

(1983) 02 BOM CK 0019
In the Bombay High Court
Case No : Second Appeal No. 476 of 1977

The Employees" State Insurance Corporation
Vs
R.R. Gundu

APPELLANT

RESPONDENT

Date of Decision : 09-02-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Employees State Insurance Act, 1948 — Section 2, 45B, 75, 76, 77
Specific Relief Act, 1963 — Section 2, 36, 41

Citation : (1983) 85 BOMLR 356 : (1983) MhLj 761

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Masodkar, J.—This second appeal filed by the Employees" State Insurance Corporation arises out of a suit filed by the respondents, which appears to be a firm manufacturing chaddars on power looms in Municipal House No. 466, situate at Sakhar Peth, Sholapur.

2. The facts leading to the present appeal and the adjudications by the Courts below reveal a very curious state of affairs and entirely unsatisfactory results.

3. The plaintiffs sought the relief of injunction by filing the present suit for the purpose of restraining the present appellant Corporation, which is duly constituted under the provisions of the Employees" State Insurance Act, 1948 (hereinafter called "the Act"), from enforcing the provisions thereof against the plaintiffs" units and from recovering amounts of contribution and special contribution. This relief was claimed on the basis of the allegations that plaintiff No. 1 was a partnership firm having four power looms, one winding machine, one warping machine and one candy machine located in one shed. In the same premises, in a separate room, plaintiff No. 2 Vyankatesh had two other power looms. The business of the firm as well as that of plaintiff No. 2, according to the plaint assertions, were separate and independent. As plaintiff No. 1 firm did not

engage more than 14 workers and the workers working with plaintiff No. 2 could not be included, the plaintiffs asserted that the provisions of the Act were not applicable, for the two units would not be "factories" within the meaning of the Act. In spite of this, the defendant Corporation, according to the plaintiff allegation, found that plaintiff No. 1 firm was a factory under the Act and called upon them to make contribution and special contribution. The defendant Corporation issued a notice of February 26, 1968 intimating that a prosecution would be launched under the Act. Similarly, a notice dated September 6, 1972 was issued u/s 73D of the Act demanding special contribution followed by another notice demanding employers' contribution having reference to the provisions of Section 45B of the Act. The plaintiff asserts in general terms that because these units are the two units, one that of the firm and the other of plaintiff No. 2, the requirements of "factory" were not satisfied and thus the notices issued and the demands made therein were without jurisdiction. No relief of- declaration is claimed. Only the relief of injunction restraining the Corporation from enforcing the provisions of the entire Act is sought. The judgments under appeal clearly indicate that though the controversy was raised in this manner, which was resisted by the Corporation, the trial Court made a decree for injunction restraining the enforcement of the provisions of the entire Act and that decree has been affirmed in first appeal. This decree is made overruling the objection of the appellants-Corporation that the civil Court had no jurisdiction either to issue such an injunction or to entertain an issue which squarely arose u/s 2(12) of the Act so as to find out whether the plaintiff No. 1 firm was or was not a factory within the meaning of that provision. Reviewing the evidence, the Courts below entered a finding that plaintiff No. 1 firm did not satisfy the requirements of the factory and, therefore, the plaintiffs were entitled to the injunction.

4. This decree made in this manner is under challenge in the present appeal.

5. The matter was heard at some length and the debated issues resolved in two parts, in that to find out whether the finding with regard to the jurisdiction as well as with regard to the exercise thereof can in law be sustained. It is obvious that the judgments under appeal do not refer to the settled principles with regard to the exercise of jurisdiction in matters of making injunctory decrees and the error is apparent on the face of the record.

6. Making of such introductory decree is a specific relief. That lies in the discretion of the Court and is not available as of course. Such a relief cannot be granted only because certain set of facts is alleged. In the context of the allegations and the law governing such allegations, the Court before which such a decree is sought has to exercise the jurisdiction either to grant the same or to refuse it.

7. It is ample to observe in this context that the provisions that govern the matters of grant of specific relief, as are available in the Specific Relief Act, 1963, have not been kept in view and there is clear error of law committed while exercising the jurisdiction in favour of the plaintiffs. As summarized above, the

plaint allegations tried to set up a case that plaintiff No. 1 firm was not a factory within the meaning of Section 2(12) of the Act. It proceeded on the basis that the defendant Corporation was duly constituted for the enforcement of the Act. Injunction was sought restraining the Corporation from enforcing the provisions of the statute, which were not questioned either on the ground that they were ultra vires or that they lacked the basic legislative competence. Now, a look at the provisions of the Act bears enough testimony that it is a complete Code with regard to the matters that arise under the provisions of the Act. There is enacted Chapter VI of the Act which provides for adjudication of disputes and claims. Without following the process of adjudication thereunder, the plaintiffs had sought to move the civil Court seeking an injunction against the Corporation. All said and granted in favour of the plaintiffs, as to whether the plaintiffs were liable to pay the contribution as employers or whether they were liable to pay the special contribution, as was demanded by the notices issued by the Corporation, could well be adjudicated upon under Chap. VI of the Act. As far as the notice of February 26, 1968 is concerned, it was a notice intimating the plaintiffs that a prosecution would be launched. Such prosecution has to be before the competent Court of jurisdiction, as is provided for in Chap. VII of the Act. In case of such prosecution, it is obvious that all that is alleged in the plaint could have well been set up in plea as a defence. By the evidence tendered at the trial, all this remedial position is not at all ruled out.

8. To such type of situation, the provisions of Section 41 of the Specific Relief Act, 1963 are clearly applicable. In other words, an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a criminal matter nor an injunction can be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding (clauses (e) and (h) of Section 41 of the Specific Relief Act). In the light of Section 36 of the Specific Relief Act, which declares the principles that preventive relief is granted at the discretion of the Court, the provisions of Section 41 are a rider, in that upon satisfaction of the conditions of either of the Clauses (a) to (j), no relief of injunction can at all be issued. It is thus obvious that the plaintiffs were not entitled to any decree of injunction, nor could the Court make such a decree in exercise of its jurisdiction in view of the cause of action pleaded and asserted in the plaint. The cause of action squarely was a dispute that could form part of the adjudication under Chap. VI of the Act. It cannot be doubted that if the plaintiffs could establish in an adjudication under that Chapter that they were not running the factory and as such the Corporation was not entitled to make the orders seeking contribution and special contribution, the dispute with regard to their liability would have been resolved by the competent Court constituted under the Act. So would be the position if they were to be prosecuted before the criminal Court. The judgments under appeal and the decree clearly overlook that such an injunctory decree cannot be made so as to restrain the Corporation from instituting or prosecuting any proceeding in a criminal matter which may arise because of the breach of the statute like the Employees' State Insurance Act,

nor could such a decree be made when particularly that Act provided equally efficacious remedy with regard to the matters in dispute.

9. Apart from that, the evidence of plaintiff No. 2 makes a significant reading. That evidence shows that the business of the power hand looms was an ancestral business carried on at least from 1960-61, his brother Maruti starting two power looms and his brother Vasant working as a partner with his father. All the power looms appear to be located in different rooms, but in the same premises or in the same house. Plaintiff No. 2's assertion is that the brothers were separate and he relied on the ration card and getting of the profits of the power loom business of his own and not taking profits from the power loom business of the father and brothers. He has stated that he had engaged separate labourers and had separate licences for his looms and those of his father and brother. According to him, his father had a licence under the Factories Act, while he and Maruti had licences under the Shops and Establishments Act. He has admitted that power is used to run the looms. In his units, six workers are engaged. His brother had removed the looms in Bhavanrushi Peth, Sholapur, in 1966. The firm name is R.P. Gundu Textiles and all the three brothers and the father are the partners of that firm. Upon the death of the father, the partnership was dissolved. The cross-examination of plaintiff No. 2 shows that he had no documentary evidence to show that the power looms were purchased out of his own amount or that his brothers and father purchased the same separately. As to the location, he has stated that power looms were in two sheds and there was a mere partition between the unit of the father and that of the brother. The house was in the name of the father, who had taken the same on lease. It was the father who used to pay the rent as well as the electricity charges, but he used to share the same with other brothers. The warping and processing units were not registered under the Factories Act, though they were located in the same premises. Even the office of the firm is in the same premises. The firm deals in yarn as well as in other products. Different clerks are engaged. No documentary evidence exists to show that Maruti left that house in 1966, neither there is any document to show that the brothers were using different sizes or different designs. He has admitted that all the brothers used to attend the work of R.P. Gundu Textiles having equal shares in the profits. He has produced documents, like the notices issued by the Employees' State Insurance Corporation and factory licence as of the year 1965.

10. This evidence taken in its entirety and literally clearly shows that power looms are located in one premises taken in the name of the father and form part of premises which the father had registered under the Factories Act. The definition of "factory", as is available in Section 2(12) of the Act shows the premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, the expressions "manufacturing process" and "power" having the meanings respectively assigned to have in the Factories Act, 1948. Thus, what the evidence should have established, which it does not establish, is

that before the material date when the cause of action is said to have arisen on any day preceding 12 months, 20 or more persons were employed for wages in the premises, the manufacturing process and aid of power being the admitted positions in the present cases. It is indeed difficult to read this evidence as satisfactorily showing that any of the elements of the definition of "factory" were lacking in the activity of the plaintiffs. The whole emphasis of the evidence appears to be that in the premises there were two different units. The fact remains that the premises were in the name of the father, they were registered under the Factories Act and in the same premises in separate rooms the activities were being carried on by the brothers, who appear to have joint interests in the business of the father. It is well nigh impossible to conclude from this evidence that the plaintiffs had shown that plaintiff No. 1 firm was not "factory".

11. Now, this being the second appeal, Dr. Naik for the respondents argued that this Court should not reappraise the evidence and the finding of fact however erroneous should not be disturbed. This submission of the learned Counsel overlooks the position that findings of fact that bind this Court in second appeal are those which are recorded after appreciating the evidence and on the basis of the material tendered by the parties. A perusal of the trial Court's judgment shows that this evidence of the plaintiffs in this manner is not appreciated. Only a general reference to that evidence has been made and the first appeal Court's judgment in para. 15 makes a partial reference to the evidence of Vyankatesh, completely ignoring several admissions given by the witness. There are no documents to show that the brothers were either separate or had separated from their father. Even from the facts admitted by Vyankatesh, the inference could not be drawn that any of the elements of the defining clause in Section 2(12) were wanting. In fact, there is no evidence to show that on the premises less than 20 workers were employed. What the evidence states is that in two units different number of workers were being employed. Under such state of affairs, the Courts below could not have concluded in favour of the plaintiffs, but should have rendered a finding that the plaintiffs had failed to establish that the power loom activity carried on on the premises did not constitute a "factory". Furthermore, the evidence of Arvind Chande, the Inspector, goes to show that he had called upon Vyankatesh to show the records of the units and he had found factory licence issued to Messrs. R.P. Gundu in whose name electric power connection was there. He found that units were sharing the bills as well as the rent. All the units were producing Chaddars by similar process and he actually found 22 employees working in the units on October 25, 1965. In cross-examination, he has stated that the looms were situated in two rooms. He also found winding, warping and bobbin winding going on. No accounts were produced for his inspection. This evidence taken along with the evidence of Vyankatesh does not leave any manner of doubt that there was in fact on the premises more than 20 persons working and the premises themselves were registered under the Factories Act.

12. Once this position is available, the statutory Corporation like the present appellant was in duty bound to issue notice that was tried to be interdicted by filing the present suit. In fact, that is the accepted jurisdiction of the Corporation. There was nothing to show that at any stage the Corporation exceeded that jurisdiction or lacked the legal authority under the provisions of the Act to issue the notices on the basis of which the suit was filed. The material placed by the plaintiffs clearly indicated the conduct that they were postponing the due process of law and the action lacked all bona fides. This itself would disentitle the plaintiffs to have any equitable discretionary relief and particularly of a decree for injunction.

13. This should be enough to allow the present appeal by setting aside the decree so made.

14. However, the next and more fundamental debate surrounds the question as to whether the civil Court had jurisdiction to enter upon the question as to whether the plaintiffs were running a factory or not and as to whether they were liable to the process of law or not, as is contemplated by the provisions of the Act. The plaint allegations clearly indicate that by filing the suit substantive dispute with regard to the liability of the plaintiffs as the owners of the looms to pay the contribution and special contribution was raised on the basis that their business was not a "factory" within the meaning of Section 2(12) of the Act. Indeed, as the judgments under appeal show, they sought an adjudication from the civil Court having reference to the definition of the term "factory" enacted by the special law. As the cause of action stood, the whole suit questioned the action of the Corporation demanding the contribution and the special contribution under the provisions of the Act. At the threshold and in substance, such a dispute and such a question would squarely fall within the terms of Section 75(1) of the Act, which provides for the matters to be decided by the Employees' Insurance Court. If the matters do form part of the question or dispute that can be adjudicated upon under Sub-section (1), then Sub-section (3) of Section 75 expressly bars the jurisdiction of the civil Court. Matters with regard to the adjudication of any liability, like the present one, that is with regard to the contribution and the special contribution, is specifically excluded from the cognisance of the civil Court. Reverting back to the plaint allegation, it did put an issue, the demand of liability with regard to the contribution and the special contribution, and that would stand expressly excluded by the terms of Sub-section (3) of Section 75 of the Act.

15. Much argument was advanced that there is no express clause in Sub-section (1) of Section 75 of the Act by which the question or dispute as to whether particular premises were a "factory" or not, would or would not be within the exclusive jurisdiction of the Employees' Insurance Court. This argument overlooks the basic and express scheme of the Act with regard to the adjudication of disputes and claims, as is provided for by chap. VI. The wordings of Clauses (a) to (g) of Sub-section (1) of Section 75 have reference to question

or dispute with regard to matters as are specifically mentioned in Clauses (a) to (ee) and residuary matters within Clause (g). The specific heads of the clauses, like Clause (a), would require an adjudication with regard to the question or dispute as to whether any person is an employee and is liable to pay employee's contribution. Clause (b) relates to the rate of wages or average daily wages of an employee, Clause (c) to the rate of contribution payable by a principal employer in respect of an employee and Clause (d) to the status of the person as to whether he is or was the principal employer of any employee. These clauses have references to the definitions of "employee" and "principal employer". These definitions are available in Sub-sections (9) and (17) of Section 2 of the Act. By reason of these definitions, to find out an "employee", it must be found out whether a person was employed for wages in or connection with the work of a "factory" or establishment to which the Act applies, and to find out the "principal employer", it would be necessary to find out the owner or occupier of the "factory" as far as Clause (i) of Sub-section (17) of Section 2 is concerned. These definitions, therefore, necessarily take in the adjudication with regard to the finding of the "factory" and the adjudication necessarily, therefore, would center and would be resolved by finding out a "factory" within the meaning of Sub-section (12) of Section 2. It is implicit in these definitions that without finding the "factory" neither the "employee" nor the "principal employer" can be reached. It is only in relation to a factory or an establishment to which the Act applies that the question or dispute can be adjudicated, as is provided for in Clauses (a) to (d) of Section 75(1) of the Act. In the light of these clauses, if a reference is made to Clause (g), it takes in any other matter that would be in dispute between a person and the Corporation in respect of any contribution or benefit or other dues payable or recoverable under the Act. Therefore, what could be done even without Clause (g) is made further clear that any other matter which is in dispute between a person and the Corporation in respect of the contribution or benefit or other dues payable or recoverable under the Act is exclusively within the jurisdiction of the Employees' Insurance Court. From this it follows that a dispute of the present kind that was raised by filing the civil suit could form part of the adjudication u/s 75(1) of the Act. Admittedly, the liability was raised by the Corporation by issue of the notices. Persons like the plaintiffs raised a dispute with regard to their liability on the footing that they were not the principal employers running a factory. Such dispute would squarely fall under Clauses (c), (d) and (g) of Section 75(1) of the Act. If it is so covered, then by virtue of Sub-section (3) of Section 75 the civil Court's jurisdiction to decide or deal with such dispute would be barred.

16. The scheme of Chap. VI clearly indicates that there is paramount intent to relegate all disputes of such kind to the cognisance of the Employees' Insurance Court and to exclude the jurisdiction of the civil Court in that regard. Not only the forum is constituted but all the necessary powers for the purpose of adjudication are conferred upon that Court. The provisions of Sections 76, 77 and 78 are in evidence thereof. Such Court is further empowered to submit any question of law

for the decision of the High Court (Section 81) and with regard to a substantial question of law, Section 82 permits an appeal to the High Court. Thus, there is ample and complete legislation with regard to the jurisdiction in favour of the special Court and the express exclusion of jurisdiction of the civil Court with regard to matters within the cognisance of such special Court.

17. Now, this is the legislation with regard to the subject-matter which is placed in the exclusive cognisance of a special Court. Generally speaking, the term "jurisdiction" consists of two elements, "jus" indicating right or law and "diction" indicating jurisdiction act. The root of the word thus indicates and connotes "the legal power, right, or authority to hear and determine a cause considered either in general or with reference to a particular matter" "legal power to interpret and administer the law in the premises." Prominently, therefore, the term "jurisdiction" has a nexus to the legal authority to determine a cause by taking cognisance thereof. In the context of the provisions of the CPC and the universal jurisdiction conferred upon the constituted civil Courts, the term "jurisdiction" has been understood to mean the extent of the authority to administer justice according to the terms of the given law. It has also a reference to the pecuniary as well as local jurisdictions. (See *Raja Soap Factory and Others Vs. S.P. Shantharaj and Others*, AIR [1960] S.C. 823. However, in the context of the special Courts or special Tribunals like the present one, the jurisdiction has real reference to the legal power to take cognisance and determine the given cause. When an inquiry arises with regard to such Court or such Tribunal, it is primary to find out whether the subject-matter of the given dispute could be taken cognisance of by such Tribunal and whether it had the legal authority to determine such a dispute. If this test is applied, it would indicate that the Questions and the disputes raised by the plaintiffs expressly were within the commonsense of the Employees' Insurance Court by reason of the provisions of Section 75(1) of the Act and that would exclude the jurisdiction conferred upon the civil Court by virtue of the provisions of Section 9 of the Code of Civil Procedure, 1908.

18. As far as the decided cases cited at the Bar are concerned, those purport to lay down the general principles operating upon the field of inquiry with regard to finding or excluding the jurisdiction of the given Courts. In the context of the provisions of the Industrial Disputes Act, the Supreme Court in the case of *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , restated the position that if the industrial dispute relates to the enforcement of a right or an obligation created under that Act, then the only remedy available to the suitor was to set an adjudication under the Act. The principle that applies to the industrial dispute would somberly govern the dispute with regard to the liability of the principal employer to pay the contribution or the special contribution. Such dispute as to liability would be excluded from the jurisdiction of the civil Court, Once the jurisdiction is so founded in favour of the Employees' Insurance Court, it is well settled principle that such Court or Tribunal will have jurisdiction to decide all questions that are necessary for the

purpose of giving or refusing to give the relief under the provisions of the given statute. (See *Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi*, , *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, *Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh*, , and *Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation*, The suits of the present kind which raised the disputes having reference to the provisions of the Employees' State Insurance Act that has provided an adjudicatory machinery will have to be treated as barred on the pan material principles that applied when attempts were made in the face of the special statute to file civil suits relying on the provisions of Section 9 of the CPC by raising disputes of the kind which could fall within the special adjudication contemplated by special statutes. (See *Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum*, , *Mohd. Mahmood and Another Vs. Tikam Das and Another*, , and AIR 1935 5 (Privy Council))

19. Much reliance was placed by Dr. Naik on the decision of the Supreme Court in *Kamala Mills Ltd. Vs. State of Bombay*, . However, such reliance is without any merit. The discussion in that case in paras. 11 to 16, on the other hand, clearly shows that the learned Counsel is not right in making the submission that the finding as to whether an establishment is a factory or not would be outside the jurisdiction of the Employees' Insurance Court. In fact, the principle stated therein would lead to the inference altogether otherwise. That is more so because of the interwoven scheme of definitions of "employee" (Section 2(9)), "principal employer" (Section 2(17)) and "factory" (Section 2(12)). For finding "employee" and "principal employer", a "factory" has to be found without which the adjudication u/s 75(1) read with the relevant clauses is not possible. The submission that it is merely a finding with regard to an ancillary or a collateral fact is not borne out by the language of Section 75(1) and the definitions of these terms. On the other hand, as the scheme stands, without finding a factory or an establishment, the Tribunal would not be in a position to find out the matters of liability of the principal employer or the entitlement of an employee. The statutory scheme under consideration referred to above clearly shows that the special statute has its special dictionary and for that Section 2 provides the definitions. The definitions with which the present controversy is concerned are such which are interrelated and basic is the definition with regard to the factory or the establishment. In such interwoven and interdependent scheme, of Statute, it is not necessary to separately provide, nor is it possible to expect a separate entry in that regard in a provision like Section 75. That provision can be implied by reference which may arise because of the enactment of other entries. Clause (g) of Sub-section (1) of Section 75 being of the general nature can be read ejusdem generis to the other clauses that are from (a) to (ee), but so reading, it does not exclude the jurisdiction of the Employees' Insurance Court from considering a dispute with regard to an establishment being factory or not. On the other hand, reading Clause (g) ejusdem generis with Clauses like (a) to (d) of Sub-section (1), it would follow that by reason of Clause (g), a dispute as

to whether a particular establishment is a factory or not would be well within the jurisdiction of the Employees' Insurance Court and it would be competent to take cognisance of the dispute with regard to the matters concerning it.

20. This being the position of the jurisdiction with regard to the dispute as to whether the plaintiffs were running the factory or not, it has to be concluded that the civil Court's jurisdiction by reason of Sub-section (3) of Section 75 of the Act was expressly excluded. In view of this and for all the reasons above, the present appeal will have to be allowed.

21. In the result, the appeal is allowed and the judgment and decree under appeal is set aside. The suit filed by the respondents-plaintiffs is dismissed with costs throughout. It is expected of the Corporation that it will take expeditious steps to implement the provisions of the Act that are made for the benefit of the working class and which benefit has been kept away for over a period of more than 10 years, by taking such measures as may be available under the provisions of the Act, now that the suit is so dismissed and the injunction dissolved.