

(1964) 10 BOM CK 0009

In the Bombay High Court

Case No : Civil Revision Application No. 411 of 1963

Kewalram Ghana Shyamdas and Others

APPELLANT

Vs

Ram Manohardas Kalyandas

RESPONDENT

Date of Decision : 23-10-1964

Acts Referred:

Payment of Wages Act, 1936 — Section 15(2), 22

Citation : AIR 1965 Bom 185 : (1965) 67 BOMLR 45 : (1965) 10 FLR 114 :
(1965) ILR (Bom) 372 : (1965) MhLj 220

Hon'ble Judges : Chainani, C.J; Tambe, J; Chandrachud, J

Bench : Full Bench

Advocate : A.G. Kripalani and L.A. Kripalani, for the Appellant; K.B. Sukthankar and Govt. Pleader, for the Respondent

Judgement

Chianani, C.J.

(1) The facts in this case are briefly these. On 28th December 1956 the respondent made an application to the Authority appointed under the Payment of Wages Act for recovering wages for the period August 1953 to December 1955, which according to him had not been paid to him by the petitioner. Under the first proviso to sub-section (2) of section 15 of the Act the application has to be made to the authority within one year from the date on which the payment of wages was due to be made. The second proviso permits an application to be made after the period of one year when the applicant satisfied the authority that he had sufficient cause for not making the application within such period. The authority refused to condone the delay in making the application for the period prior to December 1955. The authority directed the petitioners to pay to the respondent his wages for the month of December 1955, leave wages and notice pay. The respondent did not appeal against this order. On 2nd January 1958 the respondent filed a suit in the Court of Small Causes, Bombay for recovering the wages alleged to have been due to him for the period from 1-12-1954 to 30-11-1955. The applicant denied the respondent's claim. They also contended

that the Small Cause Court had no jurisdiction to entertain the suit by reason of section 22 of the Payment of Wages Act. This contention was accepted by the trial Judge and the suit was dismissed. An application was then made to a Bench of the Small Cause Court u/s 38 of the Presidency Small Cause Courts Act. Relying on the observation made in Special Civil Application No. 879 of 1956 (Bom), the Bench of that Court held that the suit filed by the respondent was maintainable. The decree passed by the trial Court dismissing the suit was therefore set aside and the suit was remanded to the trial Court. Thereafter the petitioners filed the present Civil Revision Application, in which it has been contended that the view taken by the Bench of the Court of Small Causes is erroneous. This Civil Revision Application came up for hearing before a Division Bench of this Court, which decided to refer it to a Full Bench.

(2) The question which arises for consideration by the Full Bench is as under :

"Whether a Civil Court has jurisdiction to entertain a suit by an employee against his employer for recovery of wages, after the expiry of the period of limitation prescribed by sub-section (2) of section 15 of the Payment of Wages, Act, 1936 for making an application to the Authority appointed under this Act, or after the Authority has refused to condone the delay in making such an application."

Sub-section (1) of section 15 of the Payment of Wages Act states that the State Government may appoint one or more persons to be the authority or authorities to hear and decide for any specified area all claims arising out of deductions from wages or delay in payment of wages to persons employed or paid in that area. Sub-section (2) of this section, in so far as it is material, provides :

"Where contrary to the provisions of this Act and deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person.....may apply to such authority for a direction under sub-section (3)....."

Provided that every such application shall be presented within one year from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of one year when the applicant satisfies the authority that he had sufficient cause for not making the application within such period."

Sub-section (3) states that where any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages, or give them an opportunity of being heard, and after such further inquiry, if any, as may be necessary, may direct the refund to be employed person of the amount deducted or the payment of delayed wages. Sub-section (5) provides that any amount directed to be paid under this section may be recovered by the authority as an arrear of land revenue. This section therefore provides for the constitution of a special Tribunal

to hear and decide all claims arising out of deductions from wages or delay in payment of wages, as defined in the Act. The section also lays down that an application under this section must be made to the authority within one year from the date on which the deduction from the wages was made or from the date on which the wages were payable. The application may be made even after the expiry of one year, provided the employee satisfies the authority that he had sufficient cause for not making the application within such period.

(3) Sub-section (1) of section 17 provides for an appeal against an order made by the authority. Sub-section (2) of this section states that save as provided in sub-section (1), any order dismissing either wholly or in part an application made under sub-section (2) of S. 15, - or a direction made under sub-section (3) or sub-section (4) of that section shall be final. This provision therefore gives finality to the order made by the authority u/s 15, unless it is set aside or modified in appeal u/s 17. Section 22 is in the following terms.

"22. No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed-

(a) forms the subject of an application u/s 15 which has been presented by the plaintiff 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal u/s 17 or

(b) has formed the subject of a direction u/s 15 in favour of the plaintiff; or

(c) has been adjudged, in any proceeding under S. 15, not to be owed to the plaintiff or

(d) could have been recovered by an application u/s 15."

The marginal note to this section is : "Bar of suits". This section therefore ousts the jurisdiction of a civil court in respect of the matters specified therein. It cannot therefore be said that section 15 provides a remedy in addition to that available under the ordinary law. Clause (a) bars a suit when the claim made u/s 15 is under investigation either before the authority or in appeal. Clause (b) does the same when the employee has succeeded in his application and has obtained a direction in his favour in view of clause (c) no suit can lie when in the proceeding under S. 15 it is found that no sum is due to the employee. Clause (d) bars a suit when the sum claimed could have been recovered by an application under S. 15. The question, which we have to determine, is in regard to the interpretation of this clause (d).

(4) In construing this clause it is necessary to bear in mind its phraseology. Omitting clauses (a), (b) and (c), the section reads :

"No court shall entertain any suit for the recovery of wages or of any deduction from wages, in so far as the sum so claimedcould have been recovered by any application under S. 15".

The significant words are "sum so claimed could have been recovered by an

application u/s 15." The emphasis seems to be more on the mode of recovery specified in this clause that is, by an application u/s 15 rather than on the time when the remedy is resorted to. If, therefore, the sum claimed could be or could have been recovered by an application u/s 15, a suit for the recovery of the same will be barred. Under the first proviso to sub-section (2) of section 15, an application under this section must be made within one year from the date on which the wages became due for payment or the date on which they are alleged to have been wrongfully deducted. It has not been disputed before us that during this period of one year the jurisdiction of the Civil Court is ousted. The same will be the position if the employee makes the application after one year and shows satisfactory cause for the delay in making it. It is difficult to see why the position should be different merely because of laches or negligence on the part of the employee in either not making an application to the authority or making it after the prescribed time but without there being a sufficient cause for not making it in time. His failure to take advantage of the special remedy provided cannot affect the jurisdiction of the Court. It seems to us therefore that if it was possible for the employee to recover the amount by making an application for its recovery u/s 15 within the prescribed time before he institutes a suit, the Court will not be competent to entertain the suit. If the employee delays the making of the application until the period of limitation has expired, and if he is unable to show sufficient cause for the delay, it cannot be said that he could not have recovered the amount by an application u/s 15.

(5) It has been urged that the word "recovered" indicates that clause (d) has reference to the stage of recovery referred to in sub-section (5) of section 15, that is, when the amount directed to be paid under sub-section (3) of section 15 is to be recovered as an arrear of land revenue. This argument does not seem to be correct. The question of recovering the amount as an arrear of land revenue can only arise after a direction has been made under sub-section (3) of section 15. Clause (b) in section 22 bars a suit when such a direction has been made. Apart from the fact that sub-section (5) does not provide for a separate application for realising the amount directed to be paid, no suit can lie after such a direction has been made, whether the amount is or is not recovered. Clause (d) would therefore become redundant if the above view is accepted.

(6) Having regard to the context, the words "sum so claimed could have been recovered by an application u/s 15," in our opinion mean "could have made an application for recovery of the sum so claimed u/s 15." The test for determining whether a suit can lie therefore is not only whether on the date of the suit an application can be made to the authority u/s 15, but also whether such an application could have been made before the institution of the suit. The jurisdiction of the Civil Court to entertain a suit will not consequently depend upon the choice of the employee as to whether he should or should not apply to the authority. The Civil Court's jurisdiction will be ousted if the application could have been made to the authority before the suit is filed. If, therefore, an employee does not apply to the authority for recovering his wages within one

year but fails to satisfy the authority that he had sufficient cause for not making the application within one year, he will not be able to maintain a suit for the same purpose.

(7) The view, which we are taking, seems to be in accordance with the intention of the legislature. The Act provides for the constitution of a special tribunal for deciding claims in regard to wages. The proceedings before the tribunal are cheap, because by reason of section 15A the applicant is not liable to pay any court-fees. The limitation of one year has been prescribed for making applications u/s 15, so that claims in regard to wages may be made and decided expeditiously. If, however, for any good reason an employee is not able to make the application within one year, he may do so after the expiry of this period by satisfying the authority on this point. Having provided a cheap and expeditious remedy and having constituted a special tribunal for this purpose, the legislature intended that it should have exclusive jurisdiction in respect of matters, which it could entertain. Subject to appeal finality has therefore been given to the decisions of the authority, while section 22 deprives the Civil Court of its jurisdiction to deal with such matters.

(8) Mr. Sukthankar has strongly relied on the following observations of Chagla C.J. in Special Civil Appl. No. 879 of 1956 D/- 3-9-1956 Bom.

"Now, as has been often pointed out, the Payment of Wages Act was enacted in order to confer upon the workers certain important rights. A quick and expeditious remedy was provided for recovering wages and a special Tribunal was set up. But it would be entirely erroneous to suggest that any provision under the Payment Of Wages Act was in derogation of the ordinary rights of employees. If an application could be made under S. 15, then undoubtedly a civil Court is debarred from entertaining a suit in respect of that cause of action. But in order that an application could be made u/s 15, not only must the application refer to the subject matter referred to in that section, but the application must be within the time also mentioned in that section. In other words, if an employee wishes to avail himself of this expeditious remedy and wishes to go before the special tribunal, he must go within one year. But if he fails to do so, it does not follow that he is debarred from going to the civil Court within the period of limitation provided by the Limitation Act to recover his wages.:"

With respect, it may be pointed out that S.22 in terms takes away the remedy available to an employee under the ordinary law to the extent specified in the section. This section, is, therefore, to the extent specified therein, in derogation of the ordinary rights of employees to approach a Civil Court. Clause (d) does not also say, "If an application could then be made u/s 15." The words used are: "the sum claimedcould have been recovered by an application u/s 15." If therefore when a suit is filed the Court finds that at any time before the institution of the suit it was possible for the employee to make an application for the recovery of the wages claimed u/s 15, it will have no jurisdiction to entertain the suit. With respect, therefore, we do not agree with the above observations.

They also appear to be obiter, as they were not necessary for decision of the particular case before the Division Bench.

(9) In *Bhagwat Rai v. Union Of India* ILR (1953) Nag. 433 : AIR 1953 Nag. 136 a Division Bench of the Nagpur High Court has taken the same view as we are inclined to take. It was held in that case that section 22(d) of the Payment of Wages Act excludes the jurisdiction of a Civil Court to entertain a claim, which could have been recovered by an application u/s 15 of the Act, that this exclusion is absolute and does not depend on the choice of the claimant and that the jurisdiction of the Civil Court is not revived by his omission to make an application u/s 15 within the time allowed by law.

(10) The reply to the questions formulated for our consideration will, therefore, be in the negative. The matter may now be placed before a Division Bench for further orders.

(11) Question answered in negative.