

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 45 OF 2024**

Surendra Naik, aged 52 years, son of Mr. Ramrai Naik, Residing at H. No. 408, Khumnebhat, Adpai, Durbhat, Ponda, Goa.

... PETITIONER

Versus

1. State of Goa, Through Chief Secretary, having office at Secretariat, Porvorim-Goa.

2. Office of the Commissioner, Labour & Employment, Government of Goa, Shram Shakti Bhavan, 2<sup>nd</sup> Floor, Patto Plaza, Patto, Panaji, Goa.

3. Rajendra Mahabaleshwar Rane, Sole Proprietor/CEO, M/s Vishal Shipping Company, 4<sup>th</sup> Floor, Flat No. 4C, Queeny Elite Co-operative Housing Society Ltd., Swatantra Path, Vasco-da-Gama, Goa.

... RESPONDENTS

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Mr. Shivraj Gaonkar, Advocate for the Petitioner.

Ms. Maria Simone Correia, Additional Government Advocate for Respondent Nos. 1 and 2.

Mr. Zeller De Sousa, Advocate for Respondent No. 3.

**CORAM:**

**BHARAT P. DESHPANDE, J.**

**RESERVED ON:**

**21<sup>st</sup> June 2024**

**PRONOUNCED ON:**

**2<sup>nd</sup> July 2024**

**JUDGMENT:**

1. Rule. Rule made returnable forthwith.
2. The matter is taken up for final disposal at the admission stage with the consent of the parties.
3. The Petitioner claiming to be the Employee of Respondent No. 3 preferred an Application before the Labour Commissioner under Section 33-C (1) of the Industrial Disputes Act, 1947, under the award dated 20.11.2018 in Reference No. IT/11/16, claiming the amount awarded together with interest from 20.11.2018. The learned Labour Commissioner, though issued notice to the Employer [Respondent No. 3], accepted the objections of Respondent No. 3 and dismissed the said Application on 18<sup>th</sup>/19<sup>th</sup> October 2023, which is challenged in the present Petition.
4. Mr. Gaonkar would submit that the dispute was raised by the Union before the Conciliation Officer on 28.12.2012, upon which, notice was issued to the Employer. He candidly admitted that while raising the dispute, the Employer was shown as M/s Vishal Shipping Company Private Limited, Vasco, however, in particular, all the disputes/claims, were clearly disclosing that the workmen were employed as Crew on the barge, namely, M.V.

Mahima MRH 611 and they were not paid salary from July 2012 to December 2012. He submits that Respondent No. 3 appeared before the Conciliation Officer as a Proprietor and sought time. Thereafter, Respondent No. 3 failed to appear before the Conciliation Officer and accordingly, a failure report was submitted.

5. Mr. Gaonkar would submit that once the conciliation proceedings were admitted and the notice was issued, the dispute was duly raised before the concerned Authority and therefore, the proceedings commenced. Mr. Gaonkar would then submit that thereafter, Reference was made to the Industrial Tribunal, which was registered as Reference No. IT/11/16 wherein the statement of claim was filed by the Petitioner. Respondent No. 3 was duly served in the said Reference but remained absent. Accordingly, an award was passed by the Industrial Tribunal on 20.11.2018 directing to pay monetary compensation within 60 days together with interest to the Petitioner.

6. Mr. Gaonkar would submit that Respondent No. 3 even challenged the said award by filing Writ Petition No. 178 of 2022, however, such Petition was allowed to be withdrawn vide order dated 06.07.2023.

7. Mr. Gaonkar would submit that the Recovery Certificate is issued by the Commissioner, however, since no payment was made, the Petitioner filed an Application before the Labour Commissioner under Section 33-C (1) of the Industrial Disputes Act, which was rejected by the impugned order.

8. Mr. Gaonkar would submit that once Respondent No. 3 appeared before the Conciliation Officer, it is clear that the proceedings commenced and the dispute was raised and at that time, Respondent No. 3 never took such a plea that the name of the Company mentioned in the conciliation proceedings is incorrect. He submits that such ground taken by Respondent No. 3 is only an afterthought in order to avoid the payment awarded to the Petitioner. He submits that the award passed by the Industrial Tribunal, though challenged before this Court, was not disturbed as Writ Petition No. 178 of 2022 filed by Respondent No. 3 was withdrawn and therefore, Respondent No. 3 now cannot turn around and say that he is not the same person. Mr. Gaonkar would submit that Respondent No. 3 was clearly identified by name and address as the Proprietor of the said Company and therefore, only the mistake in mentioning the name of the Company cannot be considered to be detrimental to the award. He submits that the award passed by the Industrial Tribunal is

binding on all the parties. Since the dispute started on the date of filing the conciliation, Respondent No. 3 became a party to the dispute. He would then submit that the notice forwarded to Respondent No. 3 by the Industrial Tribunal came “unclaimed”, therefore, it was sufficient service.

**9.** As against this, Mr. Zeller De Sousa appearing for Respondent No. 3 would submit that the name of the Company mentioned in the conciliation proceedings as well as the award is different from the name of the Company, of which, Respondent No. 3 is the Proprietor and therefore, such award cannot be executed against Respondent No. 3. He would submit that the address mentioned in the proceedings filed before the Industrial Tribunal are different and therefore, the Petitioner cannot claim that there was proper service. He submits that though the building is the same, the floor and the flat number are different and thus, no presumption could be drawn for the purpose of proving that Respondent No. 3 was served in the said proceedings. Besides, he submits that Respondent No. 3 is not concerned at all if the name of the Private Limited Company is shown as the Respondent in the award.

**10.** The rival contentions fall for determination.

11. The Petitioners claimed that they were working at a barge, M.V. Mahima No. MRH 611 owned by Respondent No. 3. Suddenly, the management laid down the said barge on the pretext of annual repairs from 01.07.2012 and advised the Crew to disembark from the said barge and thereafter, from 16.09.2012 refused employment and failed to pay the monthly salaries. The said Employee/Petitioner pleaded with the Employer, however, there was no response. Till December 2012, there was no employment and therefore, the Petitioner through the Union, raised an industrial dispute by filing the proceedings before the Commissioner of Labour asking him to interfere in the matter. The letter forwarded by the President of the Union to the Commissioner of Labour dated 28.12.2012 reads thus:

**“UNITED BARGEMEN'S ASSOCIATION**  
**(Regd. No. 121)**  
**(Affiliated to: All India Port & Dock Worker's Federation)**

**PRESIDENT S.R. KULKARNI**  
**GEN. SECRETARY: GOVIND B. BHONSLE**

*Damodar Polyclinic, 3rd Floor,  
Fr. Joseph Vaz Road,  
VASCO DA GAMA-403802 GOA*

*Date 28th December, 2012.*

*The Commissioner,*

*Labour & Employment,  
Govt of Goa,  
Panaji.*

*Dear Sir,*

*Sub: Refusal of employment and non-payment of salaries from July 2012 to December 2012.*

*In reference to the above subject, we have received a complaint from bargecrew working on Barge M. V. MAHIMA MRH-611 that their management is refusing them employment and refused to pay their wages from July, 2012 till December, 2012.*

*As we are not getting any response from the Management we would like to ask you to intervene into the matter and do the needful.*

*Thanking you, we remain.*

*Yours faithfully,*

*(Govind Bhonsle)  
General Secretary*

*c.c. M/s Vishal Shipping Co. Pvt. Ltd.,  
Vasco.*

*c.c. To,  
The Committee Members”*

12. From the perusal of the above letter raising the dispute, it is clear that the Commissioner of Labour was informed that the Petitioner was the Employee at the barge, M.V. Mahima, MRH 611, however, the management refused employment and failed to pay the wages from July 2012 till December 2012. It is no doubt true that the management is shown as "M/s Vishal Shipping Company Private Limited, Vasco". Accordingly, the Assistant Labour Commissioner, Vasco issued notice dated 22.01.2023 to the management of the Employer, which reads thus:

*"No. ALC/COMP/VSC/30/2013/98  
Office of the Asstt. Labour  
Commissioner,  
Government of Goa,  
Dourado Bldg., 1<sup>st</sup> floor,  
Vasco da Gama, Goa.*

*Dated:-22.01.2013.*

*To,  
M/s. Vishal Shipping Co., Pvt. Ltd.,  
Vasco-Goa.*

*Sub: -Refusal of employment and non-payment of salaries from July., 2012 to Dec., 2012.*

*Sir,*

*This is to inform you that United Bargemen's Association vide their letter dated 28<sup>th</sup> Dec., 2012 made a representation to this office, stating that the barge crew of M.V. Mahima MRH 611 is being refused of employment and non payment of Salaries from July, 2012 till Dec., 2012.*

*In this connection you are, requested to attend this office in person or through a duly authorized representative alongwith all relevant records on 6.2.2013 at 4.00 p.m. with a view to resolve the matter amicably.*

*Yours faithfully,*

*(Satish Vaghonkar)  
Asstt. Labour Commissioner, Vasco*

*c.c to:- Gen. Secretary,  
United Bargemen's Association,  
Damodar Polyclinic 3<sup>rd</sup> floor,  
Fr. Joseph Road, Vasco-da-Gama-Goa.  
with a request to attend this office on the above  
given date & time.”*

13. In the above notice issued to the Employer, it is clearly mentioned that the barge Crew of M.V. Mahima MRH 611 is being refused employment and non-payment of salaries from July 2012 to December 2012. Once such notice is issued, it is necessary to consider that the industrial dispute started/commenced as observed by the Apex Court in the case of **Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay & Others, (1979) 1 SCC 496**. The Apex Court observed in paragraph 8 that the procedure of raising an industrial

dispute starts with the submission of a charter of demands by the workmen concerned. The Conciliation Officer can be and is often made to intervene in the matter first. He starts the conciliation proceeding under Section 12. If a settlement is arrived at during the course of the conciliation proceeding, it becomes binding on all workmen under Section 18 (3) of the Act. If there is a failure of conciliation, the appropriate Government is required to make a reference under Section 10 (1) of the Act. The award published under Section 17 (1) becomes final and cannot be called in question by any Court in any manner whatsoever as provided in sub-section (2) of Section 18(1) of the Act. Thus, it is clear that once the charter of demand is raised before the Conciliation Officer, it is the starting point of the dispute.

**14.** The Conciliation Officer issued notice dated 22.01.2013 as quoted above in the name of M/s Vishal Shipping Company Private Limited, Vasco. The note sheet mentioned by the Conciliation Officer and duly signed by the respective parties would clearly go to show that the matter was taken up on 14.02.2013 and on that date, Mr. Rajendra Rane i.e. Respondent No. 3 claiming to be the Proprietor of M/s Vishal Shipping Company Private Limited remained present. The discussion took place before the Conciliation Officer and it is recorded thus:

“14/02/2013

*Shri Rajendra Rane, proprietor of M/s Vishal Shipping Co. Pvt. Ltd. Present.*

*Shri Surendra Naik, committee member along with barge crew present.*

*None attended from the side of the union.*

*During the discussion management representation submitted that due to financial difficulties he is not ready to settle the said dispute. He further submitted that he wants some time to settle the matter. As request considered, hearing stands to 08/03/2013 at 11:00 a.m.*

*Both parties agreed to meet at the above place and time.”*

15. There is no dispute raised on behalf of Respondent No. 3, even today, before the Court that the roznama or the order sheet recorded before the Conciliation Officer and duly signed by Respondent No. 3 is incorrect or that he never appeared before the Conciliation Officer on 14.02.2013 claiming to be the Proprietor of M/s Vishal Shipping Company Private Limited. Though an attempt was made by Mr. De Sousa that such a record is fabricated, the signature appearing of Mr. Rajendra Rane before such noting clearly proves otherwise.

16. Further notings/roznamas before the Conciliation Officer show that even fresh notices were issued to the Employer including a notice by Registered Post A/D. Such notice issued by Registered Post A/D returned with a remark “unclaimed”. The Union representing the Petitioners then requested the Conciliation Officer that the letter addressed to the Employer/Respondent No. 3 will be handed over to him or delivered personally. Accordingly, a letter addressed to the Employer was handed over to one of the Members of the Union to be delivered to the Employer. Inspite of this, none appeared on behalf of the Employer. However, the matter continued before the Conciliation Officer and on 13.05.2014, one Shri L. D’Costa claiming to be the authorised representative of the Employer by a telephonic conversation requested the Conciliation Officer to adjourn the matter. The note sheet/roznama dated 13.05.2014 reads thus:

“13/5/14

*The U.B.A representative attended.*

*None attended from the side of employer.*

*Shri L D'Costa authorised representative of employer by telephonic conversation requested this office to adjourn the matter.*

*Matter stands adjourned to 26/5/14 at 11:00 am.*

*Notice to be issued to the employer.”*

17. A fresh notice was issued to the Employer by the Conciliation Officer, however, none appeared for the said Employer and hence, finally, on 30.07.2015, the last and final opportunity was given to the Employer to attend the proceedings.

18. The minutes of the proceedings held before the Assistant Labour Commissioner, Vasco on 14.08.2015 recorded that the matter was admitted in conciliation, however, the management though initially appeared, failed to take part in the proceedings and therefore, the Union insisted on recording that the matter/conciliation failed and the failure report be submitted. Accordingly, the Assistant Labour Commissioner prepared the failure report, obtained the signatures of the parties and forwarded it to the Government.

19. A reference was made to the Industrial Tribunal which was registered as Reference No. IT/11/16 wherein also, the Employer is shown as M/s Vishal Shipping Company Private Limited having an office at Flat No. 4, 3<sup>rd</sup> Floor, Queeny Elite, Vasco-da-Gama. The Petitioner filed a statement of claim, however, notice issued to Respondent-3/Owner/Employer on the respective address returned “unclaimed”. Accordingly, attempts were made to serve the notice to Mr. Rane i.e. Respondent No. 3 on his residential

address, which also was returned “unclaimed”. The Industrial Tribunal then proceeded ex-parte against the Employer and passed the award dated 20.11.2018 holding that the action of the management in terminating the services of the workman w.e.f. from 16.09.2012 is illegal and unjustified. The management/director was asked to pay the monetary compensation of the amount mentioned in paragraphs 13 and 14 of the award within 60 days of the publication of the award, failing which, the management was liable to pay interest at the rate of 9% per annum.

**20.** Inspite of the passing of such an award, the management/Employer failed to comply with it, however, Respondent No. 3 in his personal capacity filed Writ Petition No. 178 of 2022 challenging the said award. Vide order dated 06.07.2023, Respondent No. 3 sought liberty to withdraw the said Petition and accordingly, the order was passed, which reads thus:

“P.C.:

1. *Zeller De Souza, learned Counsel for the Petitioners, based on instructions from the Petitioners, seeks leave to withdraw this Petition, with liberty to pursue the matter before the Labour Commissioner. Mr Gaonkar, however, states that the workmen have proceeded under Section 33C(1) of The Industrial Disputes Act, 1947 before the Labour*

*Commissioner for execution of the impugned Award dated 20/11/2018. Mr Zeller De Souza states that the Petitioners have already argued the matter before the Labour Court on 10<sup>th</sup> March 2023 and that they were informed that the orders would be communicated.*

2. *Accordingly, leave is granted, with liberty as prayed for.*

3. *Both the parties are at liberty to pursue the matter before the Labour Commissioner.*

4. *The Petition is disposed of, with liberty as prayed for.”*

**21.** Since the award was not satisfied, the Petitioner filed proceedings under Section 33-C (1) of the Industrial Disputes Act before the office of the Commissioner of Labour and Employment which was registered as Case No. CLE/(REC-11)/2019/2933.

**22.** The address of Respondent No. 3 being the Proprietor and the CEO of M/s Vishal Shipping Company Private Ltd. is shown as resident of 4<sup>th</sup> Floor, Queeny, Elite, Vasco-da-Gama. The Commissioner of Labour issued notice to Respondent No. 3 at the address mentioned therein. Here also, multiple notices were issued and only thereafter, Respondent No. 3 responded to such

notice by his letter dated 28.04.2022 [Annexure P-8 at pages 77 to 82]. In this letter, Respondent No. 3 disclosed his address as near Busy Bee School, Desterro, Vasco-da-Gama. He also mentioned in the said letter that some notices were served on his wife and from perusal of this notice, he was apprised of the award passed by the Industrial Tribunal against M/s Vishal Shipping Company Private Ltd. He submits that he is not the Proprietor of the said M/s Vishal Shipping Company Private Limited, however, he is the sole Proprietor of M/s Vishal Shipping Company. Only on this ground, he claims that the award under the conciliation proceedings was passed against a different entity all altogether and such an award cannot be executed against him as he is the Proprietor of M/s Vishal Shipping Company and not of M/s Vishal Shipping Company Private Limited. He claimed that the address mentioned in the conciliation proceedings as well as the award is different though it is in the same building. However, Respondent No. 3 in his Application/Reply dated 28.04.2022 before the Commissioner of Labour claimed that he is a resident of near Busy Bee School, Desterro, Vasco-da-Gama. In this respect, Mr. Gaonkar has placed on record the notice dated 16.04.2013 forwarded by the Assistant Labour Commissioner, Vasco through Registered Post A/D addressed to the Proprietor, M/s Vishal Shipping Company Private Limited, Flat No. D/9, 3<sup>rd</sup> Floor, Desterro Apartments, near

Busy Bee School, Vasco. Thus, it is clear from this record that a Registered Post notice was forwarded to the Proprietor having the address as found mentioned in the reply of Respondent No. 3 dated 28.04.2022.

**23.** Mr. Goankar placed reliance in the case of **Forest Realty Vs. Taksha Spaces Pvt. Ltd. & Others** decided on 07.12.2022 by the learned Single Judge [Coram: B.P. Colabawalla, J.] in ordinary original civil jurisdiction in Suit No. 168 of 2022, wherein it is observed in paragraph 8 that the remark “Unclaimed-Return to Sender” from the Postal Authority must be good service and it shows that the person named in this notice was resident at the said address, but he was not found at the relevant time and though intimation given, failed to claim the notice. Therefore, it could be safely presumed that the notice dated 16.04.2013 was delivered to the Proprietor/Employer having an address at Flat No. D/9, 3<sup>rd</sup> Floor, Destero Apartments, near Busy Bee School, Vasco as mentioned by Respondent No. 3 himself in his reply dated 28.04.2022 as his own address and it is for Respondent No. 3 to prove otherwise.

**24.** Coupled with the above facts, the note sheet/roznama dated 14.02.2013 recorded by the Conciliation Officer and quoted above

would clearly go to show that Mr. Rajendra Rane claiming to be the Proprietor appeared in the proceedings and during discussions submitted that due to financial difficulties, he is not ready to settle the dispute and wants some time to settle the matter.

**25.** Thus, it is clear that the Union while writing a letter to the Labour Commissioner dated 28.12.2012 as quoted above, inadvertently mentioned the name of the Employer as M/s Vishal Shipping Company Private Limited, Vasco instead of M/s Vishal Shipping Company, Vasco. However, it is not in dispute and sufficiently established by the records produced along with the reply filed by Respondent No. 3 that he is the owner of the barge known as M.V. Mahima, MRH 611. The Certificate of Registration of the barge along with transfers made therein clearly establish this aspect. Similarly, Respondent No. 3 produced a document from the office of the Chartered Accountants in Form 3CB along with a statement of particulars required to be furnished to the Income Tax office, which included a log book from page nos. 116 onwards. This log book pertains to Employees who were employed with Respondent No. 3, namely, Vishal Shipping Company, D-9, Desterro Apartments, 3<sup>rd</sup> Floor, near Busy Bee High School, Vasco and referred to M.V. Mahima MRH 611. Thus, the above document clearly shows that the Petitioner was

employed with Respondent No. 3 though under the name of M/s Vishal Shipping Company. It also proves that Respondent No. 3 appeared before the Conciliation Officer on 14.02.2013 as a Proprietor of the said Company and then failed to attend the proceedings further.

**26.** When the Reference was made to the Industrial Tribunal, Respondent No. 3 was again served by various notices, however, he remained absent. He also unsuccessfully challenged such an award before this Court by filing Writ Petition No. 178 of 2022, which was later withdrawn on 06.07.2023.

**27.** The learned Labour Commissioner in the proceedings filed under Section 33-C (1) completely ignored these aspects including the conciliation proceedings, the award and the fact that the workmen were working with Respondent No. 3 as Crew for M/s Vishal Shipping Company. Only because the Company was named M/s Vishal Shipping Company Private Limited instead of M/s Vishal Shipping Company, the same could not have been considered as a major flaw as the fact remains that Respondent No. 3 being the Proprietor of the said Company appeared before the Conciliation Officer and then he never appeared or intimated the Conciliation Officer that there is some mistake with regard to

the mentioning of the name of the Company. The inadvertent mistake was committed by the Union while filing the dispute before the Conciliation Officer. When Respondent No. 3 appeared before the Conciliation Officer on 14.02.2013 and signed the note sheet/roznama, he did not intimate the Conciliation Officer that he is the Proprietor of M/s Vishal Shipping Company and not of M/s Vishal Shipping Company Private Limited.

**28. In the case of *Raghu Lakshminarayanan Vs. Fine Tubes, 2007 5 SCC 103*, the Apex Court observed in paragraph 9 as under:**

*“9. The description of the accused in the complaint petition is absolutely vague. A juristic person can be a Company within the meaning of the provisions of the Companies Act, 1956 or a partnership within the meaning of the provisions of the Partnership Act, 1932 or an association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. A proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a Company. Company in terms of the explanation appended to Section 141 of the Negotiable Instruments Act, means any body corporate and includes a firm or other association of individuals.*

*Director has been defined to mean in relation to a firm, a partner in the firm. Thus, whereas in relation to a Company, incorporated and registered under the Companies Act, 1956 or any other statute, a person as a Director must come within the purview of the said description, so far as a firm is concerned, the same would carry the same meaning as contained in the Partnership Act.”*

29. Mr. Gaonkar would submit that the Proprietor is the person, who is the whole and sole of the Establishment and the name has nothing to do with it as it is only against the Proprietor carrying on the business and not against the name of the said Proprietor. In this respect, he also placed reliance in the case of **Bhagwati Vanaspati Traders Vs. Senior Superintendent of Post Offices, Meerut, (2015) 1 SCC 617** wherein the Apex Court observed in paragraphs 9, 10 and 11 as under:

“9. To overcome the mandate of Rule 17 extracted hereinabove, as also, the decision rendered by this Court in Deptt. of Posts vs. Prameelamma, (1998) 9 SCC 706], and the proposition of law declared in Arulmighu Dhandayudhapaniswamy Thirukoil vs. Deptt. of Posts, (2011) 13 SCC 220, the learned counsel for the appellant placed emphatic reliance on the decision of this Court in Ashok Transport Agency vs. Awadhesh Kumar, (1998) 5 SCC 567. He invited our

*attention to the following observations recorded therein:*

*"6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Partnership Act, 1932. Though a partnership is not a juristic person but Order 30 Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order 30 which make applicable the provisions of Order 30 to a proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order 30 have no application to such a suit as by virtue of Order 30 Rule 10 the other provisions of Order 30 are applicable to a suit against the proprietor of proprietary business 'insofar as the nature of such case permits'. This means that only those provisions of Order 30 can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."*

*10. Based on the observations recorded in the aforesaid judgment in Awadhesh Kumar (*supra*), the second contention advanced by the learned counsel for the appellant was that in sum and substance a*

*sole proprietorship concern allows the fictional use of a trade name on behalf of an individual. It was contended, that truthfully only one individual is the owner of a sole proprietorship concern. As such, according to the learned counsel, the name of the sole proprietorship concern, can again be substituted with the name of the sole proprietor. If that is allowed, the NSC purchased by the appellant would strictly conform to the mandate of law. According to the learned counsel, it makes no difference whether the individual's name, or the proprietorship's name is recorded while purchasing an NSC. It was pointed out, that if the respondent was not agreeable in accepting the trade name, the respondent ought to have corrected the NSC by substituting the name of M/s Bhagwati Vanaspati Traders with that of its sole proprietor, namely, B.K. Garg.*

*11. We find merit in the second contention advanced at the hands of the learned counsel for the appellant. It is indeed true, that the NSC was purchased in the name of M/s Bhagwati Vanaspati Traders. It is also equally true, that M/s Bhagwati Vanaspati Traders is a sole proprietorship concern of B.K. Garg, and as such, the irregularity committed while issuing the NSC in the name of M/s Bhagwati Vanaspati Traders, could have easily been corrected by substituting the name of M/s Bhagwati Vanaspati Traders with that of B.K. Garg. For, in a sole proprietorship concern an individual uses a fictional trade name, in place of his own name. The rigidity adopted by the authorities is*

*clearly ununderstandable. The postal authorities having permitted M/s Bhagwati Vanaspati Traders to purchase the NSC in the year 1995, could not have legitimately raised a challenge of irregularity after the maturity thereof in the year 2001, especially when the irregularity was curable. Legally, Rule 17 of the Post Office Savings Bank General Rules, 1981, would apply only when an applicant is irregularly allowed something more than what is contemplated under a scheme. As for instance, if the scheme contemplates an interest of Y% and the certificate issued records the interest of Y+2% as payable on maturity, the certificate-holder cannot be deprived of the interest as a whole, on account of the above irregularity. He can only be deprived of 2% i.e. the excess amount, beyond the permissible interest, contemplated under the scheme. A certificate-holder, would have an absolute right, in the above illustration, to claim interest at Y% i.e. in consonance with the scheme, despite Rule 17. Ordinarily, when the authorities have issued a certificate which they could not have issued, they cannot be allowed to enrich themselves, by retaining the deposit made. This may well be possible if the transaction is a sham or wholly illegal. Not so, if the irregularity is curable. In such circumstances, the postal authorities should devise means to regularise the irregularity, if possible.”*

- 30.** It is a fact that the proprietorship concern may run on whatever name it has and the same has no legal entity, however,

the Proprietor of such concern is the person who is liable for legal action. The matter in hand clearly goes to show that the dispute was raised by the Union with regard to the Crews working at the barge, M.V. Mahima MRH 611 and the management refused to pay the wages to the said Crews.

**31.** By producing the documents in reply, Respondent No. 3 has clearly shown that the Petitioner was working at the said barge. Though in the reply affidavit, Respondent No. 3 tried to claim that the salary of the Petitioner was paid, he clearly admitted in paragraph 2 that the Petitioner was working on a barge, M.V. Mahima of which M/s Vishal Shipping Company was the proprietary concern. Thus, the submission of Mr. Goankar that the Employer was duly identified as Mr. Rajendra Rane and accordingly, he appeared before the Conciliation Officer as the Employer, stands established. Only because there was some apparent mistake in the name of the Company, it would not have any bearing on the matter itself for the simple reason that it is a proprietorship concern and therefore, the Proprietor needs to be identified and not the name of the proprietary concern, which has no legal entity.

**32.** The learned Labour Commissioner in his impugned order dated 18<sup>th</sup>/19<sup>th</sup> October 2023 accepted the contentions raised by

Respondent No. 3 on too technical grounds and by ignoring the settled proposition that the proprietorship concern is only the business name in which the Proprietor carries on his business. The suit or the proceedings by or against the proprietary concern is normally by or against the Proprietor of the business. Thus, when Respondent No. 3 admitted that he is the Proprietor of M/s Vishal Shipping Company wherein the Petitioner was working on the barge, the objection with regard to the name mentioned in the conciliation proceedings and the award, ought to have been rejected.

**33.** The learned Commissioner also failed to consider that inspite of the award, the Petitioner who was working on the said barge was not paid wages. The proceedings under Section 33-C (1) are only executory in nature and therefore, the learned Commissioner ought not to have gone into such an aspect for the purpose of executing such an award.

**34.** For all the above reasons, the impugned order dated 18<sup>th</sup>/19<sup>th</sup> October 2023 passed by the Commissioner, Labour and Employment thereby rejecting the Application under Section 33-C (1) of the Industrial Disputes Act is quashed and set aside. The said Application is restored to the file of the Labour Commissioner

with a direction to decide such Application on its own merits and in accordance with law.

**35.** Rule is made absolute in the above terms.

**BHARAT P. DESHPANDE, J.**