
(2010) 04 BOM CK 0125
In the Bombay High Court
Case No : Writ Petition No. 2095 of 1998

G.B. Hingurani

APPELLANT

Vs

Vinayak Narayan Govekar and Others

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 11
Constitution of India, 1950 — Article 136

Citation : (2011) 2 LLJ 817

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : R.S. Pai, Pallavi Dedna and Sanjay Udeshi, for the Appellant; Mayur D. Nagle, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Admittedly, earlier Complaint (ULP) No. 743/1991, filed by the Bombay Labour Union, Bombay was disposed of for non-prosecution as settled out of the Court. It is observed in paragraph No. 11, while passing the impugned order, by the Industrial Court, Mumbai dated March 18, 1998 that except one workmen, all the workmen have accepted their legal dues from the Company and the said workman is the present complainant. The learned Judge, therefore, as there was No. liberty relevant to agitate the issue again being unconditional withdrawal order, has passed the impugned order.

Admittedly, except the Complainant, all the other workers have settled the matter and accepted the legal dues, knowing fully the effect of the closure. In my view, the relationship of the employer and the employees is always on a foundation of a contract. Having once accepted this contract, it means all the conditions also. Therefore, after obtaining the benefits, almost of the members accepted the legal dues, knowing fully the consequences of the same, there is No. case to permit one worker to agitate the issue of closure and all actions by filing such complaint, merely because he had not accepted the legal dues with

others. In the Industrial and labour matters, it is difficult to have dispute settlement all the time by total consent and/or total acceptance of terms and conditions by all the workers, the same objections are always there. However, having once filed the complaint through the Union at the relevant time, of which the complainant was also a member, they accepted the terms and accordingly the complaint was disposed of for non-prosecution as settled out of the Court. It is not the case that the settlement withdrawn for any reason. The submission is made upon the action of closure of the Petitioner on merits, referring to the amendments in the Complainant. In my view, it is necessary to see that such labour disputes must be settled, as early as possible. If the parties entered into the agreement and/or settlement and proceed accordingly and basically acted upon the same by majority of the workers, as well as, the employers, I see there is No. reason now to permit such Complainant to reagitate the closure issue on merits. If the Complainant had accepted the similar terms the matter could have ended then and there only. In totality, therefore, such agitation by one person by challenging the closure action of Management and the Court also permitting to agitate the same without deciding the preliminary objection about the maintainability of the complaint, goes to the root of the matter.

2. Apart from above, as so called binding settlement was well within the framework of law and the record and as the parties have already acted upon, unless it is reagitated on the ground of fraud and/or misrepresentation, which is not the case here, it needs to be respected for all the purpose, therefore, the complaint is not entertainable. This Court in Writ Petition No. 2670/2002, Maharashtra Kamgar Sangharsh Samiti and Anr. v. Horizon, the Beach Hotel and Ors. 2006 IV LLJ Sup 50 (Coram: D.G. KARNIK, J.) in paragraph Nos. 10, 11 and 12, has considered various such aspects referring to Order 23 Rule 1 of the CPC (for short, " CPC ") as under at pp. 53 and 54 of LLJ:

10. I am fortified in my view by the decision of the Supreme Court rendered in Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, . In paragraph No. 7 of the judgment, the Supreme Court observed:

In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned. in Sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code which provides that No. Court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the suit or an issue has already been heard and

finally decided by such Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is No. prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in Sub-rule (4) of Rule 1 of Order 23 of the Code when the first suit is withdrawn without the permission referred to in Sub-rule (3) in order to prevent the abuse of the process of the Court.

11. The principle in the *Sarguja Transport Service v. State Transport Appellate Tribunal* (supra) was again affirmed by the Supreme Court in a later decision in *Upadhyay & Company v. State of U.P. and Anr.* (1991) 1 SCC 81, after affirming that the principles contained in Order 23, Respondent No. 1 was based on rule of public policy and would also apply to the writ proceedings in a High Court the Supreme; Court held that the rule would also apply to a SLP (SLP) filed under Article 136 of the Constitution of India. It held that once a SLP filed against an order of the High Court had been withdrawn without obtaining from the Court liberty to file a SLP again, fresh SLP against the same impugned order would not be maintainable.

12. In my view, the principle contained in Order 23 Rule 1 of the CPC would also apply equally to the proceedings before a Labour and Industrial Court. If the applicant/complainant approaching a Labour or Industrial Court withdraws unconditionally a proceeding without obtaining a leave of the Court to file a fresh proceeding on the same subject matter, he would not again be allowed to file a fresh proceedings on the very same subject matter.

3. Even otherwise, I am in agreement with the above observations, the Industrial jurisprudence, it is necessary and desirable that such Industrial Disputes should be settled, as early as possible and once settled not to disturb at the instance of only one person. The impugned order so passed, on merit, in view of above is unsustainable. The complaint itself is not entertainable. The reasonings so recorded need definite interference. The aspect of *res judicata*, *estoppel*, is also relevant, even to the Industrial and Labour Dispute matters. When we talk about the applicability of principles of natural justice; fair hearing; fair opportunity; compromise/settlement which are otherwise applicable in general litigation, are also available in such industrial disputes. If that is so, there is No. reason that the same principle should not be extended in such rejection, basically when the parties have not only agreed and settled the matter and accordingly got the matter disposed of, in the year 1991 itself. The pre-agitation of one worker by the Complainant, is now, as done in the present case, will frustrate the whole purpose and object, as done in the present case and in my view, if it is permitted, it will disturb and it will create complications rather than solving it, because of one such worker-employee though the matter settled, still agitating the issue, this approach, in my view, itself impermissible basically in the facts and circumstances of the case.

4. The learned Counsel appearing for Respondent No. 1, submitted that the Complaint (ULP) No. 743/1991 was never decided on merit finally and therefore,

there is No. bar to file such complaint to agitate the issue. This submission, in my view, is not correct in view of order passed by the Industrial Court on October 14, 1991, as under:

ORDER (Below Exhibit U-1)

In view of order passed on Exhibit U-1, the Complaint is disposed off for non-prosecution as settled out of Court. No. order as to cost.

Having once settled the matter, whether it is decided finally on merits or not, is irrelevant.

5. Resultantly, the impugned order is quashed and set aside as complaint so filed is not entertainable. It is dismissed. However, it is made clear that all the amounts, already withdrawn by Respondent No. 1, as the amount paid to the other workers, need not be recovered.

6. The petition is accordingly allowed in terms of prayer Clause (a). No. order as to costs.