
(1977) 07 CAL CK 0008
In the Calcutta High Court
Case No : Suit No. 583 of 1973

The Indian Cable Co. Ltd.

APPELLANT

Vs

Lodna Colliery Co. (1920) Ltd.

RESPONDENT

Date of Decision : 25-07-1977

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 20, 7

Citation : AIR 1977 Cal 402

Hon'ble Judges : Monjula Bose, J

Bench : Single Bench

Advocate : Jayanta Mitra, for the Appellant; HIRAK MITRA, for the Respondent

Judgement

Monjula Bose, J.—This suit has been filed by the plaintiff, inter alia, for a decree for Rs. 1,93,274.10 p. for price of goods sold and delivered to the defendant.

2. The plaintiff's case, in short, is that on October 3, 1972 it had sold and delivered to the defendant various electrical goods of the total value of Rupees 1,33,082.50 p. On October 9, 1972, the plaintiff to secure payment of its dues drew a Hundi and/or sola of exchange upon the defendant directing the latter to pay within 45 days from date the said sum to the plaintiff's bankers and the defendant duly accepted the same. On due date, the instrument was dishonoured by non-payment and in spite of demands the defendant has failed and neglected to pay the plaintiff's dues.

3. The defendant has filed its written statement denying the allegations in the plaint. It is contended further that the suit is not maintainable by virtue of the provisions of the Coal Mines (Nationalisation) Act, 1973 (hereinafter referred to as the said Act),

4. The only issue raised and settled at the trial was -- Is the suit maintainable by reason of the provisions of the Coal Mines (Nationalisation) Act. 1973?

5. No witness was called to depose at the trial. The parties by consent tendered

the Hundi and/or sola of exchange dated October 9, 1972 and two invoices both dated October 5, 1972 collectively marked Exhibit "A" and an order dated January 13, 1977 of the Assistant Commissioner of Payments under the said Act (hereinafter referred to as the Commissioner) in Claim Case No. 325 of 1975, marked Exhibit "B",

6. Mr. Jayanta Mitra, learned counsel appearing for the plaintiff and Mr. Hirak Mitra appearing for the defendant have both contended that this Court was competent to consider subsequent events and made submissions keeping in view the said order

7. It transpires that subsequent to the filing of this suit, in or about 1975, a claim for Rs. 1,93,274.10 p. was preferred by the plaintiff before the Commissioner for the price of the said goods, and also for Rs. 12,442.50 p. on account of sales tax thereof. This claim was adjudicated upon, and by the said order dated January 13, 1977 the Commissioner admitted the plaintiff's entire claim of Rupees 2,05,716.50 p. Under the said Act, the sum has now become payable by way of compensation out of funds in the hands of the Commissioner.

8. The defendant's main contention in this suit has been that in view of the provisions of the said Act. a Code in itself all claims against the colliery owners could be made only before the Commissioner and this Court was not competent and had no jurisdiction to try and determine this suit.

a. Mr. H. Mitra, learned counsel for the defendant, relied on Sections 20, 23 and 24 of the said Act which may be noted as hereunder. Section 20 of the said Act inter alia provides that: --

"Every person having a claim against the owner of a Coal Mine shall prefer such claim before the Commissioner within thirty days from the specified date."

Section 23 of the said Act reads inter alia: --

1.

2.

3. Every claimant who fails to file the proof of his claim within the time specified by the Commissioner shall be excluded from the disbursements made by the Commissioner.

4. The Commissioner shall after such investigation as may, in his opinion, be necessary and after giving the owner of the coal mine an opportunity of refuting the claim and after giving claimant a reasonable opportunity of being heard, in writing, admit or reject the claim in whole or in part.

5. The Commissioner shall have the power to regulate his procedure in all matters arising out of the discharge of his function? including the place or places at which he will hold his sittings and shall, for the purpose of making any investigation under this Act. have the same powers as are vested in a Civil Court

under the CPC 1908, while trying a suit, in respect of the following matters, namely:--

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the reception of evidence on affidavits;
- (d) the issuing of any commission for the examination of witness.

6.

7. A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the coal mine is situated. Mr. H. Mitra cited the case of Cricket Club of India Ltd. and Others Vs. Madhav L. Apte and Others, for the following observations: --

"Statutory enactments. although expressed in affirmative language, are sometimes treated as having a negative implied and their provisions, though affirmative in words are not necessarily so, if they are absolute, explicit and peremptory. Every statute limiting anything to be in one form, although it bespoke in the affirmative, yet includes in itself a negative. When there is a special affirmative power given which would not be required because there is a general power, it is always read to import the negative. Necessary implication means, not natural necessity, but so strong a probability of intention that an intention to the contrary to that which is imputed to the legislature cannot be supposed.""

Mr. H. Mitra also relied on a passage from Craies on Statute Law 5th Edition at page 244 which reads as follows:--

"Statutory enactments, although expressed in affirmative language, are sometimes treated as having a negative implied" ... In Viner's Abr. (i) the following rule is laid down: "Every statute limiting anything to be in one form, although it bespoke in the affirmative, yet includes in itself a negative" and in Bacon's Abr. (k) the rule given is, that "if an affirmative statute which is introductive of a new law direct a thing to be done in a certain way, that thing shall not, even if there be no negative words, be done in any other way."

10. On the strength of the above authorities Mr. H. Mitra submitted that in the instant case reading the statute in question, by necessary negative implication the jurisdiction of the Court has been taken away.

11. Mr. H. Mitra next argued that by reason of a prior adjudication by a competent authority the plaintiff's original claim had merged in the said order and the plaintiff did not have a cause of action in this suit.

12. In support of this contention Mr. H. Mitra cited the decision In re: European Central Rly. Co. Ex parte Oriental Financial Corporation reported in (1876) 4 Ch D 33. In that case a debenture holder brought an action against the company and recovered judgment for the principal debt with interest at 4% and costs. The company was ordered to be wound up and the debenture holder was admitted to prove for the judgment debt find interest at 4%. The debenture holder subsequently sought to prove an additional 2% on the original amount of the debenture. The Court held that the original debt having merged in the judgment, the claimant was only entitled to interest at 4%

13. Mr. H. Mitra also relied upon Satish Kumar and Others Vs. Surinder Kumar and Others, for the proposition that "it is well settled that as a general rule all claims which are the subject-matter of a reference to arbitration merge in the award..... and after an award is pronounced no action can be started on the original claim which has been the subject-matter of the reference."

14. Mr. H. Mitra next contended that Section 11 of the amended CPC was an embargo to the plaintiffs proceeding with this suit as the matter in issue having been finally decided by a competent court, although of limited jurisdiction has become res judicata.

15. Mr. H. Mitra finally argued that having elected to pursue its claim before the Commissioner the plaintiff could not again proceed with the same claim before this Court. He cited the case of Pita Ram Vs. Jujhar Singh and Shanker Singh, and Jauhari Singh Vs. Ganga Sahai and Another, . In those two cases the litigant chose to avail himself of the remedy provided by Section 22 of the Provincial Insolvency Act, and his application was dismissed on merits. It was held that he cannot agitate the same issue thereafter in a Civil suit as the decision upon the merits had become final. It was contended that in the instant case, the claim of the plaintiff after adjudication by the Commissioner cannot be pursued once again.

16. Mr. J. Mitra, learned counsel for the plaintiff submitted on the other hand that, only two questions arose for determination in this case. Firstly, whether after the promulgation of the Coal Mines (Nationalisation) Act, 1973, a suit would lie in a Civil Court for a claim which could be realised under the Act, and secondly, if a claim had once been proceeded with before the Commissioner whether the same could be again agitated before a Civil Court, assuming it had jurisdiction.

17. Mr. J. Mitra did not dispute that the principles of res judicata or principles analogous thereto would apply in the instant case.

18. He conceded that if payments were received pursuant to any adjudication of the Commissioner, the same amount could not be again realisable under a decree of the Civil Court.

19. Mr. J. Mitra cited a decision of this Court in Barakar Coal Co. Ltd. Vs. N.C.

Mehta and Another, . Here, a Division Bench held that the Coking Coal Mines (Nationalisation) Act, 1972 which was in pari materia with the statute in the instant case, did not take away the jurisdiction of the Civil Courts. The said Act, merely laid down the procedure for realisation of claims out of the compensation payable by the Government to the erstwhile owners. If a creditor chose not to avail of the procedure laid down in the Act he merely ran the risk of not being entitled to enforce his claim against money in the hands of the Commissioner. There was nothing to pre-vent execution of a decree against other assets if any, of the erstwhile owners.

20. Mr. J. Mitra contended next, that the exclusion of the jurisdiction of Civil Courts will not be assumed unless the relevant statute expressly provided for the same or that it was a necessary or inevitable implication of the statute that such jurisdiction would be excluded. The provision of a certain remedy by a particular statute may not by itself necessarily exclude the jurisdiction of the Civil Courts. He cited a decision of the Supreme Court in Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, in support of his contention. He also cited the decision in the case Kamala Mills Ltd. Vs. State of Bombay, and contended that where a statute created a special right or a liability and provided for a determination of the same by a Tribunal specially constituted in that behalf with exclusive jurisdiction, the question of ouster of the jurisdiction of Civil Courts could arise by necessary implication. In the instant case, however, the statute in question did not create any special right or a liability. All that it provided was a method of realisation of existing claims. There could not be any exclusion of jurisdiction of Civil Courts by necessary implication.

21. Mr. J. Mitra drew the attention of the Court to Sections 7(1) and 7(2)(b) of the said Act, which read as follows:--

"7 (1) Every liability of the owner, agent, manager or managing contractor of a coal mine, in respect of any period prior to the appointed day shall be the liability of such owner, agent, manager or managing contractor, as the case may be, and shall be enforceable against him and not against the Central Government or the Government company."

"7 (2) (b) No award, decree or order of any Court, Tribunal or other authority in relation to any coal mine passed after the appointed day, but in relation to any matter, claim or dispute which arose before that day, shall be enforceable against the Central Government or the Government company."

22. He submitted that the liability of the owner before May 1, 1973 was expressly left enforceable against the owner and such liabilities were not meant to be agitated before the Commissioner and these sections by implication left the jurisdiction of Civil Court unaffected.

23. The case of the Cricket Club of India (supra) and the passage at p. 244 in Craies Statute Law (supra) lay down the general proposition that in certain cases a negative implication can be drawn from a positive enactment. But to oust the

jurisdiction of a Civil Court, mere negative implication is not enough. The implication must be necessary and inevitable. The Statute in the instant case does not positively or by necessary implication take away the jurisdiction of Civil Courts. On the contrary reading the entire scheme it appears that so far as claims against owners are concerned the jurisdiction of the Courts is by necessary implication retained (vide Section 7).

24. The two Allahabad decisions cited have no application in the facts of this case. There, a Civil Court had come to a decision in one jurisdiction i.e. insolvency, thereafter the same court could not be called upon to adjudicate the same matter in another jurisdiction i.e. a Civil suit.

25. It is also necessary to consider the common contention that the decision of the Commissioner has become final and attracts the principles of res judicata and/or principles analogous thereto. It is to be noted that there is neither any pleading of res judicata nor any issue has been raised thereon. This however makes little difference to this case. If the finding of the Commissioner is res judicata then the matter is not to be agitated any further and a decree will follow. It is not the contention that the entire suit has become res judicata. If the matter is not res judicata even then, the same result follows as the defendant has not joined issue with the plaintiff as to the latter's claim. A decree can be passed on the basis of the decision of the Commissioner and/or on admitted facts, no issues having been raised on the merits of the case.

26. For the reasons above and following the principles laid down in the decision in Barakar Coal Company's case (supra) I hold that this Act, viz., Coal Mines (Nationalisation) Act, 1973 neither directly nor by implication takes away the jurisdiction of the Civil Courts to entertain suits against the ex-owners of the collieries nationalised, and particularly so in respect of claims arising before the appointed day, i. e. May 1, 1973, The said Act does not prescribe any forum against the ex-owners of the colliery for such claims and only lays down a procedure for having certain claims admitted and adjudicated upon by the Commissioner at the instance of creditors, to be realised out of compensation monies in the hands of the Government payable to such owners.

27. In view of the above I answer the only issue raised in the affirmative and in favour of the plaintiff. There will be a decree for Rs. 1,83,082.52 p. against the defendant, interim interest at the rate of 6% per annum, interest on judgment at the rate of 6% and costs. In case any amount has been realised by the plaintiff from the Commissioner, the defendant will be entitled to pro tanto adjustment in the decree.