(2016) 01 P&H CK 0414

In the Punjab And Haryana At Chandigarh

Case No : COCP No. 188 of 2011 (O&M)

Raj Bahadur Pal APPELLANT

Vs

Deepak Singh and Others RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:
Industrial Disputes Act, 1947 — Section 17-B, Section 25FF

Citation : (2016) 1 PLR 701

Hon'ble Judges : K. Kannan, J.

Bench : Single Bench

Advocate : Namit Kumar, Advocate, for the Appellant; V.K. Sachdeva, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

K. Kannan, J.—CM No. 23612-CII of 2015

Application is allowed, as prayed for. Additional affidavit filed on behalf of respondents 2 and 3 is taken on record.

COCP No. 188 of 2011

1. A plea in contempt is made by the employee-respondent contending that the direction of this court in CWP No. 9518 of 2000 for payment of the benefits of Section 17-B of the Industrial Disputes Act have not been complied with. The writ petition was a challenge to the order of reinstatement granted by the Labour Court. After the disposal of the case by the Labour Court and during the pendency of writ petition, there have been certain change of circumstances that resulted in closure of the factory itself. The employer-writ petitioner had been proceeded with under the provisions of SARFAESI Act and the property had been sold in auction brought at the instance of the Recovery Officer. The purchaser had contracted at the time of purchase that he will undertake all the liabilities and indeed in a settlement brought before the Assistant Labour Commissioner, the purchaser had paid an amount of Rs. 34,16,201/- as gratuity amounts

payable and all other dues to the entire body of workmen employed at the factory.

2. The writ petitioner, therefore, had filed an application for modification of the order directing the payment of the benefits of Section 17-B to the employer and also pointing out that the entire plant and machinery had been sold along with land on which the factory had been situate. Since he was not actually running the factory, there was no liability attached under Section 17-B. No order had been, however, passed on the application for modification of the original order issued by this court at the time of grant of stay of operation of the Labour Court order. The application had been pending all along when the writ petition itself was disposed of on 04.11.2015.

3. In response to the plea for contract for alleged non-compliance of direction for payment of benefit of Section 17-B, the writ petitioner would contend that admittedly he was paid the benefits of Section 17-B to the workman even after the sale had taken place when there was no such liability. The benefit had been paid actually upto January, 2011. There has been no disobedience of the order and more so, particularly after the writ petition itself was disposed of. The liability under Section 17-B could subsist only during the pendency of the writ petition and if the liability were to be reckoned upto the disposal of the writ petition in CWP No. 9518 of 2000, dated 04.11.2015, such liability should also be calculated and should be directed to be given only by the purchaser and not by the writ petitioner.

4. The writ petitioner/contemner would make reference to a clause in the tender condition 2.8 which reads as under:--

"2.8. The Unit may have certain outstanding liabilities which are to be met by the purchaser and which will be over and above the purchase consideration. The prospective purchaser may carry out due diligence in respect of likely liabilities pertaining to the unit before submitting the tender. It may be noted that the purchaser will be responsible for meeting these liabilities, if arises, and secured creditors will not be liable to meet any such liabilities what so ever."

The counsel for the contemner would, therefore, contend that the liability could be fastened only against the purchaser.

5. The learned senior counsel for the purchaser would contend that the liability shall only be for the Company to pay and this right cannot be exercised against a purchaser who purchased only the plant and machinery. The petitioner-Company was still having its manufacturing unit at Pune and the termination order of the workman that gave rise to a Labour Court''s award was itself in a situation where the petitioner-Company transferred him to the other unit at Pune which was not accepted by the workman and consequently, when his services were terminated, the workman challenged the same and the Labour Court found the termination to be bad. When there was no business being run, there was no question of a former employee making him liable for any amount.

6. The counsel for the employee who has moved the contempt petition would state that in the present situation when the Company does not own the manufacturing unit and when all the employees have been retrenched after being paid compensation by the purchaser, there will be no scope for getting reinstatement nor he would be interested in securing any punishment against the petitioner. The counsel would refer me to a Full Bench decision of Madras High Court in Vidya Charan Shukla Versus Tamil Nadu Olympic Association and another-, AIR 1991 (Madras) 323 that held that the High Court''s power as the Court of Record extends not only to the determination of the contempt but also to the determination of whether on the allegations brought before it, instead of any action or committal for contempt, the court could make any other order that would fit in the administration of justice. The counsel would therefore plead that the writ petitioner/employer must be directed to pay the entire benefits of Section 17-B upto the date when the writ petition was dismissed and allow to him the liberty of approaching the regular Labour Court for prosecuting a claim petition in terms of the award of reinstatement already obtained.

7. The counsel also refers to me yet another judgment of this court in Prithi Pal Singh Versus Udhey Bhan Singh Sidhu-2010(3) SCT 482 that a closure of a unit in which the workman was employed will be irrelevant for determining the question of payment of wages under Section 17-B of the Act. I do not think the decision in Prithi Pal Singh (supra) has an immediate application for our case since we are examining the case of inter se liability of a purchaser and the original employer with particular reference to terms of purchase, a situation that did not confront this court in Prithi Pal Singh (supra).

8. If we go by the terms of the tender conditions, there is no doubt in my mind that the purchaser was taking over the existing liability of the manufacturing unit owned by the petitioner-Company. There could be instances where a purchaser may not take such responsibility by the terms of the sale as it happened in New Horizon Sugar Mills Limited, Ariyur Versus Ariyur Sugar Mills Staff Welfare Union and others-, 2009 INDLAW SC 1444. It was a case of a purchase by EID Parry-a Sugar Factory whose assets were brought for sale at the instance of Indian Bank under SARFAESI. The claims of the workmen under Section 25FF of the Industrial Disputes Act had not been settled and the question that became relevant was as to who was the person liable to make the payment, namely, whether the original employer or the purchaser of the factory. The court merely recorded a concession given by the counsel appearing on behalf of the employer that the liability will be only on the employer and not on the purchaser. I must observe that this judgment does not set out the details of conditions of sale nor does it examine the situation of subsisting liability even after the plant and machinery had been sold to the purchaser. This judgment must be confined to its own facts and it cannot be taken as a rule of thumb that a purchaser who undertakes to discharge the liability and who indeed satisfies the claim of every other employee before the Labour Commissioner will be also relieved of any liability to satisfy the claim of one workman who had a favourable award of reinstatement but since

the proceedings had been stayed, he could not participate along with other employees and secure his own settlement.

9. In the manner of how the learned counsel for the workman himself projected his case, there is no question of making the writ petitioner guilty of contempt. If there was any liability under Section 17-B, it could have lasted only till the pendency of the writ petition. If the writ petition was disposed of on 04.11.2015, the benefits under Section 17-B could be directed only against a person who had purchased the plant and machinery with the liability of manufacturing unit as it is existed and continued to exist till the claim was settled. If the purchaser would enter into settlement with all the workforce who was on their rolls on the date of purchase, the purchaser cannot plead for exclusion of liability only as regards the amounts due to the workman in this case. The contention that the employer has other units elsewhere in Pune cannot really answer the situation without reference to clause No. 2.8 which we have extracted above. The purchaser would not have undertaken the liability of over Rs. 34 lakhs for claims of other workmen, if the argument of the purchaser were to hold. He could have deflected the claim of even the remaining workmen and absolved himself of the liability which was to the tune of about Rs. 34 lakhs. The purchaser''s conduct itself shows that he had admitted his liability to the workmen and it subsisted by virtue of clause No. 2.8 and it cannot evade the responsibility by contending that the liability would be only against the former employer.

10. In the interest of justice, I direct the liability under Section 17-B from after January 2011 till the date when the writ petition was disposed of. The writ petitioner will not be liable for the same. The learned senior counsel appearing on behalf of the purchaser was even prepared to make a concession that he would make the payment, provided the workman gave an undertaking that he will have no further claims. The counsel for the workman was not prepared to forfeit any other claim that he may have by treating himself as continuing in employment. If the workman was not prepared to give up any other claims, it was fair enough that he will have his remedy if it is tenable in law in appropriate forum. An attempt to settle the claims made and for all through a reference to mediation has failed.

11. The contempt petition is disposed of with a direction that the liability under Section 17-B for the property from after January 2011 till the date of the disposal of the writ petition shall be only against the purchaser and the amount shall be calculated and paid to the workman within a period of 6 weeks from the date of receipt of copy of this order with interest at 6% from the respective dates when the amounts accrued. The workman shall be entitled to any independent remedy against the writ petitioner or purchaser if he has any tenable claims to make in proceedings before Labour Court or any other forum. If such a recourse is sought to be re-enforced, it will be decided independently in accordance with law.