even sumoto if it fits that the party is necessary and proper for complete adjudication of the matter and to address the real controversy involved.

6. The agreements are obviously made with the intervenors/factory owners and thus nature of lis, they are not necessary but proper parties. They want to litigate the application. It is contended that for Welfare of the members i.e. factory owners, Association without any personal interest moved main application in the name of Association due to bonafide mistake. It is also contended by factory owners that this application was immediately moved at the initial stage immediately after filing main application to avoid any technicality. Thus to decide the controversy involved finally and completely and for full and final determination of issue mentioned in Exh-1, the applicants/ factory owners are necessary and proper party and permission to add them as applicants is necessary to avoid multiplicity of litigation and to protect their legal rights and interest. If the permission is not granted in view of nature of lis to factory owners, grave prejudice would cause to them. On the other hand, no prejudice would be caused to other side if the permission is granted considering the initial stage of the matter. Already application moved under Order-VII Rule-11 of CPC by non-applicants, questioning maintainability of main application has been rejected vide order below Exh-107.”

8. The impugned order dated 16.08.2020 allowing the amendment application is the subject matter of the present writ petition.

9. Shri Samarth, learned Senior Advocate for the petitioners submits that there is no cause of action for the respondents to file an application under Section 9 of the Act of 1996. He further submits that the application was filed under Order 7, Rule 11 of the C.P.C. for rejection of the plaint. It is further submitted that the said application was rejected contrary to law.

10. It is submitted that there was an agreement with the individual factory owners with the respective Zonal Officers of the petitioner No.1-Federation and therefore, there cannot be a joint cause of action to file application under Section 9 of the Act of 1996 by all the factory owners along with the Association. He, therefore, submits that the proceeding under Section 9 of the Act of 1996, itself is not maintainable and for that reason, the impugned order allowing the application under Order 1 Rule 10 of the C.P.C., is erroneous.

11. It is submitted that the learned Court below failed to appreciate that there was no agreement with the association and therefore, no application under Section 9 of the Act of 1996 could be maintained by the association on

behalf of the factory owners. He, accordingly, prays for quashing and setting aside the impugned order allowing application under Order 1 Rule 10 of the C.P.C.

12. On the other hand, the learned counsel for the respondents points out that the petitioners are not disputing that the respondent Nos.2 to 88 are the factory owners. It is submitted that the petitioners are also not disputing that the respective Zonal Officers have entered into an agreement with individual factory owners. He, therefore, submits that any decision on the application under Section 9 of the Act of 1996 would adversely affected the interest of the respondent Nos.2 to 88 and therefore, they are necessary party to the said proceeding. He, accordingly, prays for dismissal of the present petition.

13. In light of the rival contentions, I have perused the record and the impugned order.

14. In the present matter, after going through the record, it is evident that there is no dispute about the status of the respondent Nos.2 to 88 as factory owners. There is also not disputed that, identical agreements were executed by the respective Zonal Officers with the individual factory owner and in the Season 2019-20 and 2020-21 the deductions were made from the amount payable to the respondent Nos.2 to 88, for identical reasons.

15. Thus, from the record, it is apparent that, the grievance of all the respondents Nos.2 to 88 factory owners, is similar in nature and since the application moved by the respondent No.1-Association under Section 9 of the Act of 1996 was in respect of illegal deduction made by the petitioner No.1-Federation from the amount payable to the respondent Nos.2 to 88, the learned Court below has found that, they are necessary party for the decision on the application filed under Section 9 of the Act of 1996.

16. It is a well settled law that, the provisions of C.P.C. are applicable to the Arbitration proceeding and in that view of the matter, the reasons recorded by the learned lower Court below in paragraph Nos.5 and 6 of the impugned order are just and proper and needs no interfere.

17. As far as the submission of the petitioners that, the application under Section 9 of the Act of 1996, filed by the respondent No.1 is not maintainable as there was no agreement between the association and the petitioner No.1-federation, is concerned, there is no doubt that there is a substance in it. However, it cannot be ignored that before raising such ground under Order 7 Rule 11 of the C.P.C., the application under Order 1 Rule 10 for joining the factory owners with whom the federation entered into the agreements, as party to the application under Section 9 of the Act of 1996, was made and after allowing the said

application now the said argument is not available to the petitioners in the present writ petition.

18. Moreover, while arguing the application filed under Section 9 of the Act of 1996, the petitioners have every right to oppose the said application on merit as well as on the ground of maintainability. It is a settled law that, for deciding the application under Order 1, Rule 10 of the C.P.C. the Court has to only examine whether the proposed applicants or respondents are the necessary party to the proceeding, for determination and complete adjudication of all the issues involved in the matter.

19. In the circumstances, I do not find any reason to interfere with the impugned order. Accordingly, the writ petition is **dismissed**.

20. At this stage, Shri Samarth, learned Senior Advocate prays for continuation of *interim order* granted by this Court vide order dated 01.12.2022 directing the District Court not to proceed with the matter.

21. The learned counsel for the respondents opposed the said request.

22. Considering the fact that the *interim order* is in operation from last five months, I am of the opinion that,

no prejudice will be caused to the respondents if the *interim order* granted by this Court vide order dated 01.12.2022 is continued for ten weeks from today. Accordingly, the order dated 01.12.2022 shall continue for the period of **ten weeks** from today.

23. It is made clear that, on completion of period of ten weeks, the *interim order* shall stand vacated automatically.

JUDGE