
(2007) 02 MP CK 0092
In the Madhya Pradesh High Court
Case No : Civil Rev. No. 414 of 2006

Om Prakash Malviya

APPELLANT

Vs

Shambhu Nath Singh and Others

RESPONDENT

Date of Decision : 27-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Trade Unions Act, 1926 — Section 28J, 28J(1)

Citation : (2009) ILR (MP) 3449 : (2007) 2 MPLJ 562

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Arvind Shrivastava and Rajendra Gupta, for the Appellant; K.C. Ghildiyal and Rajesh Dubey, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

This revision is directed against the order dated 5-9-2006 passed by 1st Civil Judge Class-II, Baidhan. District Sidhi by which the trial Court rejected an application filed by Petitioner u/s 9 of Code of Civil Procedure, 1908 (hereinafter referred to as "Code" for short) and held that the Civil Court has jurisdiction to decide the suit.

This order has been assailed by the Petitioner on the ground that u/s 28J of the Trade Unions Act, 1926 (hereinafter referred to as "Act") the Civil Court has no jurisdiction to entertain a suit and the suit filed by Respondent No. 1 was not maintainable before the Civil Court. It is submitted that the trial Court erred in rejecting the application filed by the Petitioner. Reliance is placed to a single Bench judgment of Bombay High Court in Regional Manager M.S.R.T.C. Vs. Civil Judge, Senior Division and Others, and submitted that this revision be allowed and the suit filed by the Respondents be dismissed as not maintainable.

Learned Counsel for Plaintiff/Respondent submitted that the trial Court has

rightly held that the Civil Court has jurisdiction to decide the dispute between the parties. Apart from this, it is not a dispute in respect of members of the Union and provisions of Section 28J(1) of the Act. does not apply in the matter. So the suit was rightly entertained by the Civil Court. Reliance is placed to the Apex Court judgment in Borosil Glass Works Ltd. Employees" Union v. D. D. Bambode and Ors. (2001) 1 SCC 330 and submitted that this revision be dismissed.

The trial Court by the impugned order found that in this case the dispute is not industrial dispute, but it is a personal dispute between Plaintiff and Defendants and the bar created u/s 28J of the Act is not applicable and rejected the aforesaid application.

To appreciate the rival contention of the parties the averments in the plaint which is on record as Annexure P-I may be seen. In the aforesaid suit, the Plaintiff has sought a declaration that he be declared as a Regional Secretary and Regional Principal Officer of Rashtriya Colliery Mazdoor Sangh, Singrauli having its Head Office at Bindeshwari Dubey Smriti Bhavan Singrauli and a permanent injunction be issued against Defendant Nos. 1 to 7 restraining them to interfere in the functioning of Plaintiff, either themselves or through their agent, servant or assistant. The Defendant be restrained to act as a member or office bearer of the Union. Another prayer is for issuance of mandatory injunction that Defendant No. 1 be directed to handover the keys of lock which has been put at the office of Rashtriya Colliery Mazdoor Sangh. at Bindeshwari Dubey Smriti Bhavan Singrauli and all the assets of the aforesaid Union be directed to be handed over to the Plaintiffs.

From the perusal of averments made in the plaint it appears that the dispute is in respect of the membership of Defendant Nos. 1 to 7 and the status of Plaintiff as Secretary of the aforesaid Union. As per the case of Plaintiff the Defendant No. 1 was initially suspended from the office of Secretary of the Union and he was directed to handover the property of the Union to the Plaintiff. As the aforesaid order was not complied with hence the Defendant No. 1 was removed from the office of Regional Secretary and his primary membership was also terminated and he was again intimated to handover the possession and property to the Plaintiff. The Defendant Nos. 1 to 7 tried to form another parallel Union on 1-8-2005 and they were issued a show cause notice in this regard. Thereafter the proceeding under Sections 145 and 146, Criminal Procedure Code, were initiated before the S.D.M.. Baidhan and the office of Union was attached, but thereafter on filing of revision before the Sessions Judge the order was set aside. The order of Sessions Judge was affirmed by the High Court. Thereafter this suit has been filed against the Petitioners by Respondent No. 1 before the Civil Judge Class-II, Baidhan, District Sidhi. Section 28J of the Act as applicable in the Madhya Pradesh reads thus:

28J. Dispute as to officer of registered Trade Union - (1) If there is any dispute as to who is the lawful officer of a registered Trade Union, any person claiming to be such an officer or the Registrar may refer the dispute to the Industrial Court

in such manner and on payment of such fee not exceeding ten rupees as may be prescribed: [Provided that no fee shall be payable by the Registrar.)

(2) On a reference being made under Sub-section (1). the Industrial Court shall, after hearing the parties to such dispute and recording such evidence as it may consider necessary, decide the dispute and declare who is the lawful officer. The decision of the Industrial Court shall be final and shall not be called in question in any Court of law,

*[(2a) The costs of and incidental to the provisions of this section shall be in the discretion of the Industrial Court and the Industrial Court shall have full power to determine by whom the whole or any part of such costs shall be paid.

(2b) If any proceeding under this section the Industrial Court is. after hearing the person making the reference, satisfied that the ground on which the claim has been preferred is false or vexatious, the Court may after recording its reasons for holding such claim to be false or vexatious, make an order for the payment of costs by way of compensation which shall not be less than fifty rupees and not exceeding two hundred rupees to such person or persons as it may specify in this order.]

(3) No Civil Court shall entertain any suit or other proceedings in respect of any dispute which has been referred to the Industrial Court under Sub-section (1) and is pending before such Court and if any such suit or proceeding is pending in a Civil Court on the date of the reference Civil Court shall, on receipt of a notice from the Industrial Court, cease to exercise jurisdiction in respect thereof and shall forthwith transfer the record of such suit or proceeding to the Industrial Court". Sub-section (3) of Section 28J specifically provides that no Court shall entertain any suit or other proceedings in respect of any dispute which has been referred to the Industrial Court under Sub-section (1) and is pending before such Court. Meaning thereby if any dispute is pending before the Industrial Court in respect of dispute as envisaged under Sub-section (1) of Section 28J, civil suit is barred. The second part of Sub-section (3) provides that in case any suit is pending in a Civil Court on the date of reference, the Civil Court shall on receipt of a notice from the Industrial Court, cease to exercise jurisdiction in respect thereof and shall forthwith transfer the record of such suit or proceeding to the Industrial Court. The second part provides that on filing a reference during the pendency of suit before the Civil Court, the Civil Court on receipt of notice from Industrial Court shall transmit the record of such suit to the Industrial Court. Aforesaid both the provisions are very specific. First part of Sub-section (3) provides that during the pendency of any reference before the Industrial Court no civil suit shall be entertained by the Civil Court and the second limb of Sub-section (3) provides that if no reference is pending on the date or filing of suit and during the pendency of suit if any reference is filed in respect of subject matter of civil suit, the Civil Court shall transmit the record of suit to the Industrial Court. In the present case the suit was filed on 27-1-2006 and admittedly on the aforesaid date or thereafter no reference by any of the party to

the proceedings has been filed, so neither first limb nor the second limb of Sub-section (3) applies in the present case.

Learned Counsel for Petitioner has placed reliance to the judgment of Bombay High Court in Regional Manager M.S.R.T.C. (supra) in which the learned Single Judge held in paras 11 and 12 of the judgment that Section 28(1A) of the Trade Union Act as applicable in Maharashtra, (which is *pari materia* with Section 28J and incorporated by an amendment in M.P.) has been enacted to meet out the exigency in respect of pending proceeding as provided in the Act, on coming into force of the amendment which were to be transmitted to the Industrial Court. But no civil suit can be filed after enactment of Section 28(1A) of the Act in respect of subject-matter which is covered u/s 28 of the Act.

Recently Apex Court in Borosil Glass Works (supra) considered the legal position in which the Apex Court held thus:

Under Section 28(1A) the jurisdiction of the Civil Court is barred only in respect of matters which have been referred to an Industrial Court u/s 28(1A). If a dispute does not fall u/s 28(1A) then that dispute can always be taken to a Civil Court. As a dispute whether a person should or should not be admitted as a member is not a dispute falling within Section 28(1A) it would always be open to such persons to approach a Civil Court for resolution of their dispute. Needless to say that if the law permits they may also raise an industrial dispute before the Industrial Court in that behalf.

The law laid down by the Apex Court makes the position clear that the civil suit is barred only in respect of matters which have been referred to an Industrial Court. If no such reference is pending or filed before the Industrial Court then the Civil Court is having jurisdiction to entertain and decide the dispute. In the present case no reference was pending on the date when the suit was filed nor any reference has been filed till date thereafter. So the civil suit which has been filed by Respondent No. 1 is not barred and the Civil Court has rightly entertained the suit. In the impugned order there is no error of jurisdiction warranting interference of this Court.

This revision is without merit and is accordingly dismissed with no order as to costs.