

**(1978) 07 OHC CK 0008**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 718 of 1976

Haramani Naik and Others

APPELLANT

Vs

Management, Samaj and Another

RESPONDENT

**Date of Decision :** 26-07-1978

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, 141  
Industrial Disputes Act, 1947 — Section 11(1) , 33C(2)

**Citation :** (1978) 46 CLT 283

**Hon'ble Judges :** R.N. Misra, J;B.K. Ray, J

**Bench :** Division Bench

**Advocate :** D.S. Misra, for the Appellant; B.B. Rath, S.C. Das and Additional Government Advocate, for the Respondent

**Final Decision :** Dismissed

## Judgement

R.N. Misra, J.—Petitioners before this Court are the legal representatives of one Jagannath Naik, who had made an application u/s 33C(2) of the Industrial Disputes Act (hereinafter referred to as the "Act") to the Labour Court for computation of service benefits including gratuity. His application had been registered as Industrial Dispute Miscellaneous Case No. 433 of 1973, During its pendency, Jagannath died on 26.1.1975. An application was made on 26-3-1975 by the present Petitioners purporting to be under Order 22, Rule 4 of the CPC for substituting them in place of the deceased applicant Jagannath. The employer (opposite party No. 1 disputed the maintainability of the application and the Labour Court on examination of the question came to hold that there was no scope for substitution and with the death of the workman, the proceeding u/s 33C(2) of the Act abated. The claim, if any, of the Petitioners could be entertained by the Civil Court only. This order of the Labour Court is assailed in this application for a writ of certiorari.

2. In the case of The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi, , the Supreme Court

has pronounced that tribunals and labour Courts constituted under the Act are not Civil Courts. In the case of Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, , it has been held that the proceedings u/s 33C(2) are in the nature of execution proceeding and the powers of the Labour Court are limited. In the very case, it has also been indicated that the legislative contemplation in making a provision like Section 33C(2) was to provide a speedy remedy for computation of dues under admitted heads. There can be no scope for doubt that the Labour Court is not a Court in the strict sense of the term. Therefore, the ratio of the decision of the Supreme Court in the case of Ebrahim Aboobaker and Another Vs. Tek Chand Dolwani and Others, where it was held that the Custodian under the Administration of Evacuee Property Act of 1950 not being a Court, to proceedings before him, Section 141 of the CPC had no application, has application in the present case.

3. Section 11(1) of the Act provides:

Subject to any rules that may be made in this, behalf, an arbitrator a Board Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

It is conceded that there is no rule which makes provision for substitution of parties. Counsel for the Petitioners places reliance on a Bench decision of the Bombay High Court in the case of Sitabai v. Auto Engineers and Ors. 1972 Lab.I.C. 733. The ratio of that case does help the stand of the Petitioners that in the event of death of an application u/s 33C(2) of the Act, the legal representatives are entitled to be brought on record. The Bombay decision had dissented from a Single Judge decision of the Allahabad High Court in the case of U.P. Elec. Supply Co. Ltd. v. Meena Chatterjee (1969) 36 F.J.R. 308. The question directly fell for consideration in a Bench decision of the Delhi High Court in the case of Yad Ram (died) and Ors. v. Bir Singh and Anr. 1974 Lab I.C. 970 where the Allahabad and the Bombay cases were also considered. Speaking for the Court, the learned Chief Justice recorded his conclusion thus:

Our conclusion, therefore, is that an application u/s 33C(2) of the Act can be made only by the workman himself and it must follow that if the workman dies during the pendency of such application, his heirs, successors and legal representatives cannot continue it in the specified Labour Court because this Court cannot recognize anybody other than a workman as the applicant before it. We should not be taken to have held that the right to sue for money or equivalent of money or the benefit due to a workman does not survive. It survives to the heirs, successors and legal representatives and they can take appropriate proceedings by way of a suit in a civil Court. They cannot however, either continue after his death an application made by the workman u/s 33C(2) or make such an application themselves in the event of his death.

The question seems to have been and we are prepared to accept exposition of the legal position.

4. We would accordingly agree with the view of the Labour Court and dismiss this application. There would be no order as to costs.

B.K. Ray, J.

I agree.

well discussed in the judgment the conclusion as the correct

Application dismissed.