
(1977) 11 BOM CK 0046
In the Bombay High Court
Case No : First Appeal No. 659 of 1975

Indian Express News Papers Ltd.

APPELLANT

Vs

K. Karunakaran

RESPONDENT

Date of Decision : 21-11-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Industrial Disputes Act, 1947 — Section 25F, 7

Citation : (1979) 81 BOMLR 297

Hon'ble Judges : Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Naik, J.—This is an appeal by the original defendant No. 2 against the judgment and decree of the learned Judge of the City Civil Court, Bombay, dated January 27, 1975, in S.C. Suit No. 2329 of 1962.

2. The question involved in this appeal is as to whether the Civil Court has jurisdiction to entertain and try the suit in question.

3. It arises under the following circumstances: The plaintiff respondent No. 1 was appointed by the defendant No. 1-Express News Papers (Private) Ltd., as a sub-editor of "Sunday Standard" on April 1, 1948 and he served in that capacity till January 31, 1951. On February 1, 1951 the plaintiff was transferred to the National Standard of defendant No. 1 as a sub-editor. Sometime in June 1953, the National Standard merged with the "Indian Express" daily paper. On August 3, 1953 the plaintiff was transferred from the editorial department of the Indian Express to editorial department of the "Screen", which is a weekly newspaper-On January 6, 1965, in appreciation of the good work done by the plaintiff, the management was pleased to promote the plaintiff as a chief sub-editor of the Screen with effect from January 1, 1955 and to give him an increment of Rs. 50 per month raising his salary to Rs. 375 per month. On May 1, 1959, the defendant No. 1 disposed of its assets and liabilities and entire business to the

defendant No. 2-the present appellant viz. "Indian Express News Papers (Bombay) Ltd., Bombay". On May 29, 1959, the Government accepted the recommendations of the wage committee and passed orders accordingly. In respect of the daily papers recommendations were given retrospective effect with effect from June 1, 1958 whereas in respect of weekly papers these orders took effect only from the date of the order viz. May 29, 1959.

4. It is as against this background that on May 28, 1962, the plaintiff filed the suit giving rise to this appeal, for a declaration that the defendants are bound to recognize him as a chief sub-editor of Daily Newspapers and also to pay him his salary according to the wage scale applicable to a chief sub-editor of a daily newspaper with retrospective effect from June 1, 1958 or, in the alternative, for a declaration that the defendants are bound to pay him dearness allowance in addition to the basic salary and for other consequential reliefs. It may be mentioned that although he was in fact working as an editor of a weekly newspaper viz.- the Screen, his allegation was that there was an oral understanding that he would be treated and paid as an editor of the daily newspaper.

5. The suit was resisted by both the defendants. The defendant No. 1 pointed out that having regard to the fact that it has transferred its entire interest to the defendant No. 2 on May 1, 1959, it is no longer responsible for the plaintiff's claim.

6. The suit was mainly resisted by the defendant No. 2. Having traversed the allegations of the plaintiff on merits the defendant No. 2 contended that the civil Court had no jurisdiction to entertain this suit.

7. On the issues settled for decision, the learned Judge rejected the defendant's contention on the point of jurisdiction. He also did not agree with the alleged oral agreement set up by the plaintiff to treat him as a chief editor of a daily newspaper even while in fact serving as an editor of a weekly paper. He, however, accepted the other claim of the plaintiff and directed the defendant No. 2 to pay him Rs. 80 per month as dearness allowance in addition to Rs. 400 per month which he held to be the basic salary.

8. The correctness of that judgment and decree is challenged by the defendant No. 2 by filing this appeal. As against that the plaintiff has filed cross-objections to part of decree dismissing his suit to the extent of his prayer for declaration that the defendant should be directed to treat him as a chief sub-editor of a daily newspaper.

9. Mr. Kapadia, learned counsel for the appellant defendant No. 2 has assailed the judgment of the trial Court on the point of jurisdiction. That is how the question which arises for my decision in this appeal and which is sufficient to dispose of this appeal is one about the jurisdiction of the City Civil Court to entertain the suit.

10. The question of jurisdiction has got to be resolved in the light of the relevant enactments applicable to the claim of the plaintiff. The first of such enactments is the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as the "Act of 1955"). The second one is the Working Journalists (Fixation of Rates of Wages) Act, 1958 (hereinafter referred to as the "Act of 1958"). The Act of 1955 by its preamble provides that it is an act to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments.

11. Section 2(c) defines "newspaper employee" as any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment.

12. Section 2(1) defines the "working journalist" as

a person whose principal avocation is that of a journalist and who is employed as such in, or in relation to, any newspaper establishment, and includes an editor, a leader-writer, news editor, sub-editor, feature-writer, copy-taster, reporter, correspondent, cartoonist, news-photographer and proof-reader. . . .

13. Section 2(g) provides that all words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947, shall have the meanings respectively assigned to them in that Act.

14. Section 3 which provides that the Industrial Disputes Act, 1947, shall apply to working journalists, is to this effect:

3 (1) The provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall, subject to the modification specified in Sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act.

(2) Section 25F of the aforesaid Act, in its application to working journalists, shall be construed as if in clause (a) thereof, for the period of notice referred to therein in relation to the retrenchment of a workman, the following periods of notice in relation to the retrenchment of a working journalist has been substituted, namely :

(a) ...

(b) ...

15. There is no dispute that the plaintiff who is a sub-editor is a "working journalist" within the definition of the Section 2(f) and, therefore, a newspaper employee within the meaning of Section 2(c) of the Act of 1955. The Act as its preamble declares is an act to regulate the conditions of service of working journalists and other persons employed in newspaper" establishments. Section 2(g) specifically provides that all words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, shall have the meanings respectively assigned to them in that Act. In other words Section 2(g) engrafts

the definitions of the words and expressions in the Industrial Disputes Act, in so far as the same are not defined in this Act. Section 3 has specifically provided that the provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall apply to, or in relation to working journalists as they apply to, or in relation to, workmen within the meaning of the Industrial Disputes Act. It is true that the provisions in this Act apply subject to the modification mentioned in Sub-section (2) of Section 3, which as I have pointed out is a modification of only the provisions of Section 25F of the Industrial Disputes Act, 1947. In other words, barring the inconsequential modification of Section 25F of the Industrial Disputes Act, 1947, the provisions of the Industrial Disputes Act, 1947, are squarely and clearly applicable to the case of the plaintiff who is a working journalist.

16. That alone should be sufficient to uphold the contention of Mr. Kapadia that the civil Court has no jurisdiction to entertain the suit. I may, however, point out that this Act together with its sister Act of 1958 form a complete Code in themselves.

17. Section 4 of the Act of 1955 deals with the special provisions in respect of certain cases of retrenchment. Section 5 deals with the payment of gratuity. Even there, there is a provision that the gratuity mentioned therein should be paid without prejudice to any benefits or rights accruing under the Industrial Disputes Act, 1947. Section 6 deals with working hours. Section 8 deals with constitution of wage board. Section 9 deals with fixation of wages. Section 11 which deals with powers and procedure of the Board provides that the Board may, for the purpose of fixing rates of wages, exercise the same powers and follow the same procedure as an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, exercises or follows for the purpose of adjudicating an industrial dispute referred to it.

18. Section 17 on which, the learned Judge of the City Civil Court has relied reads as under:

Where any money is due to a newspaper employee from an employer under any of the provisions of this Act, whether by way of compensation, gratuity or wages, the newspaper employee may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the collector and the collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

19. It would, therefore, appear that the Act of 1955 is a complete code in itself concerning the disputes between the employer and the working journalists and that the dispute has got to be settled according to the provisions of the Industrial Disputes Act, 1947- It is true that in Section 17 it is provided that without prejudice to any other mode of recovery an employee may make an application to the State Government for the recovery of any money due to him and that if

the State Government or such authority as the State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue. It is because of that expression, "without prejudice to any other mode of recovery", occurring in Section 17, that the learned Judge of the City Civil Court took the view that the jurisdiction of the City Civil Court to entertain the suit, was not taken away expressly or by necessary implication and that, therefore, the jurisdiction! which vests in the civil Court u/s 9 of the Civil Procedure Code, was not taken away. In taking that view the learned Judge was not right. He ignored the preamble of the Act. He also ignored the definition clauses 2(c), 2(f) and 2(g) of the Act and in particular the provisions of Section 3 of the Act. Had he taken these provisions into consideration he would have realised that the Act being a Code in itself, it is the authorities under the Industrial Disputes Act who could dispose of the dispute and that the expression, "without prejudice to any other mode of recovery" referred to in Section 17, has reference to the mode of recovery under the Industrial Disputes Act and not to the civil Court.

20. The next Act as I stated earlier to be considered is the Act of 1958- This is an Act to provide for the fixation of rates of wages in respect of working journalists and for matters connected therewith. Section 2(e) defines "wages" as wages as defined in the Industrial Disputes Act, 1947. Section 2(f) reads as under:

Working Journalists Act" means the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955;

21. Section 9 of this Act is as under:

9. (1) Where any amount is due under this Act to a working journalist from an employer, the working journalist may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government, or such authority as the State Government may specify in this behalf, is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of revenue.

(2) If any question arises as to the amount due under this Act to a working journalist from an employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it u/s 7 of the Industrial Disputes Act, 1947, and the said Act shall have effect in relation to the Labour Court as if the question so referred were a matter specified in the Second Schedule to that Act which has been referred to the Labour Court for adjudication,

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference, and any amount found due by the Labour Court may be recovered in the manner provided in Sub-section (1).

22. Here also by relying on the expression, "without prejudice to any other mode of recovery", referred to in Section 9(1), the learned Judge of the City Civil Court took the view that that expression would go to show that the jurisdiction which is vested in the civil Court by Section 9 of the CPC was not taken away, But as I have observed while interpreting a similar expression occurring in Section 17 of the Act of 1955, that expression has got reference to the remedy available under the Industrial Disputes Act, 1947 and that has no reference to the remedy available u/s 9 of the Civil Procedure Code. In fact since the act of 1955 is a complete code in itself, the proceedings arising under the said Act would completely oust the jurisdiction of the civil Court.

23. In this connection I may refer to certain authorities which are in accord with my view. In the *Express Newspapers v. Labour Court* [1963] II L.L.J. 764, the facts were these; The respondent who was working as a journalist was dismissed by the Express Newspapers (Private) Ltd., on May 16, 1959. Shortly thereafter on May 29, 1959, the report of the wages committee appointed under the Act of 1958 was accepted by the Government and the report was published in the gazette under which the wages of the working journalists in respect of daily papers were revised with effect from June 1, 1958. Relying on that fact of acceptance of the report by the Government the employee moved the Government. The Government was pleased to make a reference in respect of the reliefs claimed by the employee. It was that order which was challenged by the Express Newspapers (Private), Ltd., viz. the defendant No. 1 in the instant suit, challenging the jurisdiction of the labour Court to entertain the matter. That contention was rejected on the ground that the dispute was clearly referable u/s 9(2) of the Act and that Sub-section (2) of Section 9 of the Act clearly, categorically and specifically applied all the provisions of the Industrial Disputes Act as if the matter so referred were specified in Schedule II of the Act. It was further observed that it could not be denied that all the provisions of the Industrial Disputes Act applied whatever the inconvenience may be to the petitioner. It was further observed that the labour Court had undeniable jurisdiction to deal with the matter.

24. In *Samachar Bharti v. Kedar Nath* (1972) 26 F.L.R. 226 a division Bench of the Patna High Court has observed that the Working Journalists Act read with the Industrial Disputes Act provides a complete code to regulate conditions of service of working journalists, and that that being so, it could be held that the conditions of service of the respondent are exclusively governed by the Working Journalists Act and the Industrial Disputes Act, and for the redress of his grievance if any, he has to follow the remedy provided therein. That was a case of a working journalist who was discharged from service.

25. Reference may also be made to the decision in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, In para. 9 of the judgment, it is observed (p. 2243):

It would thus be seen that through the intervention of the appropriate

government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial disputes. But since an individual aggrieved cannot approach the Tribunal or the Labour Court directly for the redress of his grievance without the intervention of the government, it is legitimate to take the view that the remedy provided under the Act is not such as to completely oust the jurisdiction of the Civil Court for trial of industrial disputes. If the dispute is not an industrial dispute within the meaning of section 2(k) or within the meaning of section 2A of the Act, it is obvious that there is no provision for adjudication of such disputes under the Act. Civil Courts will be the proper forum. But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the Civil Court. It is plain that he can't have both. He has to choose the one or the other. But we shall presently show that the Civil Court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event 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 alone.

(Emphasis supplied indicated in italics-Ed.)

26. It is not disputed that in the instant case, the foundation of the plaintiff's right of a suit is the Act of 1955. Clearly therefore the civil Court will have no jurisdiction. Further on in para. 23, the Supreme Court has summed up the principles about the question of jurisdiction as under (p. 2250):

To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus :

- (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
- (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.
- (4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either section 33C or the raising of an industrial dispute, as the case may be.

27. As I stated earlier, it is not disputed that in the instant case the dispute in

fact relates to the enforcement of a right or an obligation created under the Act viz. the Act of 1955 read with the Act of 1958- Therefore, the instant case is clearly governed by the third principle which is set out by the Supreme Court in para. 23 just referred to.

28. Paragraph 24 of the judgment again provides as under (p. 2251):

We may, however, in relation to principle stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of section 2 (k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an sponsored workman which in view of the provision of law contained in section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle 8 stated above.

29. Having regard to this position of law and particularly the preamble of the Act of 1955 and Section 3 of the Act of 1955, it would appear that the trial Court was in error in holding that the civil Court has jurisdiction to entertain the suit. But it must be said in fairness to the trial Court that these provisions of the Act of 1955 were not brought to the notice of the trial Court.

30. It may be stated in fairness to Mr. Manjil, learned counsel for the plaintiff-respondent that he does not now dispute the fact that the civil Court has no jurisdiction to entertain the suit. He, however, submitted that if and when the plaintiff chooses to move the labour Court, the defendant-appellant should not raise a plea of limitation. Mr. Kapadia, however, makes a statement that in the event of the plaintiff-respondent moving the authorities in the matter, within a period of three months from to-day, the appellant-defendant No. 2 would not raise the plea of limitation.

31. In the result, the appeal is allowed. The Cross-objections are allowed to be withdrawn. The decree of the trial Court is set aside. There shall be no order as to costs of this appeal.