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

**WRIT PETITION NO.9470 OF 2003
WITH
CIVIL APPLICATION NO.2599 OF 2005**

ATUL
GANESH
KULKARNI

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1. **The Managing Director,**
M/s. Jolly Steel Industries Pvt. Ltd.,
23, Band Garden Road, Pune 411 001
2. **The Managing Director,**
M/s. Jolly Toresteel Private Ltd.,
23, Band Garden Road, Pune 411 001 ... **Petitioners**

Vs.

1. **Sarva Shramik Sanghatana,**
through it's Joint Secretary,
101, Shivaji Nagar, Pune 411 005
2. **The Partner,** M/s. Gupta Steel Ind.,
979, Laxmi Bazar Bhavani Peth,
Pune 411 002
3. **J.L. Deshpande,**
Member, Industrial Court, Pune
having his office at PMT Building,
Swar Gate, Pune ... **Respondents**

Mr. Rutwij Bapat for the petitioner.

Mr. Nitin A. Kulkarni for respondent Nos.1 & 2

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 9, 2026.

PRONOUNCED ON : APRIL 10, 2026

JUDGMENT:

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioners have called in question the legality and correctness of the Judgment and Order dated 24 October 2002 passed by the Industrial Court, Pune in Complaint (ULP) No. 107 of 1997, whereby the said complaint came to be partly allowed.
2. The facts and circumstances giving rise to the present writ petition, as set out by the petitioners, are stated thus. A Lease Agreement dated 9 April 1980 was executed between petitioner No.1 and respondent No.2 in respect of the lease of premises and machinery for a period of three years. In terms of clause 5(i) thereof, respondent No.2 was conferred a right to requisition employees from petitioner No.1, and upon such requisition, the obligation to pay regular wages to such employees was cast upon respondent No.2. Further, under clause 5(j), petitioner No.1 undertook liability to pay transfer compensation to such requisitioned employees, in the event such liability arose at the time of severance of their employment with petitioner No.1.
3. It is the case of the petitioners that, pursuant to the said arrangement, certain employees were transferred from the petitioners to respondent No.2. Thereafter, respondent No.2 entered into a settlement with respondent No.1 in the year 1980, and also independently recruited certain employees. It is further contended that respondent No.2 failed to hand over possession of the premises to petitioner No.1 upon expiry of the lease, which

necessitated the institution of Civil Suit No. 446 of 1987 before the competent Civil Court. The said suit was decreed in favour of petitioner No.1. An appeal preferred by respondent No.2 before this Court came to be disposed of in terms of consent terms dated 9 April 1991, whereunder respondent No.2 agreed to continue in possession as an agent of the Court Receiver and further agreed to hand over possession to the Court Receiver on or before 31 March 1992. Respondent No.2 also undertook to discharge all liabilities pertaining to the running of the business prior to handing over possession. It is further the case of the petitioners that respondent No.2 failed to hand over possession even within the stipulated period in the year 1992, as a result of which disputes between the parties continued. It is stated that with effect from 6 March 1993, respondent No.2 completely ceased its manufacturing activities. In the meanwhile, respondent No.1 instituted Complaint (ULP) No. 150 of 1993 against respondent No.2 claiming wages from February 1993 onwards.

4. The record further discloses that the Court Receiver ultimately handed over possession of the premises to petitioner No.1 on 7 September 1996. It is reiterated that respondent No.2 had agreed to clear all liabilities incurred prior to such handing over of possession. Thereafter, respondent No.1 preferred an application at Exhibit U-20 in Complaint (ULP) No. 150 of 1993 on 18 February 1997 seeking impleadment of the present petitioners as parties to the said proceedings. Subsequently, on 20 March 1997, respondent No.1 instituted Complaint (ULP) No. 107 of 1997 against the present petitioners as well as respondent No.2. In

the said complaint, respondent No.1 claimed lockout wages from 6 March 1993 onwards against both the petitioners and respondent No.2, without raising any claim for transfer compensation. It is pertinent to note that by order dated 19 July 2000 passed in Complaint (ULP) No. 150 of 1993, the Industrial Court rejected the application at Exhibit U-20 filed by respondent No.1 seeking impleadment of the petitioners.

5. Thereafter, by Judgment dated 29 July 2002 delivered in Complaint (ULP) No. 150 of 1993, the Industrial Court directed respondent No.2 to pay retrenchment compensation to those employees who had been independently recruited by it subsequent to the transfer. Further, by the impugned Judgment dated 24 October 2002 passed in Complaint (ULP) No. 107 of 1997, the Industrial Court directed the present petitioners to pay retrenchment compensation to the employees who had been requisitioned from petitioner No.1 by respondent No.2. Being aggrieved thereby, the petitioners have preferred the present writ petition.

6. Learned Advocate Mr. Bapat appearing for the petitioners submitted that upon transfer of the undertaking, respondent No.2 assumed the status of employer in respect of the transferred employees. It is his submission that the evidence on record clearly indicates that the employees were transferred from the petitioners to respondent No.2 and their services continued without interruption. According to him, once such transfer took place, the employer employee relationship between the petitioners and the concerned employees stood terminated, and a fresh employer

employee relationship came into existence between respondent No.2 and the said employees. He submits that respondent No.2 continued to engage the transferred employees, paid them regular wages, and also entered into a settlement with respondent No.1, which is an act falling within the prerogative of an employer under Section 2(p) of the Industrial Disputes Act.

7. It is further submitted that respondent No.2 consistently treated itself as the employer within the meaning of the Industrial Disputes Act and regarded the transferred employees as its own workforce. Placing reliance on the decision of the Supreme Court in *Workmen of Subong Tea Estate v. Outgoing Management of Subong Tea Estate 1963 SCC OnLine SC 269*, learned counsel contended that once respondent No.2 took over possession of the undertaking and continued its management in the capacity of employer, it cannot subsequently deny the existence of employer employee relationship with the transferred employees. It is his submission that any claim, if at all, against the petitioners could only relate to liabilities arising at the time of transfer, namely 9 April 1980. However, since the services of the employees continued thereafter, any subsequent claims would lie only against respondent No.2, being the employer under the Industrial Disputes Act.

8. Learned counsel further submitted that clause 5(j) of the Lease Agreement is in the nature of the provisions contained in Section 25-FF of the Industrial Disputes Act. According to him, the said clause contemplates liability only in respect of severance of employment at the stage of transfer. He submits that such

severance occurred when the employees were transferred from the petitioners to respondent No.2. However, since their services continued uninterrupted under respondent No.2, no liability arose in respect of such severance. It is contended that the learned Judge has erred in construing clause 5(i) to fasten liability for wages upon respondent No.2, while simultaneously interpreting clause 5(j) to impose liability for retrenchment compensation upon the petitioners, even during the period when the employees were under the employment of respondent No.2. According to him, such interpretation results in treating two distinct entities as employers for the same set of employees, which is contrary to the scheme of the Industrial Disputes Act and opposed to public policy. It is further submitted that respondent No.2 had entered into a settlement with the employees, which is an exclusive function of an employer, and therefore, the relationship between the petitioners and the employees stood conclusively severed. He submits that such an interpretation also offends Sections 23 and 24 of the Contract Act. Without prejudice, it is contended that the Lease Agreement is inter se between the petitioners and respondent No.2, and respondent No.1 is not a party thereto. Hence, adjudication of contractual obligations arising therefrom falls outside the jurisdiction of the Industrial Court under Section 28 of the MRTU Act read with Items 9 and 10 of Schedule IV.

9. It is further submitted that any ambiguity in the Lease Agreement stands clarified by the Consent Terms recorded in the appeal proceedings. According to the learned counsel, the parties expressly agreed therein that all liabilities pertaining to the

running of the business shall be borne by respondent No.2. He submits that the learned Judge has erred in holding that such liabilities would not include retrenchment compensation payable to employees. It is contended that payment of statutory dues to employees engaged in the manufacturing activity forms an integral part of the business expenditure. Reliance is placed on the judgment of this Court in *State of Goa v. Placido Braganza 2002 (1) Mh.L.J. 370* to contend that no relief can be granted beyond the terms of a consent decree. It is thus submitted that once the Consent Terms clearly cast liability upon respondent No.2, the learned Judge could not have directed the petitioners to bear such liability.

10. Learned counsel further submitted that the petitioners are not liable to pay any transfer compensation under Section 25-FF of the Industrial Disputes Act. According to him, the learned Judge has committed an error in holding the petitioners liable for such compensation and further in directing payment of closure compensation. He submits that under Section 25-FF, the liability of the transferor does not arise where the conditions stipulated in the proviso are satisfied, namely that the service of the workmen remains uninterrupted, the terms and conditions of service are not less favourable, and the transferee employer is legally liable to pay retrenchment compensation. It is his submission that all these conditions stand fulfilled in the present case, as borne out from the evidence on record.

11. It is further submitted that in view of the satisfaction of all conditions under the proviso to Section 25-FF, no liability can be

fastened upon the petitioners either for transfer compensation or otherwise. According to him, the closure of the undertaking was effected by respondent No.2, and therefore, the liability to pay closure compensation rests solely upon respondent No.2. He points out that the evidence indicates that when employees reported for duty on 6 March 1993, they were prevented from entering the premises by the watchman acting on the instructions of respondent No.2. The allegation sought to be raised by respondent No.2 that the petitioners had locked the premises is, according to him, unsupported by any legal action, as respondent No.2 admittedly did not initiate any civil or criminal proceedings in that regard. It is also submitted that respondent No.2 admitted non payment of electricity dues, resulting in disconnection of power supply. The learned Judge has also recorded a finding that manufacturing activities had permanently ceased from 6 March 1993. In such circumstances, it is contended that the liability for closure compensation cannot be imposed upon the petitioners.

12. Learned counsel further submitted that the complaint filed by respondent No.1 is barred by limitation. According to him, the claim made in the complaint pertains to lockout wages from the year 1993, and therefore, the cause of action arose in that year. He submits that under the MRTU Act, a complaint alleging unfair labour practice is required to be filed within 90 days from the date of occurrence. However, the present complaint came to be filed only on 20 March 1997 without any application for condonation of delay. It is contended that the Industrial Court erred in entertaining the complaint despite such delay.

13. It is further submitted that in view of the law laid down by the Supreme Court in *Sarva Shramik Sangh v. Indian Smelting & Refining Co. Ltd.*(2003) 10 SCC 455, where the existence of employer employee relationship is disputed, the same must first be established by raising an industrial dispute. According to him, only upon adjudication and proof of such relationship can proceedings under the MRTU Act be maintained. It is submitted that in the present case, since the petitioners have disputed the existence of such relationship, the complaint itself was not maintainable. On the aforesaid grounds, it is submitted that the impugned Judgment and Order dated 24 October 2002 passed by the Industrial Court is unsustainable in law and deserves to be quashed and set aside.

14. Per contra, Mr. Kulkarni learned Advocate appearing for respondent Nos.1 and 2 submitted that under the Lease Agreement dated 9 April 1980, particularly clause 5(j), the liability to pay retrenchment compensation was placed upon the lessor. It is submitted that there was no subsequent agreement altering this position when possession was restored through the Court Receiver. Though Consent Terms were recorded before this Court, it is contended that the same did not override the specific stipulation contained in clause 5(j) of the Lease Agreement. According to him, the said clause is consistent with the scheme of Section 25-FF of the Industrial Disputes Act, which entitles workmen to compensation upon transfer in accordance with Section 25-F. He submits that, in the absence of any express provision making the transferee liable, the liability would continue to rest with the transferor. Reliance is also placed on clause (c) of the proviso to

Section 25-FF to contend that unless the terms of transfer specifically fasten liability upon the new employer, the original employer remains liable to pay retrenchment compensation. It is further submitted that for the sake of clarity and effective implementation, the statement at Exhibit U-17-A(1) ought to be treated as forming part of the order, and respondent No.2 be directed to pay the legal dues as specified against the name of each employee therein. It is submitted that the amounts reflected in column Nos. 4, 5, and 6 against each employee represent the legal dues payable by respondent Nos.2 and 3.

REASONS AND ANALYSIS:

15. I have considered the material on record and the rival submissions made by the learned Advocates. The real controversy in this matter turns upon the effect of the lease agreement dated 9 April 1980, the conduct of the parties after transfer of the undertaking, the consent terms recorded in the appeal, and the true liability for the dues claimed by the workmen. The question is whether the petitioners, after transfer of the undertaking and after severance of their direct control, can still be made liable for retrenchment compensation or closure compensation in respect of the employees who were working under respondent No.2.

16. The factual position, when carefully seen from record, is largely not in dispute between the parties, though each side is trying to give different meaning to same facts. It is clear that under the lease agreement, respondent No.2 had taken over not only the premises but also the machinery required for running the

undertaking. This is important because possession of machinery along with premises shows actual control of business activity. Clause 5(i) of the agreement specifically permitted respondent No.2 to requisition employees from the petitioners. At the same time, it placed responsibility upon respondent No.2 to pay regular wages to such employees. This part is very material, because payment of wages is one of the strongest indicators of employer status. Clause 5(j), on the other hand, made the petitioners liable only in case transfer compensation becomes payable at the time when the employees are severed from their employment with the petitioners. Therefore, the two clauses operate in different fields. One deals with continuation of service under new arrangement, and the other deals with consequences at the moment of transfer.

17. The evidence on record further makes the situation more clear. It shows that the employees were in fact transferred. The employees actually went and worked under respondent No.2. Their services were continued without any break. Their wages were paid by respondent No.2. Even more respondent No.2 entered into a settlement with respondent No.1 union. This act of entering settlement is not ordinary. It is something which only an employer does in law, because settlement binds employer and employees. Therefore, these facts when read together lead to only one natural conclusion that respondent No.2 was not merely holding the premises for some limited purpose, but was running the establishment as employer in full sense. It cannot be said that it was only caretaker or agent in a loose manner. Its conduct shows active and complete control over employment.

18. Once this position is accepted, then the argument advanced by the petitioners starts appearing reasonable and having legal force. In law, the relationship of employer and employee is not something which can exist in confusion or in overlapping manner for same period and same work. There cannot be two masters for one servant at same time, unless there is clear statutory provision or clear contract saying so. In the present case, nothing is shown which creates such dual control. On the contrary, all acts of respondent No.2 show that it treated the transferred employees as its own workers. It paid them. It dealt with them. It carried on business with their labour. Therefore, the earlier relationship between petitioners and those employees cannot be said to continue in same form after transfer. At the highest, some limited liability may remain if law so provides, but the main employer employee bond had shifted.

19. In this background, the approach of the Industrial Court appears to be not properly aligned with the material on record. The Court seems to have treated the petitioners as continuing employer even after transfer in respect of certain liabilities, while at the same time accepting that respondent No.2 was paying wages and managing the workmen. If respondent No.2 was employer for purpose of wages and settlement, then logically it must also bear consequences arising out of that employment, unless there is very clear clause shifting such burden. This aspect, in my view, has not been properly appreciated.

20. Coming to clause 5(j), the same must be read in a reasonable manner. It cannot be stretched beyond its purpose. The clause

speaks of liability arising at the time of severance of employees from petitioners. This means the point when the employees cease to be in service of petitioners and are transferred. It does not mean that petitioners will remain liable for all future events happening years after transfer, even when they have no control over employment. If such interpretation is accepted, then it will lead to an abnormal situation. It will mean that for some employees, one party will pay wages and control work, and another party will keep liability for termination or closure. This division is not recognised in ordinary labour law scheme.

21. Further, if clause 5(j) is read in such extended manner, then clause 5(i) loses its meaning. Because clause 5(i) clearly puts responsibility of wages and working employment on respondent No.2. If one party takes benefit of labour and controls business, but another party bears all risks of termination, then the agreement becomes one-sided in a manner which does not appear intended. Contract must be read as whole. Each clause must support other. Therefore, clause 5(j) should be confined to liability arising at point of transfer, and not for indefinite future.

22. The conduct of respondent No.2 also supports this reading. It accepted employees, continued them, and treated them as its own. In such situation, it cannot later be said that for retrenchment or closure also petitioners must pay. That would amount to separating benefit and burden in an artificial way, which law does not favour. The reliance placed by the petitioners on the consent terms also has weight. The consent terms were entered into after dispute had already arisen and therefore they reflect clear understanding

between parties at that stage. It is seen that respondent No.2 agreed to continue in possession as agent of Court Receiver and also agreed to hand over possession within specified time. More importantly, it agreed to clear liabilities relating to running of the business. This expression is wide. Running of business includes paying workers, maintaining operations, and also bearing consequences if business stops.

23. When this is read with evidence on record, the picture becomes more clear. The manufacturing activity stopped from 6 March 1993. The workmen were not allowed to enter. The explanation given by respondent No.2 about locking of gate by petitioners does not stand supported by any action taken thereafter. If really petitioners had wrongfully stopped operations, respondent No.2 would have taken some legal step. No such step is shown. On the other hand, it is admitted that electricity supply was disconnected because bills were not paid. This shows lack of operation from respondent No.2 side. The learned Judge has also recorded that manufacturing activities had stopped from that date. Therefore, closure is not a sudden external act but a result of circumstances within control of respondent No.2 while it was in possession and managing affairs. In such situation, the liability arising out of closure, including payment to employees, naturally follows the person who was running the undertaking at that time.

24. Therefore, when all these circumstances are seen together, it becomes difficult to accept that such liability can be shifted to petitioners who were no longer in actual control of business or employment. The burden of closure related dues must follow

control and management. Since both were with respondent No.2 at the relevant time, the liability also must rest there.

25. The objection raised by the petitioners on the point of maintainability, in my view, cannot be lightly ignored or pushed aside without proper examination. It is correct that respondent No.1, in its complaint, has asserted that employer employee relationship continued with the petitioners. But mere assertion is not enough in law. When such relationship is specifically denied by the opposite side, then it becomes necessary for the Court to carefully see whether the material on record actually supports such claim. In the present case, the petitioners have consistently taken a stand that after transfer, they were no longer employer of the concerned employees. This stand is supported by surrounding facts and conduct.

26. In such situation, the duty of the Court was first to examine whether there existed any real and subsisting employer employee relationship between the petitioners and the transferred employees during the relevant period. This examination goes to the root of jurisdiction. Because unless such relationship is shown, liability under labour law cannot be imposed. When the evidence is looked into, it shows that the employees were working under respondent No.2, their wages were paid by respondent No.2, and even settlement was entered into by respondent No.2 with the union. These are strong indicators. They do not support the case that petitioners continued as employer in any legal sense.

27. Therefore, the conclusion drawn by the Industrial Court that both petitioners and respondent No.2 can be treated as employers for same employees, at same time, does not appear to be supported by the record. Such approach creates confusion in legal responsibility. It also goes against the basic understanding of employment relationship, which requires clarity as to who controls, who pays, and who is answerable. In present case, all these factors point towards respondent No.2. The workmen may certainly have a valid claim for their dues. There is no dispute about their entitlement in proper case. But such claim must be directed against the correct employer. If liability is fastened on a wrong party, then it results in legal error. The Industrial Court, by not addressing this foundational issue properly, has adopted an approach which cannot be sustained.

28. Coming to the submission of respondent Nos.1 and 2 regarding clause 5(j), I am unable to accept the manner in which the said clause is sought to be interpreted. The argument is that clause 5(j) keeps the petitioners liable for retrenchment compensation even after the transfer is complete. However, such reading ignores the surrounding facts and the conduct of parties after execution of the agreement. A contractual clause cannot be read in isolation, as if it exists separately from how parties acted upon it. The actual working of arrangement must be seen. Here, it is admitted position that the transfer was acted upon. The employees were taken over by respondent No.2. Their employment continued under it without interruption. Respondent No.2 dealt with them as employer and even entered into settlement. It also

continued the business activity using their services. These facts show that respondent No.2 stepped fully into the role of employer. Once this is accepted, then responsibility which follows employment must also follow the same party.

29. If the argument of respondent Nos.1 and 2 is accepted, it will mean that even though respondent No.2 enjoyed benefit of labour, controlled the work, and conducted the business, the financial burden arising from termination or closure would still go back to petitioners. Such division of responsibility is not supported either by the scheme of law or by fair reading of contract. It would result in separating benefit from burden, which is not a sound legal position.

30. Further, the liability in question here arises from events which took place much after the transfer, particularly the stoppage of manufacturing activities and closure like situation in 1993. At that time, the petitioners were not in possession, not running the factory, and not supervising the employees. The workmen were functioning under respondent No.2 alone. Therefore, to impose liability on petitioners for such later events would be to disconnect liability from actual control and conduct.

31. For these reasons, the impugned judgment, in so far as it holds the petitioners liable, shows clear error in understanding both the contractual clauses and the evidence on record. The interpretation given to clause 5(j) is stretched beyond its reasonable scope. The findings ignore the admitted conduct of respondent No.2 as employer. Thus, the conclusion reached by the

Industrial Court cannot be sustained, as it is not supported either by proper reading of agreement or by the factual position emerging from the record.

32. For these reasons, I am of the view that the impugned Judgment and Order dated 24 October 2002 passed by the Industrial Court, Pune in Complaint (ULP) No. 107 of 1997, cannot be sustained insofar as it directs the petitioners to pay retrenchment compensation or other like dues to the transferred employees. The writ petition deserves to be allowed. The impugned order, to the extent it operates against the petitioners, is quashed and set aside. The liability, if any, shall remain to be worked out against the party on whom the law and the evidence place it, namely respondent No.2, in accordance with law.

33. In the result, the writ petition succeeds and is allowed.

(i) The Judgment and Order dated 24 October 2002 passed by the Industrial Court, Pune in Complaint (ULP) No.107 of 1997, in so far as it fastens liability upon the present petitioners, is quashed and set aside;

(ii) It is held that the petitioners are not liable to pay retrenchment compensation, closure compensation, or any other consequential monetary dues to the concerned employees arising after transfer of the undertaking;

(iii) Respondent No.2 is held solely responsible and liable to pay all legal dues, including retrenchment compensation, closure compensation, and all consequential benefits, payable to the concerned employees in accordance with law;

(iv) Respondent No.2 shall compute and pay the said amounts to the eligible employees within a period of twelve weeks from the date of this order, failing which the said amounts shall carry interest at the rate of 9 percent per annum from the date they became due till realization;

(v) It is clarified that the quantification of dues, if not already determined, shall be carried out by the appropriate authority in accordance with law, and the employees shall be at liberty to take appropriate steps for enforcement of this order;

(vi) Rule is made absolute in the aforesaid terms. No order as to costs.

34. In view of disposal of the writ petition, all pending interim applications stand disposed of accordingly.

(AMIT BORKAR, J.)