

(2013) 04 MAD CK 0111

In the Madras High Court

Case No : W.A. No. 711 of 2013 and M.P. No. 1 of 2013

S. Srinivasan

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 19-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Industrial Disputes Act, 1947 — Section 12(3), 29, 32, 33, 33A

Citation : (2013) 138 FLR 753 : (2014) LabIC 584 : (2013) 3 LLJ 89

Hon'ble Judges : R.K. Agrawal, Acting C.J.;N. Paul Vasanthkumar, J

Bench : Division Bench

Advocate : S. Ravindran for M/s. T.S. Gopalan and Co, for the Appellant; S. Vaidyanathan for 2nd Respondent, Mr. T.N. Rajagopalan, Additional Govt. Pleader for 8th Respondent and Mr. G. Saravanabhavan for 9th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This writ appeal is preferred against the order of the learned single Judge made in W.P. No. 6664 of 2013

dated 19.3.2013, wherein the appellant herein has prayed for quashing the award dated 9.8.2001 made in Complaint No. 17 of 1999 on the file

of the Industrial Tribunal, Chennai. The second respondent herein filed a Complaint No. 17 of 1999 in I.D. No. 108 of 1993 before the Industrial

Tribunal, Chennai, u/s 33A of the Industrial Disputes Act, 1947, against four companies, i.e., respondents 2 to 5 in the industrial dispute,

contending that the management laid-off the workers from 1.8.1999 to 23.8.1999 and declared an illegal lock-out on 2.11.1999 and the same

amounts to offence punishable under the provisions of the Industrial Disputes Act, 1947. An award was passed by the Industrial Tribunal on

9.8.2001 holding that the lay-off from 1.8.1999 to 23.8.1999 and lock-out from 2.11.1999 are illegal and the Industrial Tribunal directed the four

companies, who were respondents 2 to 5 before the Industrial Tribunal, to reinstate all the workers, with effect from 2.11.1999 and pay back

wages.

2. The said award of the Industrial Tribunal having not been complied with/ implemented, the second respondent Union filed W.P. No. 14028 of

2002 before this Court praying for a writ of mandamus directing implementation of the award dated 9.8.2001. The appellant herein, who was

former Managing Director of the 4th respondent Company got himself impleaded as sixth respondent in the said writ petition, though he was not a

party before the Industrial Tribunal. On 23.12.2003 this Court allowed the said writ petition with a direction to respondents to implement the

award of the Tribunal within a period of three months. It was pointed out in the order that the award has not been challenged by any of the

respondents, including the appellant herein, who was impleaded as party in the writ petition. Following the said order the Government of Tamil

Nadu issued G.O.(D) No. 58 Labour and Employment, dated 27.1.2004 and directed the District Collector to recover the amounts payable to

132 workers, as if the amounts were arrears of land revenue.

3. The order dated 23.12.2003 in W.P. No. 14028 of 2002 was challenged by the 4th respondent herein by filing W.A. No. 1031 of 2004,

which was dismissed by the Division Bench of this Court on 30.4.2004. The appellant filed SLP before the Hon"ble Supreme Court and

challenged the order of Division Bench, which was subsequently withdrawn. The order of this Court having not been implemented, the second

respondent herein filed Contempt Petition No. 240 of 2006 before the Division Bench of this Court for disobedience of the order and the Division

Bench found fault with the appellant for not implementing the order and disposed of the contempt petition with certain directions by order dated

30.11.2011. The appellant argued that he being not a party before the Industrial Tribunal, he cannot be proceeded under the Contempt of Courts

Act, 1971. The said contention was rejected holding as follows:

34. ... taking note of the conduct of the respondent under normal circumstances, any Court would feel convinced that the appropriate punishment

is to commit the respondent to civil prison. However, in our view, such order would not meet the ends of justice, moreso, when the employees are languishing without employment or wages and it is stated that some employees have died during the pendency of the litigation, which has been pending for over 20 years. Therefore, we deem it appropriate that the property in ""Kumara Vilas"", Old No. 21, New No. 15, Visweswarapuram Street, Mylapore, Chennai, shall stand attached and be sold by way of public auction for the purpose of recovery of dues payable to the employees, who are represented by the petitioner -Union. Since the children of the respondent/Contemnor have also filed affidavits before this Court and are aware of the proceedings, we hold that the transaction done during the year 1998, whereby, the respondent/Contemnor relinquished his share in the property, as a sham transaction with a view to escape from any recovery proceedings, which may initiated against him while enforcing the award. Therefore, we reject the contention raised in the affidavits filed by the parties, and hold that the said property is the property of the respondent/Contemnor and liable for attachment and sale.

35. In the result, the respondent/Contemnor is held guilty of having committed contempt of Court and willfully disobeying the judgment rendered in

W.A. No. 1031 of 2004. The property in ""Kumara Vilas"", Old No. 21, New No. 15, Visweswarapuram Street, Mylapore, Chennai, shall be sold

by the Industrial Tribunal, who is the seventh respondent in the Writ Petition, by public auction and shall call for offers. The children of the

respondent/Contemnor as well as the respondent/Contemnor and his wife, who have all filed affidavits shall vacate the premises and hand over

vacant possession to the Officer nominated by the Industrial Tribunal within a period of 15 days from the date of receipt of a copy of this order.

36. After taking possession of the property, the Industrial Tribunal shall advertise by way of public auction and bring the property for sale. The sale

proceeds shall be remitted to the credit of Complaint No. 17 of 1999 and after appropriate application is filed by the petitioner-Union, the

Industrial Tribunal shall pass necessary orders for disbursement of the said amount to the workmen in accordance with law.

37. As we have held that the respondent/Contemnor is guilty of contempt, we impose a fine of Rs. 5,00,000/- (Rupees Five Lakhs only) on the

respondent/Contemnor and he shall pay the same to the credit of Complaint No. 17 of 1999 on the file of the Industrial Tribunal within a period of

four weeks from the date of receipt of a copy of this order, which shall be utilised for the settlement of the workers dues in addition to the sale

proceeds realised by selling the property mentioned above.

As against the above order of the Division Bench dated 30.11.2011, appellant preferred SLP before the Hon"ble Supreme Court in S.L.P.(C)

No. 34244 of 2011 and the same was dismissed on 13.12.2011. After dismissal of SLP, again the appellant filed sub-applications in Contempt

Petition No. 240 of 2006 before the Division Bench of this Court, which were also dismissed by the First Bench of this Court on 3.2.2012. In

paragraphs 11 and 12 of the order this Court held thus,

11. ... the prayer sought for in the sub applications are thoroughly misconceived and the petitioner is attempting to re-agitate the matter which has

attained finality. The counsel for the first respondent pointed out that all points raised in these applications have been raised in the SLPs and the

SLPs were dismissed by the Supreme Court.

12. For all the above reasons, we find no merit in these applications and the same are dismissed.

Thereafter the appellant had chosen to challenge the award of the Industrial Tribunal dated 9.8.2001, which was rejected by the learned single

Judge holding that there is unreasonable delay/laches on the part of the appellant in challenging the award in spite of knowledge about the same,

which is evident from the impleading petition filed by the appellant in W.P. No. 14028 of 2002, and the appellant also challenged the order made

in the said writ petition in W.A. No. 1031 of 2004. The learned single Judge found that there is no bona fide on the part of the appellant in not

challenging the award dated 9.8.2001 for over eleven years.

4. The Division Bench of this Court in the judgment dated 30.4.2004 in W.A. No. 1031 of 2004 considered the issue as to whether the award will

bind the appellant herein, who was second appellant in the said writ appeal. In paragraphs 7 to 9 of the judgment of the it is held thus,

7. The only point urged before us, by the learned counsel for the appellants is, that the appellants were never a party to the award passed by the

Industrial Tribunal and in this view, directing them to comply with the terms of

the award, is not maintainable. The first appellant is a party to the award in complaint No. 17/99, and therefore, the direction issued cannot be questioned. As for as the second appellant is concerned, he was not shown as a respondent either in complaint No. 17/99 or in I.D. No. 108/93. But, the fact remains, as the Managing Director, he alone represented respondents 2 to 5 in I.D. No. 108/93, as well as in complaint No. 17/99. As rightly submitted by the learned counsel for the respondents, in I.D. No. 108/93, he had admitted that he was filing the counter statement, in his capacity as one of the Directors of the said company. It is further conceded by Mr. Srinivasan that he ceased to be the Managing Director of Kilburn Electricals Limited as on 28.12.1999, when his period of appointment ended, thereby showing, admittedly, on the date of violation of Section 33 of the Act, he was the Managing Director. When the employees Union had filed W.P. No. 1411/2003, to pass an order on the complaints u/s 29 of the Industrial Disputes Act 1947, a direction was given by this Court to the Government, to consider the petitioner's representation and in pursuance of the said order, a G.O. was passed for non implementation of the award and settlement, holding Srinivasan is a person concerned as per the Section 32 of the Industrial Disputes Act, 1947.

8. Section 32 of the Act fixes the responsibility, if any offence is committed by company. Under this provision, every Director shall be responsible, subject to other conditions. As aforementioned and even as admitted by Srinivasan, the second appellant, he was the Managing Director of respondents 2 to 4 companies, and in that capacity alone, he entered into the settlement u/s 12(3) of the Act, agreeing to abide by the decision of the Industrial Tribunal in I.D. No. 108/93. The award in I.D. No. 108/93 was pronounced on 26.11.1999, which came into force with effect from 28.05.2000. In view of these admitted facts, despite Mr. Srinivasan has not been shown as party by name, he is responsible as contemplated u/s 32 of the Act, and he is bound by the award. As the workers in this writ appeal are concerned in dispute, in I.D. No. 108/93, and the action of Srinivasan, in not taking prior permission from the Tribunal when I.D. 108/93 was pending and for the violation committed, the workers are entitled to the full relief, for which purpose complaint No. 17/99 was filed. In the light of the above discussion, the appellants could not escape

from their liability, under the guise, they are not parties to the award.

9. Having regard to the facts and circumstances of the case, considering the status of the second appellant, a direction was issued by the learned

Single Judge in W.P. No. 14028/2002, to implement the orders, in which we are unable to find any error of law or any other reason to interfere.

5. The learned counsel appearing for the appellant argued this appeal on merits. The contentions raised in this appeal i.e., the appellant is not a

party before the Industrial Tribunal and the award will not bind the appellant was argued before this Court at least four times, and twice before the

Hon"ble Supreme Court. Finality of judicial proceeding is a well accepted principle. The Supreme Court in the decision reported in M.

Nagabhushana Vs. State of Karnataka and Others, in paragraphs 12 and 13 held thus,

12. The principles of res judicata are of universal application as they are based on two age-old principles, namely, interest reipublicae ut sit finis

litium which means that it is in the interest of the State that there should be an end to litigation and the other principle is nemo debet bis vexari, si

constat curiae quod sit pro una et eadem causa meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it

is for one and the same cause. This doctrine of res judicata is common to all civilised system of jurisprudence to the extent that a judgment after a

proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for

ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result

under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing

his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of res judicata has been evolved

to prevent such an anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which

sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent

abuse in the matter of accessing court for agitating on issues which have become

final between the parties."" Further, in paragraphs 21 and 22, the Hon"ble Supreme Court held thus,

21. Following all these principles a Constitution Bench of this Court in The Direct Recruit Class-II Engineering Officers" Association and others

Vs. State of Maharashtra and others, laid down the following principle: (SCC p. 741, para 35)

35. an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and

ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming

into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata

underlying Explanation IV of Section 11 of the CPC was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the

ground of res judicata.

22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive

res judicata, as explained in Explanation IV to Section 11 CPC, are also applicable to writ petitions.

(Emphasis Supplied)

In the said decision the Hon"ble Supreme Court followed its earlier Constitutional Bench decision reported in Devlal Modi, Proprietor, M/s.

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Officers" Association and others Vs. State of Maharashtra and others, and K.K. Modi Vs. K.N. Modi and Others,

Further, no sufficient cause is shown to approach this Court, after delay of over 11 years. Hence we are not inclined to entertain this writ appeal

and the learned single Judge rightly dismissed the writ petition on the ground of laches.

For the foregoing reasons, this writ appeal is dismissed. No costs. Connected M.P. No. 1 of 2013 is also dismissed.