
(2017) 03 BOM CK 0055

In the Bombay High Court

Case No : Civil Revision Application No. 34 of 2017

Ajit Rameshkumar Patni

APPELLANT

Vs

Dr. Vijay Sarathi

RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9, Section 9A
Maharashtra Universities Act, 1994 — Section 59

Citation : (2017) 3 AIRBomR 556 : (2017) 3 ALLMR 230

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : Mr. A.C. Dharmadhikari, Advocate, for the Applicants; Mr. Dinesh Sharma, Advocate, for the Non-Applicant

Final Decision : Allowed

Judgement

A.S. Chandurkar, J.—The order passed by the trial Court on the preliminary issue holding that it had jurisdiction to entertain the suit filed by the nonapplicant is the subject matter of challenge in this Civil Revision Application at the instance of the defendants.

2. It is the case of the non-applicant-plaintiff that he is in service of Suvalal Patni Arts & Commerce College, Pulgaon, which is being run by Jawahar Education Society, Pulgaon. The plaintiff was holding the post of Principal since October, 2010. According to him, the applicants - defendants without being members of the management were restraining the plaintiff from discharging his duties as Principal. On 4th July, 2016, the defendants entered the office of the plaintiff and forced him to sign a letter of resignation from the post of Principal. Despite his protestations, the plaintiff was compelled to sign the said document. The plaintiff immediately lodged a report in that regard with the police authorities. He thereafter filed a suit for declaration that the alleged Letter of Resignation as well as the leave application obtained by the defendants by force on 4th July, 2016 were null and void and for restraining the defendants from disturbing the plaintiff

from discharging his duties as Principal of the College.

3. On being served with the suit summons, the defendants raised a preliminary objection to the tenability of the suit under provisions of Section 9A of the Code of Civil Procedure, 1908 [for short, "the Code"], on the ground that according to the plaintiff, his resignation had been forcibly obtained by the defendants and against such an action, an appeal under Section 59 of the Maharashtra Universities Act, 1994 [for short, "the said Act"] was maintainable. According to them, the Civil Court had no jurisdiction to entertain the suit. This application was opposed by the plaintiff and on 30th July, 2016, the trial Court directed framing of a preliminary issue as regards jurisdiction of the Civil Court to entertain the suit.

4. The defendants examined defendant no.1 with regard to the aforesaid preliminary issue. He was cross-examined by the plaintiff. The plaintiff did not lead any evidence. The trial Court on consideration of the respective contentions held that the plaintiff had a right to withdraw the notice of resignation before it was accepted. On that count, the relationship between the parties as employer and employee was not severed, due to which there was no cause of action to file an appeal under Section 59 of the said Act before the University & College Tribunal. On that basis, the preliminary issue was answered by holding that Civil Court had jurisdiction to entertain the suit. Being aggrieved, the defendants have filed this Civil Revision Application.

5. Shri A.C. Dharmadhikari, learned counsel for the defendants, submitted that according to the prayers made in the suit filed by the plaintiff, it was clear that the plaintiff was seeking a declaration that the alleged letter of resignation dated 4th July, 2016 was null and void. In effect, the plaintiff was seeking adjudication on the validity of the act of otherwise termination of his services. He submitted that in so far as reliefs that could be sought under Section 59 of the said Act were concerned, the Civil Court had no jurisdiction to go into those questions. It was urged that as the trial Court had framed a preliminary issue and the defendants had also led evidence, their defence as raised also deserves to be taken into consideration while deciding the issue of jurisdiction. He was critical of the fact that the Civil Court had entered into merits of the case pleaded by the plaintiff and in that process after taking into consideration irrelevant facts had assumed jurisdiction. According to him, the nature of relief sought by the plaintiff clearly ousted the jurisdiction of the Civil Court as such relief could be prayed for only before the forum provided under Section 59 of the said Act. In support of his submissions, he placed reliance on the following decisions:-

[a] Satyawadi Ganpatrao Pimple & others v. Aruna Ganpatrao Narwade & another [2000 (2) Mh. L.J. 322],

[b] St. Ulai High School & another v. Devendraprasad Jagannath Singh & another [2007 (1) Mh. L.J. 597], and

[c] Dr.Meena Laxman Kapashikar v. The Vice Chancellor, Rashtra Sant Tukdoji

Maharaj Nagpur University & others [2012 (5) Mh. L.J. 951].

He, thus, submitted that the order passed by the trial Court was liable to be set aside.

6. Shri Dinesh Sharma, learned counsel for the plaintiff supported the impugned order. According to him, there was no cause of action for the plaintiff to approach the University & College Tribunal as no relief that could be prayed for under Section 59 of the said Act was sought by the plaintiff. He submitted that the plaintiff was disputing the status of the defendants who were posing themselves to be the "management" as defined under the said Act. According to him, in the proceedings before the Joint Charity Commissioner, the status of the defendants as trustees had not been established. As there was no action taken by the "management" under the said Act, there was no question of seeking relief under Section 59 of the said Act. He then submitted that with the withdrawal of alleged letter of resignation, the relationship between the parties of employer and employee subsisted and hence relief as prayed for in the suit could only be sought before the Civil Court. He further submitted that even in case of apprehended termination of services, the jurisdiction of the Civil Court is preserved and therefore, the plaintiff had rightly approached the Civil Court as he had the cause of action to do so. He also referred to the leave application dated 4th July, 2016 to indicate that same had also been forcibly obtained. In the aforesaid facts, it was submitted that the Civil Court rightly held that it had the jurisdiction to entertain the suit and its jurisdiction was not barred in view of provisions of Section 59 of the said Act. He, therefore, submitted that in absence of any jurisdictional error, there was no case made out to interfere with the order passed by the trial Court. He placed reliance upon the following decisions in support of his submissions:-

[a] Municipal Corporation of Delhi v. Dinesh Kumar Sangal [Writ Petition ? No. 2125/10; decided on 26th March, 2010 by Delhi High Court [Coram : Anil Kumar & Mool Chand Gar, JJ.],

[b] Marathwada University v. Sheshrao Balwant Rao Chavan [AIR 1989 SC 1582],

[c] College of Engineering v. Asmita Basole (Mrs.) & another [1987 Mh. L.J. 676],

[d] Srikantha S.M. v. Bharath Earth Movers Ltd. [(2005) 8 SCC 314],

[e] Peoples Welfare Society, Nagpur v. Second Labour Court, Nagpur & others [1998 (1) Mh. L.J. 707],

[f] Rakesh Rai v. M/s. National Aviation Co. of India & another [Writ Petition No. 287/2003; decided on 8th July, 2013 by Bombay High Court [Coram V.M. Kanade & Smt. R.P. Sondurbaldota, JJ.],

7. I have heard the learned counsel for the parties at length and I have given due consideration to their respective submissions.

8. The issue of jurisdiction has been decided by the trial Court after such issue

was framed as a preliminary issue. The parties were given liberty to lead evidence in that regard and such evidence was led by the defendants. The objection to jurisdiction having been raised under the provisions of Section 9-A of the Code and same having been answered after framing a preliminary issue by granting liberty to the parties to lead evidence, the scope of consideration by the trial Court while answering such issue would be distinct from the adjudication which is required to be done while considering such objection raised under provisions of Order-VII, Rule 11 of the Code. In other words, besides the pleadings of the plaintiff, the defence raised by the defendants and evidence, if any, led by the parties would have to be taken into consideration while answering the preliminary issue. It is not only the plaint averments, but even the defence raised by the defendants that would have to be taken into consideration while deciding the issue of jurisdiction.

9. Before considering the challenge to the impugned order, the settled legal position with regard to the parameters of exclusion of jurisdiction of the Civil Court in view of provisions of Section 59 of the said Act would have to be noted. It may be stated that the provisions of Section 59 (1) of the said Act in so far as it provides the contingencies in which an appeal can be preferred are in pari materia with the provisions of Section 9 (1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The Full Bench of this Court in *St. Ulai High School & another* [supra] while considering the question as to the bar of jurisdiction of the Civil Court to entertain matters in relation to subjects falling under provisions of Section 9 (1) of that Act held in paragraph 13 (vi) as under:-

"13.....

(vi) The Legislature having provided for a remedy before the Tribunal only in respect of the subjects spelt out in clauses (a) and (b) of sub-section (1) of Section 9, in those cases the jurisdiction of the Civil Court is impliedly barred. The jurisdiction of the Civil Court is barred to the extent to which the Legislature has spoken. In other areas which are not covered by clauses (a) and (b) of sub-section (1) of Section 9, the remedy of an appeal before the Tribunal is not available and hence, the jurisdiction of the Civil Court is not barred."

A grievance with regard to otherwise termination would include a grievance that forcible resignation of an employee has been obtained by the management. This has been held by the Division Bench in *Shriram Swami Shikshan Sanstha v. Education Officer, Zilla Parishad, Nagpur & another* [1984 Mh. L.J. 31]. In *Shaikh Abdul Rahim Nabi v. The Anjuman-I-Islam & others* [2012 (4) Mh. L.J. 280], it has been held that the School Tribunal has jurisdiction to consider and adjudicate upon the aspect of resignation as well as its acceptance. An adjudication upon the offer by a person to resign implies an adjudication upon its acceptance also. In *Hindi Vidya Bhavan, Mumbai & others v. Presiding Officer, School Tribunal, Mumbai & others* [2007 (6) Mh. L.J. 563], it was held that the School Tribunal can decide the issue with regard to the relationship between the appellant and

the institution as employee and employer in an appeal filed under Section 9 of that Act. In Dr. Meena Laxman Kapshikar [supra], it was held that under Section 59 of the said Act, an appellate forum is provided for an employee who is aggrieved by the predatory action of the Management in snapping the relationship of master and servant by virtue of an act of "otherwise termination".

10. Thus, on the basis of the aforesaid legal premise, the scope of examination of the question as to whether the plaintiff had allegedly issued resignation letter dated 4th July, 2016 and further whether such alleged resignation letter was acted upon by the defendants is a matter that can be only gone into by the University & College Tribunal under Section 59 of the said Act. Similarly, the question as to whether the relationship of employer and employee continues on account of withdrawal of the offer of resignation, as alleged, can also be examined by the Tribunal under Section 59 of the said Act. The bone of contention between the parties is the alleged act of the defendants of forcibly obtaining the resignation of the plaintiff. Whether the defendants fall within the purview of the definition of the expression "management" as defined by Section 2 (20) of the said Act can also be examined in proceedings under Section 59 of the said Act. In other words, all the questions sought to be raised by the plaintiff that have given him a cause of action to approach the Civil Court can only be answered by the Tribunal under Section 59 of the said Act. In that view of the matter, I am of the opinion that the jurisdiction of the Civil Court to entertain the suit filed by the plaintiff is clearly barred in view of provisions of Section 59 of the said Act.

11. As far as the decisions relied upon by the learned counsel for the plaintiff are concerned, the same touch the merits of the dispute between the parties. At this stage, while only answering the issue of jurisdiction, it is not necessary to venture into that area which exercise can be done by the Tribunal under Section 59 of the said Act. The ratio of the decision in People's Welfare Society, Nagpur [supra] cannot be made applicable to the facts of the present case, inasmuch as the employee therein was a member of the non-teaching staff and in that context, his approaching the Labour Court for challenging his threatened dismissal from service was held to be amenable to the jurisdiction of the Labour Court. In the present case, the plaintiff is holding the post of Principal and the dispute is with regard to "otherwise termination" of the services of the plaintiff. In any event, the plaintiff could not have approached the Labour Court for seeking the relief that he has sought in the Civil Suit. The law with regard to the manner of tendering resignation and its acceptance is also not required to be gone into at this stage when the preliminary issue of jurisdiction of the civil Court is being examined. The legality or otherwise of the alleged letter of resignation and its acceptance can be raised and considered before the Tribunal under Section 59 of the said Act.

12. Thus, as a sequel to the aforesaid discussion, the order passed by the trial Court holding that it had jurisdiction to decide the civil suit cannot be sustained.

The trial Court while deciding said preliminary issue misdirected itself by restricting its consideration only to the case of the plaintiff and not considering the stand of the defendants especially when it was deciding the preliminary issue with regard to jurisdiction. It also attempted to enter into the merits of the respective stands of the parties when the same was not necessary at this preliminary stage. The law referred to herein above on the question of jurisdiction of the civil Court is against the plaintiff. It is, therefore, held that the trial Court has no jurisdiction to entertain the suit filed by the plaintiff. Accordingly, the following order is passed:-

ORDER

[a] The order passed by the trial Court while answering the preliminary issue in Regular Civil Suit No. 40 of 2016 dated 7th February, 2017 is quashed and set aside. It is held that the trial Court has no jurisdiction to entertain Regular Civil Suit No. 40 of 2016 as the jurisdiction to consider the prayers made therein lies with the University & College Tribunal under Section 59 of the said Act. Regular Civil Suit No. 40 of 2016 accordingly stands dismissed with no order as to costs.

[b] It is open for the non-applicant to approach the University & College Tribunal under Section 59 of the said Act to seek the reliefs as sought in the civil suit. If such appeal is filed within a period of four weeks from today, it shall be entertained on merits without requiring the non-applicant to seek condonation of delay.

[c] It is clarified that observations made in this judgment are only for deciding the preliminary issue of jurisdiction and same shall not be considered as an expression on merits of the dispute between the parties. The proceedings in that regard, if initiated by the non-applicant, shall be decided on its own merits and in accordance with law.

13. The Civil Revision Application is allowed with no order as to costs.