

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.43 OF 2011

IN

WRIT PETITION NO.8543 OF 2010

The Kunbi Sahakari Bank Limited and Ors.

...Appellants

Versus

Shri. Sanjiv Shriram Barbade & Ors.

...Respondents

WITH

CIVIL APPLICATION NO. 1 OF 2024

IN

LETTERS PATENT APPEAL NO.43 OF 2011

Sanjiv Shriram Barabde and Ors.

...Applicants

Versus

The Kunbi Sahakari Bank Ltd. And Ors.

...Respondents

Mr. Anand Pai a/w Mr. Netaji Gawade Adv. i/by M/s. Sanjay Udeshi & Co. for Appellants.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 13 NOVEMBER 2025

P.C.

1. We have heard Mr. Pai, learned Counsel for the appellant. None for the respondents.

2. We have perused the impugned order dated 06 December 2010 passed by the learned Single Judge whereby the petition was allowed by the following order:-

"1. The order of the Labour Court and of the Industrial Court in Complaint (ULP) No.68 of 2010 and Revision Application (ULP) No.141 of 2010 have been challenged in this petition. The petitioners contend that they are employees under the Bombay Industrial Relations Act as defined u/s 3(13) of the Act. The respondent Bank contests this fact and contends that the employees are Managers or Officers and, therefore do not fall within the definition of section 3(13) of the Bombay Industrial Relations Act (for short, 'BIR Act'). The

petitioners had approached the Labour Court under Item 1 of Schedule IV during the conduct of the domestic enquiry against them, contending that it was not conducted in Marathi as requested by them and that certain documents which they have sought were not produced by the employer.

2. The Labour Court has held that the petitioners are not “workmen u/s 2(s) of the Industrial Disputes Act”. It has therefore dismissed the complaint. As regards the findings as to the relevancy of the documents the Labour Court has only observed that it should not stall the proceedings before the enquiry officer in view of various judgments of this Court as well as the Supreme Court. It has not considered the relevancy of the documents sought by the petitioners. The Labour Court has further considered the question whether the enquiry should be conducted in Marathi as required under the the standing orders applicable. The Labour Court has held that since no prejudice would be caused to the employees if the enquiry proceedings are conducted in Marathi and recorded in English. These findings of the Labour Court have been confirmed by the Industrial Court. However, the Industrial Court has held that the Labour Court ought not to have dismissed the complaint on merits it was necessary for it to give an opportunity to the petitioners to lead evidence to prove that they are employees as defined under the BIR Act.

3. In my opinion, both the Courts below have committed serious errors in passing the impugned orders. The Labour Court while dismissing the complaint has considered the definition of workmen as contained in section 2(s) of the Industrial Disputes Act although what was relevant was the definition of an employee under section 3(13) of the BIR Act. On the basis of some prima facie findings the Labour Court has dismissed the complaint. The Industrial Court has rightly restored the complaint and permitted the parties to lead evidence in that behalf.

4. As regards the issue of documents being produced, the Labour Court has not considered which documents the Petitioners want the Bank to produce at the enquiry or their relevance at all. It has instead proceeded on the footing that it should not be an instrument to stall the proceedings before the enquiry officer. This finding of the Labour Court must be set aside. It was the duty of the Labour Court to consider whether the documents sought by the petitioners were relevant before dismissing the application. The petitioners are not asking that the enquiry should be stayed endlessly but that it should be conducted after the Bank produces certain documents on record.

5. The issue as to whether the enquiry should be conducted in Marathi cannot be determined on whether prejudice would be caused to the employees if it is conducted in English. The employees had requested the enquiry officer to conduct the proceedings in Marathi and to record the proceedings in the same language. The standing orders require the same to be conducted either in English, Hindi or Marathi. It is the choice of the employees concerned as to language in which the enquiry should be conducted and the proceedings should be recorded. Mr.Rele has placed reliance on the judgment in the case of

Shashikant M. Sable vs. Advani Oerlikon Ltd. & anr., 2008 (119) FLR 537 to submit that the proceedings can always be recorded in English. However the facts in that case were different. The Defence Representative was well versed in English and had conducted the cross-examination in English. The workman had participated in the enquiry without protest although the proceedings were recorded in English. In the present case since the employees had requested at the first instance that the proceedings should be conducted and recorded in Marathi, the enquiry officer ought to have abided by that request.

6. The impugned orders are set aside. The Labour Court shall consider the exhibit U2 afresh.

7. The Labour Court shall decide the issue as to whether the petitioners are employees as defined u/s 3(13) of the BIR Act as a preliminary issue before considering the application for interim relief in the matter. The issue must be decided within three months from today. The interim application shall be considered within a period of two weeks thereafter in case it is found that the Petitioners are employees u/s 3(13) of the BIR Act. Till then, the enquiry proceedings against the petitioners will be stayed.

8. Writ petition is disposed of accordingly.”

3. The present appeal was admitted by an order dated 12 July 2011 passed by the co-ordinate Bench of this Court. An order of the even date was passed on the Civil Application whereby the Division Bench was of the opinion that the departmental inquiry ought not to have been halted and thus permitted the appellants to proceed with the departmental inquiry. The relevant paragraphs are required to be noted which read thus:

“2. We have heard both sides. In our view, when the departmental inquiry initiated against the respondents is in connection with serious irregularities and when both the Courts declined to grant interim relief, the learned Single Judge should not have granted such interim relief by which further departmental inquiry proceedings are stayed. In our view, considering the question of balance of convenience, in case the respondents succeed, they may be compensated by way of monetary compensation. As against that, if the complaint is dismissed, the loss which the appellants may suffer cannot be compensated. Considering the same, the order passed by the learned single Judge is stayed during the pendency of the appeal.”

4. We are informed by Mr. Pai that the departmental inquiry was accordingly undertaken which resulted into an order of dismissal being passed against the respondents. Such order of dismissal was not challenged by the respondents.
5. In this view of the matter, the proceedings of Letters Patent Appeal have become infructuous. It stands disposed of.
6. Pending Civil Application would not survive. It is accordingly disposed of.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)