(1993) 07 KL CK 0036

In the High Court Of Kerala

Case No : W.A. No. 633 of 1993

Sainalabdeen Musliar APPELLANT

Vs

District Collector RESPONDENT

Date of Decision : 08-07-1993

Acts Referred:
Industrial Disputes Act, 1947 — Section 10, 18(3), 33C(2)

Citation : (1993) 1 ILR (Ker) 575 : (1994) 1 LLJ 529

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : B. Krishna Mani, for the Appellant; Jose K. Kochupappu, Govt. Pleader and B. Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Sreedharan, J.—Writ petitioner in O.P. 9732/1992challenges the judgment of the learned Single Judge dated March 23, 1993 dismissing the said Original Petition.

2. The short facts necessary for the disposal of this writ appeal are as follows, Kallada Bricks and Tile Works was owned by the father of the third respondent. On his death, the business devolved on third respondent, his mother and brother and sister. Third respondent was the Managing Partner of the factory. 4th respondent was an employee in that factory. He was dismissed from service. That gave rise to Industrial Dispute 31/1988. Labour Court, Kollam directed the management to reinstate the worker with all back arrears and other attendant service benefits by its award dated April 17, 1989. As the workman was not paid his wages in terms of the award, he approached the Labour Court, Kollam by moving Claim Petition 85/1989 u/s 33C(2) of the Industrial Disputes Act, hereinafter referred to as "the Act". That Court, by order dated September 18, 1991, fixed the amount payable to the workman at Rs. 52,388/-.

3. After the award in I.D. 31/1988, writ petitioner purchased the factory and its site under three documents executed by third respondent and his relations, the

legal heirs of deceased Varghese Daniel, the father of the third respondent. These documents were executed on September 6, 1991, November 15, 1991 and June 28, 1992. Pursuant to these sale deeds, writ petitioner-appellant was running the factory. While so, on account of the non-payment of the amount to the workman covered by the Claim Petition 85/1989 u/s 33C(2) of the Act, proceedings under the Revenue Recovery Act were initiated. Factory and the stock therein were attached by the revenue authorities. Writ petitioner thereupon approached this Court to quash the proceedings initiated by the revenue authorities under the Revenue Recovery Act and also for a declaration that he is not liable for the amount covered by the award and the order in the Claim Petition passed by the Labour Court, Kollam.

4. The main argument advanced by the learned counsel representing the appellant is that the award in I.D. 31/1988 on the file of the Labour Court, Kollam is not binding on the appellant. It is also his contention that even if the award in I.D. 31/1988 is found to be binding on the appellant, the order on claim Petition 85/ 1989 filed u/s 33C(2) of the Act cannot be enforced as against him.

5. It is the common case of parties that Kallada Bricks and Tile Works was owned and run by deceased Varghese Daniel, On his death, the factory and the premises devolved on third respondent and other legal heirs. Thereupon third respondent was running the firm as its Managing Partner. While the factory was being run by the third respondent as Managing Partner, 4th respondent, an employee in the factory, was dismissed from service. The said dismissal gave rise to I.D. 31/1988 on the file of the Labour Court, Kollam. That case was disposed of on April 17, 1989 by passing an award directing the management to reinstate 4th respondent with all ''arrears of wages and other attendant benefits. Since the workman was not reinstated with arrears of salary, he acted by filing Claim Petition 85/1989. Pending that application, appellant purchased the properties and the factory under ''three sale-deeds dated September 6, 1991, November 15, 1991 and June 28, 1992. Claim petition u/s 33C(2) of the Act was disposed of on September 18, 1991 by quantifying the amount due to the workman at Rs. 52,388/-.

6. Sale-deed taken by the appellant specifically provided for the appellant to conduct the tile industry in the property covered therein. Document dated September 6,1991 covers 20 Cents of property in which the factory building, sheds and other machinery are situated. As per that document, the transferee was authorised to effect mutation to use the building and to conduct the tile industry. The sale-deed dated November 15, 1991 contains a provision that the transferor relinquishes entire possession over the schedule properties, sheds, tile manufacturing factory and machinery. The transferee is authorised to carry on the factory. The sale-deed contain indemnity clause stating that the schedule property is absolutely free from any encumbrance claims and also free from sales tax, income tax, purchase tax, and revenue tax. The transferors have undertaken to make good the loss of the transferee in case contrary to their undertaking if

he happens to suffer any loss. On account of indemnity clause, it is argued that the liability of the third respondent to pay the amount covered by the Claim Petition should not be fastened on the appellant.

7. The legal heirs of deceased Varghese Daniel was running the Kallada Bricks and Tile Works. While that factory was being ran by them with third respondent as the Managing Partner, appellant herein purchased the property and the factory. The purchase was effected at a time when award in I.D. 31/1988 passed by the Labour Court, Kollam was in force. It is also worthwhile to note that the claim petition filed by 4th respondent pursuant to the award was also pending before the Labour Court. As per Section 18(3)(c) of the Act an award passed by a Labour Court shall be binding on all successors or assigns in respect of the establishment to which the dispute relates. The question that arises for consideration is whether the appellant is the successor or assigns in respect of the Kallada Bricks and Tile Works, to which the dispute in I.D. 31/1988 related to. As stated earlier, third respondent was the Managing Partner of the Kallada Bricks and Tile Works. While it was being run by the third respondent, 4th respondent was dismissed from service. 4th respondent got award in that industrial dispute in his favour. So that award is binding on the third respondent and the establishment. Appellant herein purchased that establishment under three documents. By that purchase will he not become the successor or assign in respect of that establishment?

8. In Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, a Constitution Bench of the Supreme Court examined the question as to whether a purchaser of an industrial concern can be held to be a successor in interest of the vendor. Their Lordships laid down certain factors to be taken into consideration. They are (p.626):

"Did the purchaser purchase the whole of the business? Was the business purchased a going concern at the time of the sale transaction? Is the business purchased carried on at the same place as before? Is the business carried on without a substantial break in time? Is the business purchased carried in at the same or similar to the business in the hands of the vendor? If there has been a break in the continuity of the business, what is the nature of the break and what were the reasons responsible for it? What is the length of the break? Has goodwill been purchased? Is the purchase only of some parts and the purchaser having purchased the said parts purchased some other new parts and started a business of his own which is not the same as the old business but is similar to it? These and all other relevant factors have to be borne in mind in deciding the question as to whether the purchaser can be said to be a successor-in-interest of the vendor for the purpose of industrial adjudication. It is hardly necessary to emphasis in this connection that though all the facts to which we have referred by way of illustration are relevant, it would be unreasonable to exaggerate the importance of any one of these facts or to adopt the inflexible rule that the presence or absence of any one of them is decisive of the matter one way or the other".

In the instant case, appellant purchased the entire factory and its premises. At the time when he purchased the factory, it was being run by the third respondent as Managing Partner. What is averred by him in paragraph 2 of the writ petition is:-

" Until the execution of Ext. P1 sale deed the 3rd respondent herein was the Managing Partner of the factory in question".

The fact that appellant purchased the "factory" is not in controversy. He has reiterated in his Original petition at various places that the sale deed taken by him was in relation to the "factory" in question. These show that when the sale deed was taken by the appellant it was a going concern. Appellant continued the factory. His only contention appears to be that the factory in question has been sold free from all encumbrances. The fact that vendor has taken upon himself the liability to discharge the encumbrances will not in any way change his character as an assignee of the factory. In the above mentioned decision rendered by the Supreme Court the sale deed contained a clause that the transferor company will pay all its liabilities, secured and unsecured, determined or to be determined and the society will not be liable to pay the same. Inspite of such an indemnity clause, their Lordships came to the conclusion that the assignee was a successor in interest of the company. On an evaluation of all the relevant factors in this case, we have no hesitation in coming to the conclusion that appellant herein is a successor in interest of Kallada Bricks and Tile Works, the management in I.D. 31/1988. It, therefore, follows that the appellant is bound by the award in I.D. 31/1988.

9. Another argument advanced by the learned counsel representing the appellant is that even if the award is held to be binding on the appellant u/s 18(3)(c) of the Act, the order in Claim Petition 85/1989 filed u/s 33C(2) of the Act cannot be enforced as against the appellant. An "award" under the Act inter-alia means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court. It means an award comprehends within it the determination of any question relating to the award as well. An "industrial dispute" inter-alia means a dispute or difference between an employer and workman. Consequently the "award" under the Act is comprehensive enough to take within its ambit not only disputes between the parties, but also includes determination of any question relating thereto. By the award in I.D. 31/1988, the Labour Court directed the management to reinstate the worker with all back arrears and other attendant service benefits. Quantification of the back arrears and other attendant circumstances necessarily falls within the ambit of any question relating to the award. Decision on such a question must necessarily come within the purview of "award" as defined under the Act. u/s 33C(2) of the Act when a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which

such benefits should be computed, then the question may be decided by the Labour Court. Invoking this provision, 4th respondent moved the Labour Court by filing Claim Petition 85/1989. That Claim Petition was necessitated on account of the failure of the third respondent and the appellant herein in reinstating the 4th respondent. This we say because of our finding that the appellant is bound by the award in I.D. 31/1988 by virtue of Section 18(3)(c) of the Act. When the main award is binding, any order passed in execution of that award should also be binding on the appellant. In the ordinary circumstances Section 33C(2) provides the forum for execution of the award passed in the industrial disputes. The Labour Court exercising its jurisdiction u/s 33C(2) was only giving effect to the award in I.D. 31/1988 and it had not gone behind the award. Nor has it gone to vary or modify the award either. Viewed in this light, we find no merit in the contention of the appellant that he is not bound by the order passed by the Labour Court u/s 33C(2). On the facts and circumstances of this case, we have no hesitation in holding that the order of the Labour Court in Claim Petition 85/1989 is one passed in execution of the award in I.D 31/1988 and the appellant is bound by the same. Any view contrary to this, if taken, will result in an incongruous situation wherein an original award will be binding, but not an order passed in execution thereof. It therefore, follows that the appellant is bound by the award in I.D. 31/1988 and the order in Claim Petition 85/1989 passed by the Labour Court, Kollam. This may not deny him of the benefit of the indemnity clause incorporated in the sale deeds taken by him as against his vendors.

10. The result, therefore, is writ appeal fails and it is accordingly dismissed.

