(2018) 06 BOM CK 0107

In the Bombay High Court

Case No : Writ Petition No. 4509 of 2014

SHRI. NANDLAL S/O KRISHNARAO YELNE — APPELLANT

Vs

SHRI CHANDRAKANT S/O NARHARI RAJURKAR — RESPONDENT

Date of Decision : 21-06-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(9), 11(10), 33C(1), 33C(2)
Code of Civil Procedure, 1908 — Order 21

Citation : (2018) 06 BOM CK 0107

Hon'ble Judges : S.B. SHUKRE, J

Bench : Single Bench

Advocate : Y. D. Shukla, S. B. Dobde

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.Â This petition challengesÂ the legality and correctness of the order datedÂ 6th April 2013 passed by 2nd

Joint Civil Judge, Junior Division, Nagpur whereby application (exhibit 19) filed by the petitioner taking objection to the maintainability of the execution

proceedingÂ initiated by the respondent has been rejected.

2. An award dated 20th August 2011 was passed by the Labour Court, Nagpur on the application of the respondent filed under Section 33ÂC (2) of

the Industrial Disputes Act, 1947 (for short, the â??I. D. Actâ?). The respondentÂworkman was held entitled to receive from the petitioner a sum of

Rs. 2, 82,224/Â.Â This award dated 20th August 2011, when attained its finality, was not satisfied by the employer upon whom the entire liability to

pay the money was fastened.Â The respondentÂworkman was, therefore, compelled to initiate proceeding for execution of the award. Respondent

approached the Joint Civil Judge, JD, Nagpur for the purpose and filed execution proceeding.Â The petitionerÂemployer was still reticent as well as

defiant.Â The petitioner, instead of satisfying the award, raised a preliminary objection to the maintainability of the execution proceeding.Â The

objection was rejected, as aforestated, by the executing court vide order dated 6th April 2013.

3. According to learned counsel for the petitioner, the language of Section 33ÂC (1) of the I. D. Act, which deals with recovery of money due from

an employer, is very clear.Â According to him, the workman or any other person authorized by him or in case of his death, his assignee or legal heir,

has to make an application in writing to the appropriate Government for recovery of money and when the appropriate Government is satisfied, it shall

issue a certificate to the Collector and in that case, the dues can be recovered as arrears of land revenue. He further contends that under subÂsection

(2) of Section 33ÂC of the I.D. Act, the question of amount of dues payable to the workman has to be decided by the Labour Court and the recovery

of the dues has to be done, unless subSection (1) of Section 33ÂC by the appropriate Government. According to him, when the Statute has created a

special remedy for enforcing an award, the remedy under Section 33ÂC (1) of the I. D. Act, alone can be allowed to be availed of by the

employee.Â He has placed his reliance upon the case of N. P. Ponnuswami v. The Returning Officer, Namakhal Constituency, Namakkal & ors

reported in AIR 1952, SC 64 (1).

4. According to learned counsel for the respondentÂworkman, the impugned order is legal and proper as the provisions of Section 33ÂC (1) of the

I.D. Act clearly state that the application for recovery can be made without prejudice to any other mode of recovery.

5. Upon going through the provisions of Sections 11 and Section 33ÂC (1) of the I. D. Act, I find that there is no merit in the submission of learned

counsel for the petitioner.

6. In the present case, there is no dispute that the award dated 20th August 2011 has attained its finality.Â There is also no dispute about the fact that

the money given under the award is Rs. 2, 82,224/Â.Â It is also not in dispute that this money is due from the petitioner to the respondent and the

petitioner for the last about seven years has not satisfied the award.Â So, now what has remained to be decided is only the question as to where does the remedy lie for the workman to coercively recover the money due to him from the petitioner, who has steadfastly refused to mend his attitude.

7. After the amendment of the year 2010, which came into force w.e.f. 15.9.2010, one more remedy, apart from what was already available to a

workman under Section 33ÂC(1), I.D. Act, came toÂ be provided under Section 11(9) of the I.D. Act.Â This provision lays down inter alia, that

every award made under the Act shall be executed in accordance with the procedure laid down for execution of orders and decrees of a Civil Court

under Order 21 of the Code of Civil Procedure, 1908.Â This provision, it is clear, is about an affirmative action offerred toa workman less endowed

with money and manpower than a defiant employer yearning to relish the pleasure of defiance.Â It also stands as an illustration to the expression

â??any other mode of recoveryâ? used in Section 33ÂC (1) I.D. Act, clarifying that this could be one of the alternate modes of recovery envisaged

by it.Â The 2010 amendment, one cannot miss, also goes further to reach out to the disadvantaged workman.Â It says in an imperative tone that the

award made by the Court (Labour or Tribunal) shall be sent by it to Civil court having jurisdiction and the Civil court shall execute the award as if it

were a decree passed by it.Â Thus, provision only affirms the conclusion that the mode of recovery born of Section 11(9) I.D. Act is one of the other

modes of recovery in contemplation of Section 33ÂC (1) I.D. Act.Â Â Section 11 (10)Â of the I. D. Act provides that the Labour Court shall

transmit any award to a Civil Court having jurisdiction and such Civil Court shall execute the award as if it were a decree passed by it.

8. According to learned counsel for the petitioner, in the present case, no execution proceeding or application to transmit the award under Section

11(10), I.D. Act was filed before the Labour Court and, therefore, there was no question of the Civil Court executing the Award on it being received

from the Labour Court for execution.Â While it is true that the execution proceeding has been initiated directly before the Civil Court, it is also

felicitous to say that accepting such an objection would amount to allowing the procedure eclipsing the substance or letting the technicality gobble up

the soul of justice.Â It is well settled principle of law and it has been expressed repeatedly in several cases that the procedure is only handmaid of

justice and not its mistress (Sushilkumar Sen vs. State of Bihar, (1975) 1 SCC 774) and I think, this is a fit case where this well settled principle of law applies with all its vigour and vitality. When the award is to be executed by the Civil Court ultimately, under these amended provisions, it hardly

matters where the effort to execute the award and by whom it is taken first.Â Besides the scheme of subÂsections (9) and (10) of Section 11 of the

I.D. Act is such that the award can be executed by the workman by making an application in accordance with the procedure prescribed under Order

XXI of the Code of Civil Procedure before the Civil Court or on the award being transmitted by the Labour Court or the Tribunal to the Civil Court

having jurisdiction and on receipt of the award, the Civil Court has to proceed further by executing the award.Â When the procedure laid down for

execution of order and decree of a Civil Court under Order XXI of the Code of Civil Procedure has been made applicable for execution of the award,

it is futile to say that the initiation of the execution proceedings must start from the Labour Court. That apart, the petitioner in the present case has also

not shown as to how the initiation of execution proceedings before the Civil Court has caused irreparable injury or prejudice to him.

9. Of course, learned counsel for the petitioner argues that if such proceeding was firstly filed before the Labour Court he would have got an

opportunity to take an objection to the entitlement of the respondent to receive any money from this petitioner.Â In fact, such an objection was

already taken by the petitioner before the Labour Court in an application filed under Section 33ÂC (2) of the I. D. Act by the respondent. The

objection of the petitioner was also adjudicated upon by the Labour and so it is obvious that the submission is bereft of any substance.Â In any case, I

must say, there is no provision made under the I. D. Act that if any application for execution of award is filed before the Labour Court, an objection

can be taken by the judgmentÂdebtor and only after adjudication of such an objection, the Labour Court could transmit the award for its execution to

the Civil Court under Section 11 (10) of the I. D. Act.Â Therefore, the argument advanced by learned counsel for the petitioner has to be rejected

and is rejected accordingly.

10. It is also the contention of learned counsel for the petitioner that the execution of the Award can be made only when an application is made to the

appropriate Government under subÂsection (1) of Section 33C of the I. D. Act.Â The objection cannot be accepted for the simple reason that this remedy is available to a decreeÂholder without prejudice to any other remedy available to him for execution of the award.Â It has been held to be so

by the Civil Court and rightly, while passing the impugned order.

11. So, the conclusions reached as above can be summarised thus Â under the Industrial Disputes Act, two options are available to the decreeÂholder

for executing the award of the Labour Court; one is under Section 11 (9) or (10) thereof and the other is under Section 33ÂC (1), and finally having

regard to the expression â??any other mode of recoveryâ? contained in Section 33ÂC (1) of the I. D. Act, it cannot be said that remedy of the

decreeÂholder under Section 11 (9) and (10) is barred.Â For this reason, in my humble view, the law laid down by the Hon'ble Apex Court in the

case of N. P. Ponnuswami (supra) has no application to the facts of the present case as this is not a case wherein only one remedy is provided for

execution of the Award.

12. In the circumstances, I find that there is no illegality in the impugned order and the writ petition deserves to be dismissed.

13. Before parting with the judgment, I would like to make a specific mention about the attitude adopted by the petitioner.Â The award has been

passed about seven years ago.Â The petitioner, however, has refused to obey the award for all these years and has made the respondent to run from

pillar to post to get what is due to him under the law of the land on one pretext or the other.Â The least that the law of the land would expect of the

petitioner is his remaining deferent to the law of the land and in this case to satisfy the award and discharge the debt under the award without

requiring the decreeÂholder to once again enter the portals of the Court of Justice.Â The petitioner, however, by his intransigence in the matter has

shown that he has no respect for the law and would do anything to frustrate the award. Such a petitioner must be imposed with appropriate costs.

14. Writ Petition is dismissed with costs ofÂ Rs. 20,000/Â to be paid to the respondent within one month from the date of order failing which the

costs will be the costs of the proceeding before the Civil Court and will be included in the money to be recovered.Â Rule discharged.Â No costs.

