

(2011) 04 GUJ CK 0129

In the Gujarat High Court

Case No : Letters Patent Appeal No. 566 of 2011 in Special Civil Application No. 15232 of 2010 and Civil Application No. 4089 of 2011

Harishbhai Lakhoita

APPELLANT

Vs

Patel Haribhai Mohanbhai and Others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 18(3)(c)

Citation : (2011) 04 GUJ CK 0129

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Viral K. Shah, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Shah, J.—We have heard Mr Viral K Shah, learned Counsel for the Appellant.

2. The Appellant, being aggrieved by the impugned order dated 24.2.2011 passed by the learned Single Judge in Special Civil Application No.

15232 of 2010 preferred the present appeal.

3. The brief facts of this case are that Respondent No. 1 was working in an undertaking named M/s. B & Brothers Engineering Works. His service

was terminated by the employer. Aggrieved by the said termination, Respondent No. 1 and two others have raised industrial dispute which

culminated into Reference (LCA) No. 169/1990.

No one contested the said Reference proceedings on behalf of the employer. Hence, in the said Reference, the Labour Court, after having waited

for almost 13 years, has passed award dated 15.11.2003. It is to be clarified that the legality and propriety of the said award is not in challenge in

the present proceedings and therefore, in our view, further discussion with regard to the said award is not necessary or warranted.

4. It appears that the directions issued by the Labour Court by the said award dated 15.11.2003 in Reference (LCA) No. 169 of 1990 were not

complied with. Under the circumstances, Respondent No. 1 preferred Recovery Application which was registered as Recovery Application No.

1829 of 2003. By the said Recovery Application, the Respondent No. 1 claimed a sum of Rs. 3,78,410/- from the employer. The cause title of

the said application reveals that the original party to the Reference proceedings i.e. the employer M/s.B & Brothers Engineering Works was

impleaded as opponent by Respondent No. 1 workman. It is pertinent to note that the Respondent No. 2 along with Mr Aswinbhai were also

impleaded as opponent No. 2 in the Recovery Application No. 1829 of 2003. The present Appellant Hareshbhai Lakhota not being in picture at

that point of time was not joined as party. The said proceedings of the Recovery Application was also neglected by the employer, hence the

Labour Court passed final award in the said Recovery Application No. 1829 of 2003 on 21.10.2004 and decreed the recovery application in the

sum of Rs. 3,78,410/-in favour of the present Respondent and others. It further appears that the order of the said Recovery Application was also

not complied with by the employer.

5. It is pertinent to note that by the time the aforesaid Recovery Application No. 1829 of 2003 was filed or the final order therein came to be

passed, the present Appellant had somewhere in the interregnum period entered into the picture, inasmuch as he had purchased the property of the

said undertaking M/s. B & Brothers Engineering Works and the said aspect came to the notice of the present Respondent No. 1 and so for the

purpose of further execution of the order passed in Reference and the Recovery Application, the Respondent No. 1 preferred another Recovery

Application No. 878 of 2005 and had impleaded the present Appellant to the said Recovery Application on the ground that the Appellant who

was impleaded as opponent No. 3 in Recovery Application No. 878 of 2005 was successor in interest and since he had purchased the property

of the employer against which Recovery Application dues were to be executed. The said Recovery Application was contested by the present

Appellant by contending inter alia that he was not a party to the Reference proceedings and/or party to the Recovery Application No. 1829 of

2003 and that therefore, the application and the dues which arose on account of the award are ought not to be pressed into service and executed against him.

6. After considering the rival contentions, the Labour Court passed order dated 5.5.2010 in the said second Recovery Application No. 878 of

2005. As mentioned hereinabove, in the second subsequent Recovery Application No. 878 of 2005, the present Respondent No. 1 had

impleaded the Appellant in addition to the opponents in the Recovery Application No. 1829 of 2003 and the said third opponent i.e. the present

Appellant as party opponent was liable to discharge the obligation. The Labour Court vide order dated 5.5.2010 directed that all the three

Respondents shall be jointly and severally responsible to discharge the obligation of payment of the amount due and payable as per the award

passed in Reference which was quantified as Rs. 3,78,410/- in Recovery Application No. 1829 of 2003.

7. Learned Counsel Mr Viral K Shah has vehemently argued that the Appellant had purchased the property bearing survey No. 401/1, 402/1-2-3

by way of registered sale deed which was registered before the Registrar of Assurance at Sr. No. 3014 on 27.11.2002 and at that time, the

Respondent No. 2 herein i.e. M/s.B & Brothers Engineering Works was running its business at the said premises and before purchasing the said

property, the title of the said property was got verified through a Solicitor and having found that the title of the property was clear and

unencumbered, the Appellant purchased the land and building of M/s. B & Brothers Engineering Works by way of registered sale deed. He has

also submitted that Respondent No. 1 herein who was employed by Respondent No. 2 herein had initiated proceedings under the provisions of

Industrial Disputes Act, 1947 against M/s. B & Brothers Engineering Works in which an award was passed by the Labour Court in favour of

Respondent No. 1 on 15.11.2003 and as the Appellant was not a party to the said proceedings, the Labour Court and the learned Single Judge

has wrongly passed the relevant orders against the present Appellant. He has further submitted that when relationship of employer and employee

between the present Appellant and the present Respondent No. 1 did not exist, the order requiring the Appellant to make payment should be held

unsustainable more particularly when the Appellant was not party to the proceedings in the Reference (LCA) No. 169 of 1990 and/or in the

Recovery Application No. 1829 of 2003 and thus any liability arisen out of the order passed in the said proceedings should not be imposed on the

present Appellant.

8. We have carefully perused the Records and Proceedings of this Appeal along with the orders passed by the Labour Court and the order passed

by the learned Single Judge. The learned Labour Court has passed the orders after considering the entire evidence forthcoming on the record and

applying the principles of the successor in title. The learned Single Judge in para 5.4 of order dated 24.2.2011 passed in Special Civil Application

No. 15232 of 2010 which is related to the principles of successor in title reads as under:

5.4 Even the provisions u/s 18 of the I.D. Act make the successor in interest liable and responsible to discharge the obligation of the previous

employer. The Sub-clause (c) of Sub-section (3) of Section 18 reads thus "(c) where a party referred to in Clause (a) or Clause (b) is an

employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates.

emphasis supplied

Hence, the obligation is attached to the establishment and not the person.

9. It is the well settled legal position that the employees of a business continue to be entitled to all the rights and privileges acquired by them by

reason of past services even after a transfer of business provided there is continuity of service and there is identity of business. In N.J. Chavan and

Others Vs. P.D. Sawarkar and Others, it was held by the Apex Court that although a successor of a business will necessarily be a transferee, there

may be a transferee of a business who is not necessarily a successor. Therefore, the correct test is not whether there is succession to the business

but the correct test is whether the business has been transferred without disturbing the identity of the business and its continuity.

10. The meaning of successor in interest has been dealt with by the Apex Court in the citation reported in Anakapalla Co-operative Agricultural

and Industrial Society Limited Vs. Workmen, in Anakapalla Co-operative Agricultural and Industrial Society Ltd. v. Workmen. The relevant

portion is extracted hereunder:

The question as to whether he can be held to be a successor-in-interest of the transferor would depend on consideration of several relevant facts.

What should be the relevant facts to be taken into account in determining this question was explained by Gajendragadkar, J in the following words:

Did the purchaser purchase the whole of the business? Was the business purchased a going concern at the time of the sale transaction? Is the

business purchased carried on at the same place as before? Is the business carried on by the purchaser the same or similar to the business in the

hands of the vendor? If there has been a break in the continuity of the business, what is the nature of the break and what were the reasons

responsible for it ? What is the length of the break? Has goodwill been purchased? Is the purchase only of some parts and the purchaser having

purchased the said parts purchased some other new parts and started a business of his own which is not the same as the old business but is similar

to it? These and all other relevant factors have to be borne in mind in deciding the question as to whether the purchaser can be said to be

successor-in-interest of the vendor for the purpose of industrial adjudication. It is hardly necessary to emphasize in this connection that though

illustrations are relevant, it would be unreasonable to exaggerate the importance of any one of these facts or to adopt the inflexible rule that the

presence or absence of any of them is decisive of the matter one way or the other... The decision of the question must ultimately depend upon the

evaluation of all the relevant factors and it cannot be reached by treating any one of them as of overriding or conclusive significance.

11. It is the case of the Appellant that there is no relationship between the Appellant and the Respondent No. 1. The learned Single Judge has

observed that the present Appellant has not challenged the award dated 15.11.2003 passed in Reference (LCA) No. 169/1990 by which the

Labour Court was directed the employer to reinstate Respondent No. 1 and accordingly it has attained finality and the direction would continue to

bind the employer and the successor in interest. It is pertinent to note that neither in any of the earlier proceedings nor in Special Civil Application

No. 15232 of 2010 before the learned Single Judge the award and the direction thereby have ever been challenged. Now the important question

to be examined as to whether the order passed by the Labour Court in Recovery Application No. 878 of 2005 dated 5.5.2010 and Review

Application No. 6 of 2010 dated 18.9.2010 can be said to be illegal? On this point, the learned Single Judge has elaborately discussed the same in

paras 9 and 9.1 which is extracted as under:

9. So far as the Petitioner is concerned, it is relevant fact to be noted that assets/ property of the opponent (which was a firm and not a duly

incorporated and registered company, under the Companies Act, 1956, having different and distinct existence, in eye of law, from its members) in

the reference proceedings are purchased by the Petitioner herein. It is pertinent that the Petitioner (i.e. the opponent No. 3 in Recovery Application

No. 878 of 2005) has, as recorded by the Labour Court conveniently not placed any other relevant details on record viz. as to whether he had

purchased the undertaking itself (i.e. the land, building, machines, other assets, goodwill etc.) and/or whether the workers engaged in the said

undertaking at the time of taking over by the opponent No. 3 i.e. Petitioner were also transferred under his management and control or not, if not

what were the conditions of retrenchment, whether any liabilities of the undertaking were taken over by it or not etc. None of the aforesaid and

such other relevant aspects are shown or established by the Petitioner herein in the petition or before the learned Labour Court at the relevant time.

9.1 In absence of any details and cogent and supporting material to establish that he (Petitioner) is not the ""successor-in-interest"" liable to discharge

erstwhile owner's liabilities, the learned Labour Court held and considered the opponent No. 3 i.e. present Petitioner also liable and responsible,

jointly and severally along with other opponents, to discharge the obligation, as successor in interest in his capacity of the purchaser of the property

of the undertaking in which the Respondent No. 1 was employed.

12. It has come on record that the Appellant has purchased the property bearing survey No. 401/1, 402/1-2-3 by way of registered sale deed

which was registered before the Registrar of Assurance at Sr. No. 3014 on 27.11.2002 and as averred by the Appellant in para 3 of this Appeal,

at the relevant time, M/s. B & Brothers Engineering Works was running its

business at the said premises. In support of the Appellant's above case, the Appellant has produced copy of the index of the property above referred purchased by the Appellant from Respondent No. 2.

13. We have perused the Index at Annexure "G". It is important to note that the Appellant has not produced the above referred registered sale

deed from which one can easily give all the answers of the queries involved in this Appeal. But for the reasons best known to the Appellant, he has

not produced the same before the Labour Court. It is also the case of the Appellant that prior to the purchase of the above referred property, the

same has got verified through Solicitor and having found that the title of the property was clear and unencumbered, the Appellant purchased the

land and building of M/s. B & Brothers Engineering Works by way of registered sale deed but in fact the alleged papers/documents prepared by

the Solicitor have not been forthcoming on the record for the reasons best known to the Appellant.

14. Drawing our attention to ground "L" of the appeal memo, the learned Counsel for the Appellant has submitted that even without calling upon

the Appellant to produce the sale deed by which the properties are purchased, adverse inference was drawn against the Appellant. It is difficult for

us to swallow this submission made by the learned Counsel for the Appellant because none has given invitation to produce copy of the index of the

property above referred and the Appellant ought to have produced all the documents referred above at the initial stage before the Labour Court

but he has failed to do so for which the Appellant should blame himself. The learned Single Judge has passed order dated 24.2.2011 in Special

Civil Application No. 15232 of 2010 very elaborately and pain-taking covering of all the aspects and we have perused the same and are in

agreement with all the findings of the legal position as well as the factual aspects narrated by the learned Single Judge in the said order. Thus we do

not find any infirmity or illegality in the order passed by the learned Single Judge in Special Civil Application No. 15232 of 2010 dated 24.2.2010.

15. In the result, this appeal is devoid of merits and is accordingly dismissed.

16. In view of the order passed in the main matter, the Civil Application does not survive and the same is accordingly disposed of.