HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7522/2018

Sangam Handloom, through
Proprietor Priyadev s/o. Harbanslal Khatri,
aged about 39 years, Occupation : Business,
R/o. M.S.E.B. Colony, Bhandara,
Tahsil & District : Bhandara **PETITIONER**

.....VERSUS.....

Pradip S/o. Mahendrapal Vig,
Aged about 29 years, Occu. : Service,
R/o. Near Navnath Mandir,
Takali, Bhandara,
Tahsil and District : Bhandara. **RESPONDENT**

WITH

WRIT PETITION NO.7523/2018

Aradhana Garments, through
Proprietor Anandram S/o. Bhagatram Balwani,
aged about 54 years, Occupation : Business,
R/o. Guru Nanak Ward, Bhandara,
Tahsil and District : Bhandara. **PETITIONER**

.....VERSUS.....

Sunil S/o. Maroti Dhakate,
Aged about 49 years, Occu.: Not Known,
R/o. Rajguru Ward (Shahid Ward), Bhandara,
Tahsil and District : Bhandara. **RESPONDENT**

WITH

WRIT PETITION NO.7524/2018

Aradhana Garments, through
Proprietor Anandram S/o. Bhagatram Balwani,
aged about 54 years, Occupation : Business,
R/o. Guru Nanak Ward, Bhandara,
Tahsil and District : Bhandara. **PETITIONER**

.....VERSUS.....

Suresh S/o. Rajaram Mandurkar,
Aged about 50 years, Occu.: Not Known,
R/o. Near Mata Mandir, Nehru Ward (Mendha),
Bhandara, Tahsil and District : Bhandara. **RESPONDENT**

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WITH
WRIT PETITION NO.7525/2018

Aradhana Garments, through
Proprietor Anandram S/o. Bhagatram Balwani,
aged about 54 years, Occupation : Business,
R/o. Guru Nanak Ward, Bhandara,
Tahsil and District : Bhandara. **PETITIONER**

.....VERSUS.....

Narayan S/o. Govinda Palawe,
Aged about 51 years, Occu.: Not Known,
R/o. Near Santaji Ward, Bhandara,
Tahsil and District : Bhandara. **RESPONDENT**

Shri A. C. Dharmadhikari, counsel for petitioner
in writ petition Nos.7522, 7523, 7524 and 7525 of 2018
Shri J. R. Kidiley, counsel for respondent
in writ petition Nos.7522, 7523, 7524 and 7525 of 2018

WITH
WRIT PETITION NO.7864/2018

Bharat Fashion,
Through its Proprietor,
Shri Satram s/o Bhagwandas Kaurani,
Aged about 60 years, Occ.: Business,
R/o. Bada Bazar, Main Road, Bhandara,
Tah. And District – Bhandara. **PETITIONER**

.....VERSUS.....

1. Shri Vithoba s/o Eknathji Ninawe,
   Aged about 38 years, Occ.: Not known,
   R/o. C/o. Shri Vilas Fule, Near Nisha School,
   Rajguru Ward, Bhandara,
   Tah. And District – Bhandara.

2. The Hon'ble Member,
   Industrial Court, Bhandara.

3. The Hon'ble Judge,
   Labour Court, Bhandara. **RESPONDENTS**

Shri S. R. Bhongade, counsel for petitioner.
Shri J. R. Kidiley, counsel for respondent no.1.

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WITH
WRIT PETITION NO.3540/2019

Kutumb Fashion Mall,
Through its Proprietor,
Dinesh S/o Tilakraj Chaddha,
Aged about 37 years, Occ. Business,
R/o. Main Road, Bhandara,
Tahsil & District – Bhandara. **PETITIONER**

.....VERSUS.....

Sau Manisha Dilip Shivarkar,
Aged about 40 years, Occ. Nil,
R/o- C/o Shri Vithoba Dudhpachare
Behind Govt. Hospital, Sant Kabir Ward,
Kazi Nagar, Bhandara, Tah & Dist. Bhandara. **RESPONDENT**

WITH
WRIT PETITION NO.3542/2019

Kutumb Fashion Mall,
Through its Proprietor,
Dinesh S/o Tilakraj Chaddha,
Aged about 37 years, Occ. Business,
R/o. Main Road, Bhandara,
Tahsil & District – Bhandara. **PETITIONER**

.....VERSUS.....

Shri Revatinath Keshaorao Parate,
Aged about 40 years, Occ. Nil,
R/o. Tilak Ward, Mohadi,
Tah. Mohadi, Dist. Bhandara. **RESPONDENT**

WITH
WRIT PETITION NO.3546/2019

Kutumb Fashion Mall,
Through its Proprietor,
Dinesh S/o Tilakraj Chaddha,
Aged about 37 years, Occ. Business,
R/o. Main Road, Bhandara,
Tahsil & District – Bhandara. **PETITIONER**

.....VERSUS.....

Sujat S/o Sukhadas Chaware,
Aged about 56 years, Occ. Service,
R/o Kardha, Tah. & Dist. Bhandara. **RESPONDENT**

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Shri H. N. Verma, counsel for petitioner in writ petition Nos.3540, 3542 and 3546/2019.
Shri J. R. Kidiley, counsel for respondent in writ petition Nos.3540, 3542 and 3546/2019.

CORAM : A.S. CHANDURKAR, J.
DATE : 9TH SEPTEMBER, 2019.

COMMON JUDGMENT

1. Since common issues arise in these writ petitions they are all heard together and decided by this common judgment.

2. **RULE**. Heard finally with consent of counsel for the parties. For the sake of convenience the facts in Writ Petition No.7522 of 2018 are being referred to.

3. It is the case of the respondent – complainant that he was appointed as salesman at the petitioner's Unit. He was being paid Rs.150/- per day. As he was working as a salesman he was workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'). Various salesmen working in garment shops in the city of Bhandara had formed their Union which was got duly registered. They sought extension of various facilities that were admissible under the relevant statutory provisions. The complainant was also a part of that Union. The garment shop owners in view of aforesaid

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developments had discontinued the services of various salesmen including the respondent. Hence a representation was made to the Assistant Labour Commissioner. The Assistant Labour Commissioner did not issue any direction and instead closed the said conciliation proceedings. The services of the complainant were not reinstated and hence he approached the Labour Court by filing a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'the Act of 1971'). The provisions of Item - 1 of Schedule - IV to the said Act were invoked and a prayer to set aside the oral order of termination was made.

4. In the written statement as filed by the petitioner herein it was pleaded that the complainant was not an employee of the petitioner nor he was a workman. There was no privity of contract nor was there any relationship of employer and employee between them. It was further pleaded that the Labour Court had no jurisdiction to decide the complaint until the relationship between the parties was adjudicated and established in the forum constituted under the Act of 1947.

5. The complainant filed an application seeking interim relief. A direction was sought that his services should be temporarily reinstated till the adjudication of the complaint. That application was opposed by the

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petitioner. The Labour Court passed an interim order directing the petitioner to reinstate the complainant temporarily till the adjudication of the main proceedings. A prima facie finding was recorded that there was existence of relationship of employer and employee between the parties. The aforesaid order came to be challenged by the petitioner by filing revision application under Section 44 of the Act of 1971. The Industrial Court did not interfere with the order passed by the Labour Court and dismissed the revision application with costs of Rs.5000/- payable by the petitioner to each complainant. The petitioner then approached this Court for challenging the aforesaid order. Writ Petition No.5424 of 2015 with other connected writ petitions were decided on 16th and 17th December 2015. This Court maintained the orders passed by the Labour Court and the Industrial Court but clarified that the observations made in the impugned order as well as in the order deciding the writ petitions were only for the purposes of considering the prayer for interim relief. The Labour Court was directed to decide the complaint in accordance with law.

6. The Labour Court thereafter on 20.07.2015 framed issues in the complaint. Issue No.1 as framed reads as under:-

> *"Whether the employer – employee relationship exists between the parties ?"*

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Shortly, thereafter the petitioner amended the written statement by moving an application on 03.09.2015. By the said amendment it was sought to be pleaded that the complainant had no concern with the petitioner nor was the complainant working for the petitioner. The complainant was not employee of the petitioner and hence there was no question of the employees named in the complaint being junior to the complainant. It was further asserted that the complainant was never appointed, engaged nor did he work with the petitioner. The muster roll from the year 2013 were sought to be produced. The aforesaid amendment application was accordingly allowed by the Labour Court.

7. The petitioner thereafter moved an application on 29.09.2017 at Exhibit C-10 stating therein that the Labour Court had no jurisdiction to entertain the complaint in question in view of the fact that the relationship of employer and employee was disputed. The complaint filed under Section 28 of the Act of 1971 therefore could not be entertained for the purposes of adjudicating that issue. The petitioner filed another application at Exhibit C-11 seeking permission to produce on record various muster rolls.

The Labour Court by its order dated 27.11.2017 allowed the application that was filed seeking permission to produce documents on

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record. However by its order dated 04.12.2017 the Labour Court rejected the application at Exhibit C-10 by observing that Issue No.1 which was initially framed had become redundant as it could not be decided by the Labour Court. In place of that issue it was stated that another issue as to whether the complainant was a "workman" under Section 2(s) of the said Act of 1947 was required to be framed. The application was accordingly rejected. This order was challenged by the petitioner before the Industrial Court and by the impugned order dated 06.07.2018 the Industrial Court did not interfere with the order passed by the Labour Court and dismissed the revision application. Being aggrieved by the aforesaid order the petitioner has challenged the same before this Court.

8. Shri A.C. Dharmadhikari alongwith Shri H. N. Verma and Shri S. R. Bhongade, learned counsel for the petitioners submitted that both the Courts erred in coming to the conclusion that the complaint as filed was liable to be entertained by the Labour Court. It was submitted that the complaint as filed was under Section 28 of the Act of 1971. The petitioner had specifically raised a defence that there did not exist relationship of employer and employee between the parties. In fact the engagement of the complainant with the petitioner itself was denied. Unless it was undisputed that there existed relationship of employer and employee between the parties, the Labour Court while exercising

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jurisdiction under Act of 1971 had no authority to adjudicate that aspect of the matter. In other words, if the complaint filed under Section 28 of the Act of 1971 involved adjudication of the issue as regards existence of relationship of employer and employee the Labour Court would lose its jurisdiction and the complainant would have to get that relationship adjudicated before the forum under the Act of 1947. Reference was made to the judgment of the Division Bench in ***Asia Foundation and Construction Ltd., Nagpur and another Versus Engineering Kamgar Sanghatana, Nagpur and another*, 2016 (2) Mh. L.J. 406** wherein it has been held that one of the pre-requisites for entertaining a complaint under the Act of 1971 was the pre-existing relationship of employer and employee as an accepted fact. This aspect was specially raised in the written statement and also by amending the same. The Labour Court by framing that issue at serial No.1 had endorsed the aspect that such issue did arise for determination in the light of the pleadings of the parties. Despite amending the pleadings and further amplifying the stand in that regard the Labour Court as well as the Industrial Court committed a jurisdictional error in coming to the conclusion that the Labour Court had jurisdiction to decide the complaint under Section 28 of the Act of 1971. The orders passed by both the Courts were contrary to the law as laid down by this Court. It was thus submitted that in the light of a clear defence having been raised by the petitioner in its written statement the

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complainant was required to have the aspect of existence of relationship as employer and employee established before the appropriate Forum. The impugned order therefore were liable to be set aside.

9. On the other hand, Shri J.R. Kidilay learned counsel for the respondents supported the impugned order. According to him alongwith the complaint an application for grant of interim relief had been moved by the complainant. Initially the Labour Court and thereafter the Industrial Court as well as this Court had found prima facie that there existed relationship of employer and employee between the parties and hence interim relief was granted to the complainant. That order attained finality in view of the fact that even the review application filed by the petitioner had been rejected on 05.09.2018. The finding recorded in those orders and in the earlier round of litigation had attained finality and thus operated as r*es-judicata*. It was therefore not permissible to reagitate those aspects by moving an application before the Labour Court. It was then submitted that Issue No.1 that was initially framed was now modified and the complainant was required to establish that he was a workman under Section 2(s) of the Act of 1947. That issue could be tried and decided by the Labour Court in the complaint filed under Section 28 of the Act of 1971. He then submitted that the dismissal of the complaint was sought by amending the written statement and raising the plea of

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lack of jurisdiction. That course was not permissible and the Labour Court ought to have been permitted to adjudicate the complaint on its merits. The decision relied upon by the learned counsel for the petitioner was sought to be distinguished by contending that in the present case the complainant had claimed that they were directly appointed by the petitioner. In the cited judgment the case of contractual employees had been considered. Hence ratio of that decision could not be made applicable to the facts of the present case. It was thus submitted that there was no reason to interfere with the impugned order and the writ petitions were liable to be dismissed. He relied upon the decision in ***Relene Petrochemicals Pvt. Ltd. Versus Sunil Sudhakar Sathe & Ors.,*** **2006 II CLR 183** and submitted that all issues as framed were liable to be decided by the Labour Court.

10. I have heard the learned counsel for the parties at length and I have gone through the documents placed on record. After giving due consideration to the respective submissions, I find that the impugned orders are liable to be set aside as the Labour Court had no jurisdiction to decide the complaint as filed under Section 28 of the Act of 1971.

In the complaint as filed under Section 28 of the Act 1971, the complainant has claimed that he was appointed in June 2012 as a salesman. He was appointed on daily wages and has been paid Rs.150/-

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per day. The payments were however made on monthly basis. Since the complainant sought to raise various statutory demands the services of the complainant were put to an end from March 2014. The complainant therefore invoked the provisions of Item - 1 of Schedule - IV to the Act of 1971. In the written statement the relationship of employer and employee between the parties was specifically denied. A plea was raised that unless it was established that there existed such relationship, the complaint under Section 28 of the Act of 1971 could not be entertained. Based on the aforesaid pleadings the Labour Court had framed issues and the first issue was in respect of existence of relationship as employer and employee between the parties. In the written statement as amended it has been further pleaded that the complainant had no concern with the petitioner and that he was never appointed, engaged nor did he work with the petitioner.

11. In ***Asia Foundation and Construction Ltd., Nagpur and another*** (supra) the Division Bench of this Court has considered the aspect of jurisdiction of the Labour Court to entertain a complaint under Section 28 of the Act of 1971 in a case where the existence of relationship as employer and employee is disputed. After referring to various decisions of the Hon'ble Supreme Court it has been observed that the provisions of the Act of 1971 could be enforced only by those persons

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who admittedly were workmen. When there is a dispute as regards the status of the complainant being an employee of the employer, that dispute must be first got resolved by raising a dispute before the appropriate forum under the Act of 1947. What was necessary for invoking the jurisdiction under the Act of 1971 was the pre-existing relationship of employer and employee as an accepted fact. From the aforesaid decision it is thus clear that in a complaint filed under Section 28 of the Act of 1971 an adjudication as regards existence of relationship as employer and employee between the parties cannot be made. It is only if there is no dispute as to existence of such relationship between the parties that the provisions of the Act of 1971 can be invoked.

12. As noted above the pleadings as initially made in the written statement led to framing of the first issue as to existence of such relationship. The Labour Court therefore at that stage itself had found that the pleadings of the parties did give rise to such an issue. As the same was a jurisdictional issue it could not have been adjudicated in the complaint filed under Section 28 of the Act of 1971. That adjudication was required to be made under the Act of 1947. Though it was submitted on behalf of the complainant that such pleadings were raised subsequently by amending the written statement, that contention cannot be accepted. As noted above in the written statement as initially filed

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such pleas were specifically raised. Those pleas were further amplified by amending the written statement. As regards the submission that while considering the prayer for grant of interim relief the Labour Court, the Industrial Court and thereafter this Court had recorded a prima facie finding that there existed such relationship was a aspect which could not be ignored and that finding would therefore operate as res-judicata, said contention is recorded only to be rejected. The Labour Court as well as Industrial Court have clearly observed in their orders that said finding was a prima facie finding while adjudicating the application for grant of interim relief. In the writ petitions decided by this Court earlier on 16th and 17th December 2015 between the same parties the following observations were made:

> "*12. ..... It is made clear that observations made in the impugned orders as well as in present order are only for the purposes of considering the prayer for interim relief and the Labour Court shall decide the complaints in accordance with law without being influenced by any such observations.....*"

From the aforesaid observations it becomes clear that the same were only for the purposes of deciding the question of interim relief. Similarly rejection of the application for review that was moved by the petitioner also has no consequence whatsoever.

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13. It is found that the Labour Court as well as the Industrial Court commited an error in holding that the Labour Court had jurisdiction to entertain the complaint despite a specific plea being raised as to absence of existence of relationship of employer and employee. As a result of the impugned order the Labour Court has assumed jurisdiction which does not lie with it insofar as the complaint under Section 28 of the Act of 1971 is concerned. The impugned orders are therefore liable to be set aside. The decision relied upon by the learned counsel for the respondents does not support his contentions in these facts.

14. Accordingly the orders passed by the Labour Court and thereafter maintained by the Industrial Court which are impugned in these writ petitions are set aside. It is held that the Labour Court has no jurisdiction to entertain the complaint filed under Section 28 of the Act of 1971 as there is a dispute with regard to existence of relationship of employer and employee. The complainants are at liberty to seek appropriate reliefs by initiating proceedings under the Act of 1947. All contentions raised on merits of the disputes are kept open for being adjudicated in accordance with law.

Rule is made absolute in aforesaid terms with no order as to costs.

(**A.S. CHANDURKAR, J.**)

Sarkate

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