
(2000) 12 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1108 and 1138 of 2000

M/s Hanuman Das Chhagan Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 3 RLW 1533 : (2001) 2 WLC 271 : (2001) 2 WLN 62

Hon'ble Judges : Sunil Kumar Garg, J;B.J. Shethna, J

Bench : Division Bench

Advocate : Hemant Shrimali, for the Appellant;

Final Decision : Dismissed

Judgement

Smethna, J.

(1). These special appeals are disposed of by this common judgment and order as both of them are arising out of common judgment and order dated 25.9.2000 passed by the learned Single Judge whereby the learned Single Judge dismissed both the writ petitions on various grounds.

(2). Learned counsel Mr. Shrimali for the appellants vehemently submitted that the learned Single Judge has committed grave error in dismissing the writ petitions only on the ground of alternative remedy. He submitted that though the petitioners had alternative remedy available to them before the Civil Court by way of civil suit, the said remedy could not be said to be efficacious remedy. Therefore, it cannot be said to be alternative remedy. He submitted that the remedy should not only be alternative, but it should be efficacious. He also submitted that both the writ petitions were of the year 1994 and pending before this Court for nearly 6 years, therefore, it was not proper on the part of the learned Single Judge to dismiss both the writ petition on the ground of alternative remedy.

(3). It is clear from the record of the writ petition as well as reply filed by the

other side and the judgment of the learned Single Judge that the relationship between the appellants and respondents were purely contractual relationship. His very well settled by catena of decisions of Hon''ble Supreme Court that in case of contractual matters, ordinarily the writ petition should not be entertained by the High Court under Article 226 of the Constitution of India. In this regard, the following decisions are relevant:

(I) State of Himachal Pradesh vs. Raja Mahendra Pal and Ors. (1); (ii) Ram Badan Rai and Ors. vs. Union of India and ors. (2);

(iii) U.P. State Co-operative Land Development Bank Ltd. vs. Chandra Bhan Dubey and Ors. (3);

(I) Food Corporation of India & Ors. vs. Jagannath Dulta & Ors. (4); (v) Hindustan Petroleum Corporation Ltd. and Anr vs. Dolly Das (5).

(4). Similar view has been taken by the Full Bench of Five Hon''ble Judges of this Court In the case of Gopi Chand Teli vs. State of Rajasthan (6).

(5). In the latest judgment of Division Bench of this Court in the case of Laxman Singh Verma vs. State of Rajasthan & Ors.(7) and in unreported judgment of the learned Single Judge of this Court in the case of M/s. Marudhara Conductors and Anr. vs. Haryana State Electricity Board and Anr. (8), decided on 6.5.98 are on this point.

(6). In view of the above judgments of the Hon''ble Supreme Court as well as of this Court, it is not possible for us to lake a different view of the matter than the view taken by the learned Single Judge while dismissing both the writ petitions on the ground of alternative remedy. It cannot be said that the remedy of civil suit is not an alternative remedy for the petitioners. In our considered opinion, the alternative remedy of civil Suit before the competent Civil Court is efficacious remedy which should have been availed of by the appellants petitioners instead of approaching this Court by way of writ petition under Article 226 of the Constitution of India.

(7). Apart from that under the contract there was an arbitration clause itself, therefore, if the petitioners'' were of the opinion that it would take long lime in getting the civil suit decided then alters, they should have opted for arbitration proceedings as provided under the Arbitration Clause mentioned in the contract itself. In the case of M/s. Shreeji Industries, Jodhpur vs. The Slate of Rajasthan and Anr. (9), it has been held by this Court that where remedy by civil suit or arbitration is available to the petitioners, then this Court would not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

(8). At this stage, a request was made by learned Counsel Shri Shrimali for the appellants that this Court may direct the appellants to avail the alternative remedy of arbitration. From the operative part of the common judgment and order passed by the learned Single Judge, it is clear that the learned Single Judge while dismissing the writ petitions filed by the petitioners clearly observed

that "the petitioners shall be at liberty to raise even arbitration in matters wherever it is possible under the contract in which the money is due to the petitioners." In that view of the matter, there is no need for us to issue any such direction.

(9). This brings us to the last contention raised by the learned counsel for the appellants about the dismissal of the writ petition at final hearing stage on the ground of alternative remedy available to the petitioners after its admission. It was submitted by the learned counsel Shri Shrimali learned counsel for the appellants that it was not proper on the part of the learned Single Judge to dismiss the writ petition on the preliminary objection raised by other side at the time of final hearing on the ground of alternative remedy available to the petitioners, particularly when both the writ petitions were admitted and pending before this Court for last more than 5-6 years, it is true that both the petitions were filed in the year 1994 and the same came to be dismissed on the ground of alternative remedy in the year 2000 after a period of more than six years, but in our considered opinion, mere admission or pendency of petitions for six years would not be a ground in favour of the appellants - petitioners to get the matter decided on merits. Fully knowing it that they had alternative remedy either before the Civil Court or before the Arbitrator, the petitioners have preferred to approach this Court in its extraordinary jurisdiction under Article 226 of the Constitution and merely because the Court entertained the writ petitions at admission stage and admitted the same and said matters kept lying pending for 6 years would not be a ground to entertain this petitions if they had alternative remedy because with open eyes they have chosen to take risk. What difference it would make, if such objection is raised immediately or at final hearing stage. This Court is unnecessarily burdened with this type of litigations where the petitioners have alternative remedy.

(10). Under these circumstances, we are of the considered opinion that such a fortuitous circumstances should not be used by the appellants in their favour. It was submitted by learned counsel Shri Shrimali for the appellants that other Division Bench of this Court after entertaining the writ petitions/appeals decided the same on merits though preliminary objection regarding alternative remedy was raised because of pendency of matters before this Court for long time. He, therefore, submitted that it would not be proper for this Court to dismiss both the appeals only on the ground of alternative remedy. He submitted that the best course open to this Court is to refer this matter to the larger bench. With respect to the submission made by learned counsel for the appellants, we are of the opinion that on this very point, in the past the matter was referred to the larger Bench of this court and Five Hon''ble Judges of this Court in Full Bench have held that when there is alternative remedy available to the appellants - petitioners, then in such type of cases, the Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India (Gopichand Teli vs. State of Rajasthan (supra)).

(11). In the case of Laxman Singh Verma vs. State of Rajasthan and Ors. (supra), the Division Bench of this Court has held that mere pendency of petition or appeal would not be a ground to entertain the appeal or petition if the appellants or petitioners have alternative remedy available to them. We are in complete agreement with the view taken by the Division Bench of this court in Laxman Singh Verma's case (supra). Under these circumstances, we are of the considered opinion that when there is already a judgment of Five Hon"ble Judges of this Court, then it is not proper for us to refer the matter to the larger Bench because in some of cases other Division Bench of this Court have entertained appeals/petitions though there was alternative remedy. We are bound by the judgment of Full Bench of this court in Gopi Chand Teli's case (supra). Hence, this submission of Shri Shrimali also fails and is rejected.

(12). Having carefully gone through the Judgment and order passed by the learned Single Judge, we are of the considered opinion that while dismissing both the writ petitions on the ground of alternative remedy, the learned Single Judge has not committed any error which calls for interference of this Court. In the very well written judgment, the learned Single Judge has taken care of considering the latest Supreme Court Judgments and judgments of this Court and in our considered opinion, when there is alternative remedy of suit or arbitration available to the appellants, then this Court should not entertain the petition under Article 226 of the Constitution. We are in complete agreement with the reasons assigned by the learned Single Judge while dismissing the writ petition.

(13). In view of above discussion, both the appeals fail and are hereby dismissed.