
(2019) 05 UK CK 0259

In the Uttarakhand High Court

Case No : Writ Petition No. 1203 Of 2019 (M/S)

Managing Director Hilltop Builders Pvt. Ltd

APPELLANT

Vs

Prayag Dutt Pathak

RESPONDENT

Date of Decision : 24-05-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 11
Code Of Civil Procedure, 1908 — Order 6 Rule 17
Constitution Of India, 1950 — Article 227

Citation : (2019) 05 UK CK 0259

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Dharmendra Barthwal, Sheetal Bisht

Final Decision : Dismissed

Judgement

Lok Pal Singh, J

1. Petitioner has invoked the extra-ordinary jurisdiction of this Court under Article 227 of The Constitution of India seeking a writ of certiorari quashing the order dated 09.04.2019 (annexed as Annexure No.1 to this writ petition) passed by learned Presiding Officer, Industrial Tribunal and Labour Court Haldwani, District Nainital in Misc. case no.30 of 2018 Prayag Dutt Pathak vs. Managing Director Hilltop Builders and further be pleased to dismiss the application dated 11.01.2019 (paper no.18D) Annexure no.14 to the petition).

2. Factual background of the case is that the respondent raised an industrial dispute before the Labour Court, Haldwani, which was registered as misc. case no.30/2018. Petitioner contested the case by filing written statement. Subsequently, the respondent moved an amendment application which was however withdrawn by him. Thereafter, the respondent filed another amendment application stating that, due to some typographical error, amount of salary has wrongly been written in the claim petition and sought amendment that in the second line of para-2 of the application Rs.9,000/- may be written instead of

Rs.18,500/-; in the last line of the same para it may be written that initially the respondent was getting Rs. 9,000/- which was later on enhanced to Rs.18,500/-. Further, in para-5, respondent sought to add the demand of salary as Rs.55,500/-. Petitioner filed his objections stating that the application is barred by principles of res judicata and is not maintainable, on the ground, that the application has been filed more or less on the same grounds, on which earlier amendment application was filed. After hearing the parties, Presiding Officer, Industrial Tribunal and Labour Court, Haldwani, District Nainital, observed that the amendment sought by the respondent does not change the nature of the claim petition and that the earlier amendment application was not dismissed on merit rather it was dismissed as not pressed and accordingly by order dated 09.04.2019, allowed the amendment application.

3. Learned counsel for the petitioner would contend that the Labour Court ought to have rejected the second application for amendment as the same was barred by the principles of res judicata. To buttress his submission, learned counsel would place reliance on a judgment of Hon'ble Apex Court in the case of Pondicherry Khadi & Village Industries Board v. P. Kulothangan (2004) 1 SCC 68 and would refer to following paragraph:-

"10. In our opinion, the appellant has correctly contended that the industrial dispute pertained to the same subject matter dealt with in the earlier writ proceedings and was barred by the principles of res judicata. It is well established that although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of res judicata laid down under Section 11 of the Code are applicable¹ including the principles of constructive res judicata. Thus in State of U.P. v. Nawab Hussain Pondicherry Khadi & Village Industries Board v. P. Kulothangan (2004) 1 SCC 68 it was held that the dismissal of a writ petition challenging disciplinary proceedings on the ground that the charged officer had not been afforded reasonable opportunity to meet the allegations against him, operated as res judicata in respect of the subsequent suit in which the order of dismissal was challenged on the ground that it was incompetently passed. This Court also held: (SCC p.808) It may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process."

4. I have heard learned counsel for the parties and perused the entire material available on file.

5. A perusal of the order impugned would reveal that reasons have been recorded by the Labour Court while allowing the amendment application. Petitioner has an opportunity to file written statement against the amended petition before the Presiding Officer, Labour Court. In my considered view, neither any prejudice nor any miscarriage of justice has been caused to the petitioner by allowing the amendment application as he can rebut the averments

of the claim petition by filing an additional written statement.

6. Hon'ble Apex Court in the case of Raj Kumar Bhatia vs. Subhash Chander Bhatia (2018) 2 SCC 87 has held as under:

"12. This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In *Sadhna Lodh v National Insurance Company*, this Court has held that the (2003) 3 SCC 524 supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The Trial Court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 of the CPC. There was no reason for the High Court to interfere under Article 227. Allowing the amendment would not amount to the withdrawal of an admission contained in the written statement (as submitted by the respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary to note that it was on 21-9-2013 that an amendment of the plaint was allowed by the Trial Court, following which the appellant had filed a written statement to the amended plaint incorporating its defence. The amendment would cause no prejudice to the Plaintiff.

13. In the view which we have taken, it has not become necessary to consider the alternative submission of the appellant namely, that recourse taken to the jurisdiction under Article 227 by the respondent after filing an application for review before the Trial Court was misconceived. Since the matter has been argued on merits, we have dealt with the rival submissions.

13 Hence, on a conspectus of the facts and having due regard to the nature of the jurisdiction under Article 227 which the High Court purported to exercise, we have come to the conclusion that the impugned judgment and order is unsustainable. We accordingly allow the appeal and set aside the judgment of the High Court. The order passed by the Trial Court allowing the amendment of the written statement is accordingly affirmed."

7. Insofar as the case-law cited by learned counsel for the petitioner is concerned, the ratio of said judgment is not applicable to the facts and circumstances of the present case since in the present case earlier the amendment application was not decided on merit by the Presiding Officer.

Principle of res judicata or constructive res judicata would apply in the case where the matter in dispute has been decided earlier on merit.

8. For the reasons recorded above, writ petition lacks merit and is hereby dismissed. No order as to costs.