
(2003) 11 AP CK 0050
In the Andhra Pradesh High Court
Case No : CRP No. 4542 of 2003

Sri Balaji Rice Mill

APPELLANT

Vs

Rice Mill and Flour Mill Workers Union and Others

RESPONDENT

Date of Decision : 14-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2003) 6 ALD 731

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : G. Vidyasagar, for the Appellant; Y. Sudhakar, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Sri Balaji Rice Mill represented by its Managing Partner/revision petitioner/plaintiff filed the present civil revision petition aggrieved by an order made in G.R.No. 1186 of 2003 dated 25-8-2003 on the file of the Principal Junior Civil Judge at Palakonda, Srikakulam District, whereby the plaint was returned for presentation before the proper Court.

2. Sri G. Vidyasagar, learned Counsel representing the revision petitioner/plaintiff had drawn the attention of this Court to the allegations made in the plaint and also the cause of action and the relief prayed for in the plaint and had contended that the return of plaint on the ground that the civil Court has no jurisdiction to entertain the suit cannot be sustained in the facts and circumstances of the case. The learned Counsel also submitted that as per the plaint allegations, it is clear that since the respondents/defendants are resorting to certain unruly activities like abusing and threatening the plaintiff with dire consequences and interfering with the regular course of business, there is no question of driving the petitioner/plaintiff to an Industrial Tribunal or to a Labour Court in this regard. The learned Counsel also had drawn the attention of this Court that in fact, the concerned Industrial Disputes Court had returned making endorsement how the relief para is maintainable in the said Court. The learned Counsel further explained that the

ratio in Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another, , is not applicable to the facts of the present case and at any rate these are not questions to be decided at the threshold while numbering the suit.

3. Per contra, Sri Y. Sudhakar, learned Counsel representing the 1st respondent submitted that there is no dispute that the 1st respondent, the 1st defendant in the suit is a registered trade union and the controversy in fact arose between the management and registered trade union relating to the payment of wages and with a view to put the members of the trade union into trouble, the management had thought of instituting the present suit with all unsustainable allegations. The learned Counsel also had drawn the attention of this Court that in the plaint itself it was pleaded that there were some talks and understandings between millers and workers and in the year 1999 both millers and labourers agreed to implement the same rates prevailing in Palakonda Village. The learned Counsel also had further drawn the attention of this Court to the other allegations which clearly go to show that the dispute is in relation to the payment of minimum wages and nothing more. The learned Counsel would maintain that this is clearly an industrial dispute and hence the remedy before the civil Court is clearly barred by the provisions of the Industrial Disputes Act, 1947. Strong reliance was placed on C.T. Nikam v. Municipal Corporation of Ahmedabad case (supra) in this regard. The learned Counsel also had drawn the attention of this Court to Section 18 of the Trade Union Act, 1926 and had submitted that in view of the immunity from civil suit in certain cases, the civil Court has no jurisdiction to entertain this suit since it should be taken to have been barred both by the provisions of the Industrial Disputes Act, 1947 and the Trade Union Act, 1926.

4. Heard the Counsel and also perused the allegations made in the plaint. As can be seen from the material available on record, it appears that the plaintiff had approached the Industrial Disputes Court where an endorsement was made returning the petition "how the relief para is maintainable in this Court". Subsequent thereto, the management presented the plaint before the Principal Junior Civil Judge at Palakonda and the learned Judge after recording certain reasons came to the conclusion that civil Court has no jurisdiction and had returned the plaint again for presentation before proper Court. The said order is assailed in the present civil revision petition. It is needless to say that at the time of numbering of plaint the allegations made in the plaint may alone have to be looked into and unless a suit is clearly, expressly or impliedly barred Wherever there is infringement of civil right, it should be taken that a civil Court has jurisdiction to entertain a suit of civil nature u/s 9 of the Code of Civil Procedure. In the present case, as can be seen from the allegations made in the plaint what is complained of is the unruly behaviour and the like activities of respondents/defendants in interfering with the transaction of business. It is no doubt true that a registered and recognized trade union is having certain rights and such rights may have to be ventilated within the permissible limits as specified by different provisions of labour legislations when unlawful activities and other like

allegations are made in the plaint. It cannot be said that the jurisdiction of the civil Court to entertain such a suit is totally barred u/s 9 of the CPC either in the light of provisions of the Industrial Disputes Act, 1947 or in the light of provisions of the Trade Union Act, 1926. Reliance was placed on SRF, Ltd. v. Shriram Fibres Employees Union, 1994-II LL No. 160. Section 18 of the Trade Union Act, 1926 dealing with Immunity from civil suit in certain cases reads as hereunder:

1. No suit or other legal proceeding shall be maintainable in any civil Court against any registered trade union or any office bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

2. A registered trade union shall not be liable in any suit or other legal proceeding in any civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the trade unions.

5. In Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, , the Apex Court while dealing with the dispute between employer and employee, jurisdiction of civil Court and the principles relating to same had stated as follows:

"The principles as regards jurisdiction of civil Court in relation to dispute between employer and employee are as follows :

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, suit filed in civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A, of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves @page-SC1716 recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance of enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 - which can be called "sister enactments" to Industrial Disputes Act - and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute Industrial Disputes within the meaning of Section 2(k) and Section 2-A of Industrial

Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial Dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act, Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, the Supreme Court thought it fit to commend to the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act are statutorily imposed conditions of service and are binding both upon the employer and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated above.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil Courts. Indeed, the powers of the Court and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

6. Reliance was also placed on C.T. Nikam 's case (supra) wherein the Apex Court held as follows:

"The Industrial Disputes Act is enacted by the Parliament to provide speedy, inexpensive and effective forum for resolution of disputes arising between workmen and the employers, the underlying idea being to ensure that the workmen does not get caught in the labyrinth of Civil Courts which the workmen can ill-afford. The procedure followed by Civil Courts are too lengthy and

consequently, is not an efficacious forum for resolving Industrial Disputes speedily. The power of Industrial Courts also is wide and such forums are empowered to grant adequate relief as they think just and appropriate. It is in the interest of the workmen that their disputes, including the dispute of illegal termination are adjudicated upon by an industrial dispute within the meaning of Section 2(k) and u/s 17 of the Industrial Disputes Act, every Award of Labour Court, Industrial Tribunal or National Tribunal is required to be published by the appropriate Government within a period of thirty days from the date of its receipt and such Award published under Sub-section (1) of Section 17 is held to be final."

7. The facts of the case in the aforesaid decisions of the Apex Court referred to supra definitely are distinguishable. Here is a case where allegations are made relating to unruly activities or unlawful activities of interference with the course of business by the management. It is no doubt true that the dividing line between such activities when there is controversy between the management and trade union may be very thin and slender and it may be very difficult to define, but, the fact remains that it cannot be laid down as a rule. Under no circumstances, the civil Court can entertain a suit of this nature when such allegations relating to unruly activities and unlawful activities are specifically pleaded in the plaint. At any rate, that is not the stage where these aspects may have to be decided since the Court while numbering the plaint should be guided only by the allegations made in the plaint and not beyond it.

8. In the light of the allegations made in the plaint, I am thoroughly satisfied that the suit of this nature praying for the relief of perpetual injunction based on unruly or unlawful activities of respondents/defendants is definitely maintainable in a civil Court. It is needless to say that after the suit is numbered, the respondents/defendants may be at liberty to raise the necessary defence. In the light of the foregoing discussion, the impugned order is set aside with a direction to the learned Judge to number the suit and proceed with the matter in accordance with law.

9. Accordingly, the Civil Revision Petition is hereby allowed. No order as to costs.