(1972) 09 BOM CK 0010

In the Bombay High Court

Case No : O.C.J. Miscellaneous Petition No. 144 of 1968

Bharat Barrel and Drum Mfg. Co. Ltd. APPELLANT

Vs

B.S. Kalelkar RESPONDENT

Date of Decision : 13-09-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10A

Citation : (1974) 76 BOMLR 686 : (1974) MhLj 939

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.K. Desai, J.—In this petition under Article 226 of the Constitution the petitioner company has challenged the legality and correctness of an interim order dated December 27, 1967, made on the interim application for disclosure and production of documents made on September 9, 1967, before the private arbitrator Shri B.S. Kalelkar in the matter of dispute referred to him under the provisions of Section 10A of the Industrial Disputes Act, 1947, for adjudicating upon claim for bonus made by the workmen of the petitioner company for the years 1961, 1962, 1963 and 1964.

2. The only facts which require to be noticed are as follows:

By the above application the workmen submitted that the Balance-sheets and Profit and Loss Accounts of the petitioner company that were disclosed for the above years1 did not correctly disclose the true and actual income and/or profits of the petitioner company. The submission was that the above situation had arisen because one Prakash Cotton Mills Pvt. Ltd., which was a sister concern of the petitioner company, had been given complete control of the business of manufacturing and selling of drums and barrels. This business, in fact, belonged to the petitioner company. Under the agreement the petitioner company agreed to receive only royalty from the Prakash Cotton Mills Pvt. Ltd. The profit and loss accounts disclosed by the petitioner company related to the royalty amount received and did not contain the relevant accounts in respect of the business of manufacturing and selling drums and barrels manufactured in the factory. On this main ground by the application a prayer was made for discovery and production of documents mentioned in seven items in the application. Those documents were (1) General Ledger Books, (2) General Ledger Accounts Trial Balance (audited), (3) Journal Books, (4) Cash Book and Petty Cash Books, (5) Purchase Books, (6) Sales Books and (7) Income Tax assessment orders, all for the years 1961, 1962, 1963 and 1964. On behalf of the petitioner company the application was resisted mainly on the ground that in fact the profits made by the petitioner company were under the royalty agreement made with the Prakash Cotton Mills Pvt. Ltd. The accounts of profits and losses of the business of manufacturing and selling drums and barrels were not relevant. This business was under the royalty agreement carried on by the Prakash Cotton Mills Pvt. Ltd. for its own benefit. The learned arbitrator delivered the impugned order dated December 27, 1967. A copy of the said order is annexed as exh. H to this petition. The order consists of recitals and reasonings extending over forty-nine typed pages. It appears that in arriving at his conclusion in the matter of production of the above documents, the arbitrator has almost made final findings on arguments advanced by both sides on the above two questions. The arguments were advanced on issues which were irrelevant in connection with the question of ordering production of documents. By the impugned order the petitioner company has been directed to produce the documents mentioned in items 1 to 6. There can be no dispute that all these documents are not in the possession of the petitioner company as such. These documents are books of accounts of the Prakash Cotton Mills Pvt. Ltd. which, being a third party, has no connection whatsoever with the demand for claim for bonus referred to the arbitrator. The learned arbitrator and also the advocates who had made arguments before him appear to have forgotten the well-established principle that orders for discovery and production cannot be made against persons who are not parties to the litigation in question. The only method of getting documents from such parties is to issue ducestecum summonses for production of documents. There is no provision in law entitling tribunals to order "discovery and production of documents" by such persons. The failure of the petitioner company to produce documents not of its ownership and which are not held to be in its possession cannot result into any punishable default. On this interim application for production of documents the learned arbitrator should not have delivered an order containing lengthy recitals and reasonings and should never have decided finally issues on merits of the questions argued by the parties. The learned arbitrator should have realised the important fact that the application was for production of documents which were not of the ownership of the petitioner company, nor for production of documents which in law can be said to be in the possession of the petitioner company. It is quite clear that the order for production of documents which were of the ownership of the Prakash Cotton Mills Pvt. Ltd. and in possession of that company should never have been made by the learned arbitrator. The order is contrary to the well-established principles of law and should not have been made.

3. The result of the above finding is that the direction given in the interim order against the petitioner company to produce documents mentioned in items 1 to 6 of the application is set aside. The Rule is made absolute as above. No order as to costs.

