RAJASTHAN STATE ROAD TRANSPORT CORP. MANAGING DIRECTOR & ANR.

v.

RAMESH KUMAR SHARMA

(Civil Appeal No. 7472 of 2011)

JANUARY 16, 2020

[SANJAY KISHAN KAUL AND K. M. JOSEPH, JJ.]

Industrial Disputes Act, 1947 – ss. 2(k), s.2-A – Imposition of fine on the respondents-workmen by the appellant-management – Assailed by respondents by filing suit in 2005 inter alia *for permanent injunction – Appellant filed application u/Or. VII, r.11, CPC for rejection of the plaint and relegation of the respondents to the remedy under the 1947 Act – Dismissed – Revision petition dismissed by the High Court – On appeal, held: 1947 Act is an alternative dispute resolution mechanism for the benefit of the workmen to provide speedy, inexpensive, informal and unencumbered by the plethora of procedural laws – Object is thus, to protect the workmen – In the present case, the principles as set out in para 9 of the judgment in the* Premier Automobiles Ltd. *case would govern – Present case involves recovery of certain fine amount which cannot be said to be covered by s.2-A of the 1947 Act – Workmen in their wisdom (or possibly, lack of it) approached the civil court and have been left high and dry for the last fifteen years without any adjudication on merits of their claims – Suit has not even been proceeded with on the basis that matter is pending before Supreme Court – No ground made out to interfere with the impugned order – Civil Judge to forthwith proceed to try the suit and endeavour to complete the trial and pronounce the judgment, if not already pronounced, in the maximum period of six months from the date of receipt of the order – Code of Civil Procedure, 1908 – Or. VII, r.11.*

Dismissing the appeals, the Court

HELD: 1. On examination, it is found that the principles set out in the *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay & Ors.* would govern i.e. as set out in para 9.

A **The Industrial Dispute Act, 1947 is an alternative dispute resolution mechanism for the benefit of the workmen to provide "speedy, inexpensive, informal and unencumbered by the plethora of procedural laws. The object is thus, to protect the workmen. The impugned orders are also, in a sense interlocutory in character. The present case involves recovery of certain fine amount which cannot be said to be covered by Section 2-A of the Industrial Disputes Act. The workmen in their wisdom (or possibly, lack of it) approached the civil Court and have been left high and dry for the last fifteen years without any adjudication on merits of their claims. The impugned orders are also, in a sense interlocutory in character. There is no ground made out to interfere with the impugned order and the appeal is consequently dismissed. In view of the lapse of time, the Civil Judge is directed to forthwith proceed to try the Civil Suit No.774/2005 and endeavour to complete the trial and pronounce the judgment, if not already pronounced in the maximum period of six months from the date of receipt of the order. [Paras 6, 8-12] [115-H; 118-E; 119-A-C]**

Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay & Ors. **(1976) 1 SCC 496 : [1976] 1 SCR 427 – relied on.**

C.A. No. 7475/2011, C.A. No. 7474/2011, C.A. No.7473/2011 & C.A. No. 7476/2011

The appeals are dismissed in view of the order passed above in Civil Appeal No.7472/2011.

Case Law Reference

[1976] 1 SCR 427	**relied on**	**Para 6**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7472 of 2011.

From the Judgment and Order dated 27.02.2008 of the High Court of Judicature for Rajasthan at Jaipur in S.B. Civil Revision Petition No. 130 of 2006.

With

Civil Appeal Nos. 7475, 7474, 7473, 7476 of 2011.

S. K. Bhattacharya, L.K. Paonam, Ms. Seema Sharma, Niraj Bobby Paonam, Mrs. Tomthinnganbi Koijam, Advs. for the Appellants. A

Bankey Bihari Sharma, Yash Pal Dhingra, Parmanand Gaur, Advs. for the Respondent.

The following Order of the Court were passed : B

O R D E R

Civil Appeal No.7472/2011

1. We have heard learned counsel for the appellant.

2. None has appeared for the respondent(s). C

3. The civil suit was filed by the workmen for declaration and permanent injunction assailing a fine imposed on them by the appellant management. It is, *inter alia*, the plea of the respondents that what has been done is in violation of Regulation 35 of the standing order (which is non-statutory) in effect thus, the contractual obligation *inter se* the parties is alleged to have been breached. D

4. The appellant endeavoured to stall the suit by raising a plea under order VII Rule 11 of Code of Civil Procedure, 1908 claiming that the plaint is liable to be rejected and the respondents to be relegated to the remedy under the Industrial Disputes Act, 1947. The plea did not find favour with the learned Civil Judge, Jaipur City who dismissed that application by order dated 16.5.2006. The revision petition preferred against the same was dismissed by the High Court on 27.02.2008. Twelve years hence we are determining whether this exercise of the two forums below was valid or not! E

5. We may note that only notice was issued in the matter and no interim order was granted. Logically speaking, the suit would have been tried and decided in the meantime, if not the appeal also considering the time period which has lapsed. We are, however, informed that the suit has not even been proceeded with on the basis that matter is pending before this Court. The facts pain us that the recourse to justice can be delayed for such an *ad infinitum* period of time. F G

6. On examination, we find that the principles set out in *The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay & Ors.*- 1976(1) SCC 496 would govern i.e. as set out in para 9 below: H

A "9. It would thus be seen that through the intervention of the appropriate government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial disputes. But since an individual aggrieved cannot approach the Tribunal or the Labour Court directly for the redress of his grievance without the intervention of the government, it is B legitimate to take the view that the remedy provided under the Act is not such as to completely oust the jurisdiction of the civil court for trial of industrial disputes. If the dispute is not an industrial dispute within the meaning of Section 2(k) or within the meaning of Section 2A of the Act, it is obvious that there is no provision for C adjudication of such disputes under the Act. Civil courts will be the proper forum. But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the D machinery under the Act or to approach the civil court. It is plain that he can't have both. He has to choose the one or the other. But we shall presently show that the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only E under the Act. In that event civil court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of contract if the contract is one which is recognized by and enforceable under the Act alone."

F 7. Learned counsel does not dispute that the view taken in the aforesaid judgment has not been overruled but seeks to submit that the legal position has been elucidated in the case of the appellant in *Rajasthan State Road Transport Corporation and Anr. v. Krishna Kant and Ors.-(*1995) 5 SCC 75 as under:

G "35. We may now summarise the principles flowing from the above discussion:

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not H maintainable, even though such a dispute may also constitute an

"industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act,1946 - which can be called 'sister enactments' to Industrial Disputes Act- and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex-facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly - i.e., without the requirement of a reference by the government - in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

A (6) The certified Standing Orders framed under and in accordance with the Industrial employment (Standing Order) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

8. We must keep in mind that the Industrial Dispute Act is an alternative dispute resolution mechanism for the benefit of the workmen to provide "speedy, inexpensive, informal and unencumbered by the plethora of procedural laws. The object is thus, to protect the workmen.

9. It has also been observed that dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947. It is only when the dispute involves recognition, observance or inforcement of or obligations created by the Industrial Disputes Act, the only remedy would be exclusively under the provisions of the Industrial Disputes Act Act. The facts of this case involved the termination of service of workmen and thus the remedy was *inter alia* under the Industrial Disputes Act.

10. The present case involves recovery of certain fine amount which cannot be said to be covered by Section 2-A of the Industrial Disputes Act. The workmen in their wisdom (or possibly, lack of it) approached the civil Court and have been left high and dry for the last fifteen years without any adjudication on merits of their claims. We

may also note that the impugned orders are also, in a sense interlocutory in character.

11. We are thus, of the view that there is no ground made out to interfere with the impugned order and the appeal is consequently dismissed.

12. In view of the lapse of time, we direct the Civil Judge to forthwith proceed to try the Civil Suit No.774/2005 and endeavour to complete the trial and pronounce the judgment, if not already pronounced in the maximum period of six months from the date of receipt of the order.

13. The appeal is dismissed in terms aforesaid.

C.A. No. 7475/2011, C.A. No. 7474/2011, C.A. No.7473/2011 & C.A. No. 7476/2011

The appeals are dismissed in view of the order passed above in Civil Appeal No.7472/2011.

Divya Pandey Appeals dismissed.