

(2014) 05 GUJ CK 0006
In the Gujarat High Court

Case No : L.P.A. No. 2131 of 2011 in S.C.A. No. 15399 of 2008

Shaileshbhai Haribhai Patel		APPELLANT
	Vs	
State of Gujarat		RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 143 FLR 357 : (2014) 3 LLJ 734

Hon'ble Judges : K.S. Jhaveri, J;Abdullah Gulamahmed Uraizee, J

Bench : Division Bench

Advocate : B.M. Mangukiya, Advocate for the Appellant; Nisha Thakor, AGP, Paritosh Calla and Party-in-Person, Advocate for the Respondent

Judgement

K.S. Jhaveri, J.—This Letters Patent Appeal is filed against the judgment and order passed by the learned single Judge in Special Civil Application No. 15399 of 2008 dated 11.11.2011. Mr. B.M. Mangukiya learned counsel for the appellants contended that the learned single Judge erred in ignoring the observations made in S.C.A. No. 10376 of 2003 dated 27.09.2004 and in S.C.A. No. 8538 of 2002 dated 27.09.2004 and in relying upon the affidavit-in-reply filed by the respondents. He submitted that earlier, the coordinate Bench of this Court, vide order dated 09.04.2012 passed in the present proceedings, had stayed the order of learned single Judge only qua the original petitioners and the private properties and not against M/s. Ramesh Textiles.

2. We have heard learned counsel for both sides and also respondent No. 5, who appeared as party-in-person. It appears from the record that though decree was passed in favour of the respondent-workman way back in the year 1980, the rights have not yet crystallized. By abusing and/or misusing the process of law, the employer has been successful in depriving the workmen of their rights for a period of over three decades.

3. In Para-11 to 14 of the impugned judgment, the learned single Judge observed as under: "11. The proceedings undertaken by the petitioners on

behalf of Shri Ramesh Chhaganlal Patel, owner of M/s. Ramesh Textile, the employer of the workman, reveal the manner and method in which the employer can successfully deprive the workman of claiming the fruit of the legitimate dues adjudicated and ordered by the Labour Court as early as on 21.4.1984 - about 27 years ago. When the first award was passed on 21.4.1984 in the main Reference Application No. 535 of 1983 and the award was not complied with, contempt proceedings were initiated by the workman in this Court and an assurance was given to reinstate the workman and the said contempt application came to be disposed of on 1.4.1986 but the above commitment by the employer remained non-complied with since the application for restoration was filed by the person named Ravindra H. Patel for restoration of alleged ex-parte award in Reference (LCA) No. 535 of 1983, which came to be restored on 30.5.1987. Once again, an opportunity was given to the employer to defend the case and the written statement signed by Mr. Shaileshbhai Haribhai Patel, petitioner herein, was taken on record and, in spite of examination of one of the workmen, nothing could be elicited by the representative of the employer, namely, M/s. Ramesh Textile and the second workman was not even examined at all. Therefore, the Labour Court, on appreciation of record of the case and the above deposition, allowed the reference by award dated 14.8.1996. Somehow, two more attempts were made to recall and review the above order which also failed by the year 1999 and the award remained non-complied with and, therefore, the workman had again to move a contempt petition being Misc. Civil Application No. 1924 of 1999 which came to be disposed of on 2.3.2000 with a direction to file recovery application and the struggle of the workman continued. The remedies were taken by the workman before the Payment of Wages Authority also by filing two applications and the orders were passed accordingly as recorded in the earlier paragraphs and also Recovery Application No. 994 of 2000 filed in the main reference, Reference (LCA) No. 535 of 1983, also allowed by the Labour Court in favour of the workman. It is not further in dispute that, when the writ petition, Special Civil Application No. 10376 of 2003 was filed by Shri Shailesh Haribhai Patel, the nephew of Shri Ramesh Chhaganlal Patel, proprietor of M/s. Ramesh Textile, since his application to delete his name came to be rejected by the Labour Court, the learned Single Judge of this Court ordered to pay Rs. 1 lakh in favour of the workman which remained final even in a challenge before the Division Bench in Letters Patent Appeal No. 1043 of 2003 and, therefore, the amount of Rs. 1 lakh was to be deposited by Shri Shailesh Haribhai Patel and, while disposing of the said writ petition, Special Civil Application No. 10376 of 2003, finally, the above aspect was not taken into consideration by the learned Single Judge.

12. The contention of the learned counsel for the petitioners that the above order was of interim in nature and merged into the final order dated 20.7.1994 in Special Civil Application No. 10376 of 2003 is devoid of merit in as much as the said order was passed by the Division Bench specifically directing the petitioners to deposit Rs. 1 lakh which remained non-complied with and the doctrine of

merger in the peculiar facts and circumstances of the present case would not apply. Further, the decisions relied upon by the learned counsel for the petitioners and recorded in the foregoing paragraphs of this order and the proposition of law laid down therein, with which this Court has respectful agreement, shall have no bearing on the case on hand.

13. The reasoning and justification given by the Labour Court in support of the impugned order cannot be said to be illegal in any manner in as much as since 1986 the respondent-workman is deprived of reinstatement and back wages in clear defiance of the order passed by a Division Bench dated 1.4.1986 when assurance was given by the learned advocate appearing on behalf of the employer to reinstate the workman and, secondly, by order dated 10.11.2003 another Division Bench specifically directed the petitioners to deposit Rs. 1 lakh which remained non-complied with. Earlier, the employer was pursuing the litigation before the Labour Court through a proxy and even the power of attorney was also not valid and, again, in this writ petition, another power of attorney represented the petitioners of Special Civil Application No. 10376 of 2003 and the workman who appears party-in-person has submitted and in written submissions also requested this Court to review the aspect of non-consideration of deposit of Rs. 1 lakh as ordered by the Division Bench. Though initially the award came to be passed on 14.8.1996 after affording an opportunity to examine and cross-examine the workmen, further attempts were made treating such award as ex-parte award or without providing an opportunity of hearing, therefore, in my humble view, the said award for all purposes remained final and ought to have been implemented and executed by proper execution. However, the owners of Ramesh Textile, namely, Rameshbhai Patel and the petitioners herein in collusion with each other alienated the property of Ramesh Textile and even other properties owned by them which were part of HUF. Further petitioner No. 1, Shaileshbhai Haribhai Patel, had deposed in Application No. 10 of 1998 that he was actively participating and managing affairs of Ramesh Textile and further his power of attorney was treated to be invalid even by the learned Single Judge of this Court. Now, even the petitioners, who have chosen not to appear before this Court, again filed this petition by a proxy claiming to be power of attorney, which is nothing but an attempt to deprive the workman of his lawful wages and this Court cannot remain to be a mute spectator to the sordid attempts made by the employer and his representative taking miscellaneous applications, amounting to abuse of process of law. Considering the above, I am of the considered opinion that the rejection of application preferred by the petitioners by the Labour Court vide order dated 21.11.2008 in Misc. Application No. 70 of 2008 in Recovery Application No. 994 of 2000 cannot be said to be illegal warranting any interference by this Court in exercise of powers under Article 226 of the Constitution of India and I am duty bound to issue directions to the Authorities below to expedite the recovery proceedings so as to realize the dues even from the successors and purchasers of the assets/properties which originally belonged to M/s. Ramesh Textile and also properties of its owners,

namely, Rameshbhai Patel, Shaileshbhai Haribhai Patel and Haribhai Chhaganbhai Patel, the petitioners herein, and if alienated then from the successors who have purchased such properties/assets during pendency of proceedings.

14. In the result, this petition is rejected. The interim relief is vacated. Rule is discharged with no order as to costs. The Authorities below including the Mamlatdar and the District Collector are hereby directed to expedite the process of recovery and, if necessary, for execution of the decree of the Labour Court, the Ministry of External Affairs, Union of India, New Delhi, be requested to take follow up action with the Indian Consulate at the USA, so that Shri Ramesh Chhaganlal Patel, owner of M/s. Ramesh Textile, who has migrated to the USA, can be brought to the book for effecting execution of the award of the Labour Court in proper perspective."

Looking to the facts of the case, we are in complete agreement with the view taken by the learned single Judge. Even if any other view is possible, we do not deem it proper to disturb the view taken by the learned single Judge. Hence, the appeal is dismissed. At this stage, learned counsel Mr. Mangukiya requests to extend the interim relief for a period of four months. The interim relief has continued for more than two years and since the Apex Court is to reopen after summer vacation on 30.06.2014, the interim relief granted earlier stands extended up to 15th July 2014.