
(2006) 07 P&H CK 0013
In the Punjab And Haryana At Chandigarh

All K.G. Khosla Karamchari Union

APPELLANT

Vs

Kirloskar Pneumatics Ltd. and Another

RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A

Citation : (2007) 4 PLR 724 : (2007) 1 RCR(Civil) 683

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—This is a revision petition directed against order dated 24.11.2004 of the Civil Judge (Junior Division), Faridabad by which the application filed by the respondents under Order 7 Rule 11 of the CPC (for short, the CPC) has been allowed and the suit of the petitioner, has been rejected.

2. The petitioner, styling itself as All K.G. Khosla Karamchari Union (Registered), filed a suit through its Secretary for permanent injunction against the respondents. It was pleaded by the petitioner that it is a workers' union duly affiliated with the I.N.T.U.C. and registered under the Trade Unions Act and its Secretary was duly authorised to present the suit. As per the pleadings raised by the petitioner in the suit, it was averred that respondent Nos. 1 and 2 are the companies located in the same premises and out of SO workers of the Union, 19 were employed with respondent No. 1 while 61 workers were employed with respondent No. 2, All these employees were regular employees and were entitled to the benefits as admissible under various statutes, such as gratuity, ex-gratia, bonus etc. According to the petitioner, the management of respondent No. 1 had terminated the services of 19 workers illegally and without assigning any reason and the affected persons had consequently raised respective demand notices u/s 2A of the Industrial Disputes Act, 1947 (for short, "the Act") which were pending before various authorities and were at advance stages of finalization. None of them, however, had been decided so far. Similarly, the management of

respondent No. 2 had decided to close down the unit and a dispute regarding illegal closure was pending before the Industrial Tribunal. It was alleged that the respondents, in collusion with each other and in order to defeat the claim of the employees, were trying to dispose of the machinery and other assets of the companies because the liabilities were likely to accrue in the event of various cases of the employees becoming final.

3. With these averments in the background, the petitioner had prayed that the respondents be restrained from negotiating, selling, transferring/shifting and removing plant, machinery, land and buildings of the companies, records, raw material, finished/unfinished goods, furniture, fixtures, telephones, vehicles etc. In short, the prayer made by the petitioner was that the companies be restrained from disturbing their present assets in any manner till the time the claims of the employees in various fora are decided so that they can execute the same against the assets of the companies.

4. Upon notice, the respondents moved an application under Order 7 Rule 11 of the CPC And prayed that the suit be dismissed because it did not disclose any cause of action and was barred by the provisions of the Act as the Civil Court did not have any jurisdiction to entertain such suit.

5. The Civil Judge (Junior Division), Faridabad, who was seized of the matter, rejected the suit of the petitioner vide order dated 24.12.2004. Hence, the present revision petition.

6. It was contended by Mrs. Abha Rathore, learned Counsel appearing on behalf of the petitioner that the trial Court had wrongly exercised its jurisdiction under Order 7 Rule 11 of the C.P.C. According to her, the pleadings contained in the suit disclosed an actionable claim as the workers' rights were defeated because of the reason that the respondents were disposing of the assets of the companies. It was further contended by her that even if the disputes were not settled before the various foras, yet, the claims of the workmen were statutory claims which stood determined by the provisions of various Acts and the same did not require any further determination by the Courts and, therefore, the respondents were liable to pay the amount to the workers and in case they succeed in alienating the assets of the companies, the rights of the workers to recover the amounts would be jeopardized. Apart from this, it was submitted by the learned Counsel that since the Industrial Tribunals and other authorities did not have the power to grant injunction, the trial court had the jurisdiction to entertain the suit because the petitioner had no other remedy except to do so.

7. Shri Arun Jain, Learned Counsel for respondent No. 1 submitted that the suit was frivolous and was misconceived/According to Shri Jain, the petitioner had alleged that there were 19 workers, who were employed with respondent No. 1, but out of these, services of 10 employees had been terminated and reference applications filed by them had been dismissed and a compensation of Rs. 25,000/- per workman had been granted which has been duly paid to them

through bank drafts. He submitted that these workers have, however, challenged the awards of the Tribunal before the High Court. As far other 9 employees are concerned, it was submitted that their claims had been settled way back in 1986-87 and, therefore, the allegation of the petitioner that 19 workers had been working with respondent No. 1, whose claim is likely to be adjudicated, is totally false.

8. Shri Amit Chopra, learned Counsel for respondent No. 2 submitted that the suit had rightly been rejected as there was no claim which had been determined and in any eventuality, the Courts where the proceedings regarding the grievance of 61 employees were pending had their own mechanism to get the orders, if any, executed, if such a necessity arises.

9. I have considered the submissions of the learned Counsel for the parties and perused the record.

10. The petitioner had made the following averments in paragraph 6 of the suit filed by it:

6. That the plaintiffs/workers against the said illegal act of the defendants raised their respective demand notices u/s 2A of the Industrial Disputes Act to the defendant-management and as well as before the Labour-Cum-Conciliation Officer, Faridabad, which are still pending final adjudication and the matter of illegal closure is also pending before the Hon"ble High Court and Supreme Court for final decision and have not yet been decided.

11. The prayer made in the suit is also pertinent for the purpose of disposal of this revision petition. The relevant portion thereof including Clause (a) is extracted below:

It is, therefore, prayed that this Hon"ble Court may graciously be pleased to pass a decree of Permanent Injunction in favour of plaintiffs-workers and against the defendants restraining the defendants perpetually from:

(a) negotiating, selling, transferring/shifting and removing plant, machinery, land and building of defendants companies, records, raw material, finished/unfinished semi finished goods, furniture, fixtures, telephones, vehicles tools and other jig-jags of the defendants No. 1 & 2 companies known as M/s Kirloskar Pneumatics Ltd.(formerly known as K.G. Khosla Compressor Ltd.) and M/s Deepak Pneumatics Pvt. Ltd. Both situated at 18/8 Mathura Road Faridabad fully described in the enclosed sketch plan and from leaving the jurisdiction of Hon"ble Court, without settling the payment of salary and other legal dues like gratuity, bonus, ESI, service compensation, earned leave, increments, uniform, provident fund, and other statutory benefits in full and final, which are due to workers in accordance with the Companies and Labour Laws prevalent and applicable to the plaintiffs and till their claims are released to the 80 workers in full and final settlement to the plaintiffs by the defendants, in all respect after the decision of various pending disputes in various Courts of law from Labour

Court, Labour Commissioner upto the Apex Court of enquiry, or till pending final disposal of this suit, which ever is earlier.

12. A perusal of the aforementioned extracts of the suit shows that concededly, the proceedings which had been initiated by the workers against the respondents had not culminated into final orders. That being so, it cannot be said that the liabilities of the workers qua the respondents, if any, had been determined. That could have been so only if the proceedings had crystallised into the orders determining the rights of the parties. In view of this, there was no cause of action which could have accrued to the petitioner so as to warrant filing of a suit with the prayer as has been made by it in the suit. Order 7 Rule 11 of the C.P.C., gives the power to the Court to examine the suit at the outset and to see whether it discloses any cause of action or to see whether it is barred by any law and if it appears to the Court to be so, then the court can reject the plaint for reasons to be recorded. The provisions of Order 7 Rule 11 of the C.P.C. Are extracted here for ready reference:

11. Rejection of plaint.-The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

13. Taking the facts in their totality, it is clear that even as per the admission of the petitioner itself, the matters regarding liabilities of the workers were pending adjudication and had not been decided. There was, thus, apparently no cause of action which had accrued to the petitioner on the date when the suit was filed.

14. It was then contended by Mrs. Abha Rathore that the Civil Court had the

jurisdiction to go into the matter and the observation of the trial Court regarding the fact that the disputes of the workers were to be adjudicated upon by the Industrial Tribunals and, therefore, the Civil Court did not have the jurisdiction, is wrong. In support of this contention, she placed reliance on the judgment of the Apex Court as *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, . In that case, the Supreme Court has held that where disputes, even industrial disputes, involve reliefs based on general law of contract, the Civil Court has alternative jurisdiction.

15. I am afraid, the judgment is not applicable to the facts of this case. Concededly, the disputes of the workers were pending before the various Tribunals under the provisions of the Act. The instant suit was not for determination of any right of the workers under the Act or any other law. The petitioner had invoked the jurisdiction of the Civil Court when there was absolutely no cause of action to do so. The workers were agitating their disputes under the special law and the power of the Civil Court could not have been invoked to secure some imaginary liabilities which may or may not have accrued against the respondents.

16. The Supreme Court in (1996) 1 S.C.C. 496, *The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay* has clearly held that the Civil Court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain rights or liability created only under the Act. In that event the 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.

17. Even on facts, the suit is totally misconceived. As has been noticed above, in so far as respondent No. I is concerned, the matter regarding 19 employees had already been settled. Ten of the employees had been paid their dues by way of bank drafts in the year 2002 itself, whereas the proceedings qua other nine employees had been settled in the year 1986-87. There was, thus, no claim, at all, against respondent No. 1.

18. The Civil Court, therefore, was absolutely right in exercising its jurisdiction under Order 7 Rule 11 of the C.P.C. by examining the plaint at the outset.

19. If an application under Order 7 Rule 11 of the C.P.C. is filed, then it becomes the duty of the Court to examine the plaint to see whether it discloses any cause of action and also to see whether it discloses any cause of action and also to see whether it is barred by the provisions of any law. This is imperative for the court and if the plaint suffers from any of the infirmities which have been enumerated in Order 7 Rule 11 of the C.P.C., then the Civil Court should not be hesitate to reject the plaint, provided there are sufficient reasons to do so which are to be recorded by the Court while exercising its power under that provision of law.

20. There is, thus, no infirmity in the impugned order and the revision petition is

accordingly dismissed.