

(1998) 03 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No"s. 1711 and 1712 of 1998 Arising out of SLP (C) No"s. 13720 and 17490 of 1997

Premier Textile Processors

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:

Citation : AIR 1999 SC 1523 : (1998) AIRSCW 3934 : (1998) 99 ELT 484 : (1998) 9 SCC 643

Hon'ble Judges : V. N. Khare, J;S. P. Bharucha, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. We shall deal with the facts of the appeal arising out of SLP (C) No. 17490 of 1997. The appellant is engaged in the process of cotton and man-made fabrics on jobwork. The questions whether the processing activities constituted manufacturing and regarding the assessable value of the processed fabric were the subject-matter of a writ petition filed by the appellants in the High Court at Bombay. The appeal having been dismissed, the appellants approached this Court by way of a special leave petition. As an interim order, pending the disposal of the appeal by special leave, this Court required the appellants to give a bank guarantee for 50% of the amount in dispute and to deposit the balance 50% in the High Court. The amount deposited in the High Court pursuant to this interim order was invested in fixed deposit. On 4-11-1988, the appeal was dismissed by this Court.

3. The question then was who was to get the amount of the interest that had accrued on the fixed deposits because there was no order in this behalf.

4. The appellants applied to the Prothonotary and Senior Master of the High Court for release of the interest amount to it and on 20-7-1992, the Prothonotary

so ordered. The order of the Prothonotary was assailed by the respondents by taking out Notice of Motion No. 400 of 1992 in the High Court. On 25-6-1993, Notice of Motion No. 400 of 1992 was dismissed. The order in this behalf reads thus:

"The relief sought in the Notice of Motion cannot be granted unless the Union of India seeks clarification from the Supreme Court in respect of payment of interest on the amount deposited in court and invested.

Notice of Motion dismissed. No order as to costs. The Union of India to file proceedings for clarification before the Supreme Court within 8 weeks.

Prothonotary not to part with monies until further orders."

The respondents' clarification application made pursuant to the above order, was dismissed by this Court on 10-5-1996. Pursuant thereto, the appellants wrote a Praecipe to the Prothonotary claiming the interest amount. The Praecipe was placed before a Division Bench, presumably because the Prothonotary had been ordered not to part with the monies until further orders. What was shown on the Daily Board on that day, as we have seen, was the writ petition. The application made in the Praecipe was argued before the Division Bench. When, however, the judgment thereon which had been reserved was to be delivered, the Daily Board showed that it was to be delivered in Notice of Motion No. 400 of 1992; and, indeed, the judgment which is now under challenge before us is in Notice of Motion No. 400 of 1992. The judgment allowed Notice of Motion No. 400 of 1992 thus:

"Notice of Motion No. 400 of 1992.--Notice of Motion is made absolute in terms of prayer Clauses (a) and (b) which read as under:

(a) That the order dated 20-7-1992 passed by the Prothonotary and Senior Master of this Court in Miscellaneous Writ Petition No. 394 of 1979 be set aside.

(b) That the amount of interest accrued on Rs 82,59,317.61 p., deposited by the petitioners in respect of past dues in cash be paid to the respondents."

5. The facts insofar as they relate to the appeal arising out of SLP (C) No. 13720 of 1997 are similar except that the Prothonotary had not passed an order in 1992 releasing the interest amount to the appellant and the respondents' Notice of Motion (503 of 1992) had not been dismissed on the earlier occasion but had been "disposed of" in similar terms.

6. Thus, these appeals.

7. Learned counsel for the appellants submitted that Notices of Motion Nos. 400 and 503 of 1992 had been dismissed/disposed of as far back as 1993; there were no orders setting aside the orders of dismissal/disposal and restoring these Notice's of Motion to the file. The judgment under appeal purporting to allow these Notices of Motion was, therefore, ipso facto ineffective and inoperative and should be set aside.

8. We had asked Mr Bhat, learned Additional Solicitor General, appearing on behalf of the respondents, whether the orders of dismissal/ disposal of Notices of Motion Nos. 400 and 503 of 1992 had been vacated and these Notices of Motion had been restored to the file; he could not say that they were. Certainly, there is no application or order placed before us which indicates that the orders of dismissal/disposal of these Notices of Motion had been sought to be vacated or had been vacated before the judgment under appeal was passed. It would, therefore, appear clear that the judgment and order under appeal was delivered on Notices of Motion which had already been dismissed/disposed of and, therefore, it is of no effect.

9. Mr Bhat submitted that, in any event, we should leave it open to the respondents to move the High Court again on appropriate applications. Having regard to the fact that the clarification applications made by the respondents to this Court (which prayed, inter alia, for release to them of the interest amounts) have been dismissed, there is no way in which the respondents can lay claim to the interest amounts.

10. We are distressed that the High Court should have passed orders allowing Notices of Motion Nos. 400 and 503 of 1992 when these Notices of Motion had already been dismissed in 1993. We are distressed that the Union of India (the respondents) did not bring it to the knowledge of the Division Bench when the judgment and order under appeal was delivered, or thereafter, that these Notices of Motion had already been disposed of and that it contested these appeals.

11. The appeals are allowed, with costs. The judgment and order under appeal is set aside. It is made clear that the earlier orders dismissing Notice of Motion No. 400 of 1992 and disposing of Notice of Motion No. 503 of 1992 are the operative orders thereon. The Prothonotary and Senior Master of the High Court at Bombay shall release the amounts of interest that had accrued on the fixed deposits as aforestated to the respective appellants.