

(1986) 07 MAD CK 0024
In the Madras High Court

The Management of Chandra Textiles (P.) Ltd.	APPELLANT
Vs	
N. Palaniswamy and Another	RESPONDENT

Date of Decision : 15-07-1986

Acts Referred:

Citation : (1987) 1 MLJ 269

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The first respondent was employed as a Turner in the Mechanical section of the appellant's Mills. The appellant framed four charges against the first respondent, and after a domestic enquiry, dismissed him from service on 4th September, 1971. The first respondent raised an industrial dispute which was referred for adjudication to the second respondent, and it was taken on file as I.D. 81 of 1972. The second respondent, without going into the merits of the case, rejected the claim of the first respondent by order dated 19th October, 1972 on the ground that the first respondent had not made a demand against the Management claiming reinstatement and that there was no industrial dispute. After making a demand, the first respondent raised a dispute again and it was referred to the second respondent for adjudication, by the Government on 23rd August, 1974 which was numbered as I.D. No. 79 of 1974. Against the reference the appellant filed a writ petition in W.P. 34 98 of 1974 in this Court, questioning the competence of the Government to make a reference in view of the earlier order of the second respondent. The said writ petition was dismissed on 16th November, 1976. Thereafter, the second respondent considered the matter on merits and found that none of the

charges framed by the Management was proved. It was also observed by the second respondent in the Award that it was most inequitable and

unjust for the Management to have dismissed the first respondent from service. The fact that other workmen similarly placed like the first

respondent were reinstated by the management was also referred to by the second respondent. However, while considering the relief to be granted

to the first respondent, the second respondent refused to grant the relief of reinstatement on the ground that the first respondent was absent from

service for a long time and that the Management had to make consequential arrangements and that if reinstatement was to be ordered, it would"

cause untold hardship to the Management. It is better to reproduce the relevant observation of the second respondent in its award:

In view of the long absence, naturally the Management has to make consequential arrangements and therefore, if the petitioner who has put in four

years of service is now ordered to be reinstated after a lapse of about six years, certainly there will be untold hardship to the Management.

The second respondent ordered the appellant to pay a sum of Rs. 10,000 to the first respondent in lieu of reinstatement besides any amount

lawfully due to the first respondent from the Management on account of gratuity, bonus, etc. Incidentally, it may be pointed out that in one sentence

the second respondent refers to the sum of Rs. 10,000 as an ex-gratia payment by the Management.

2. This award was passed on 18-6-1977. On 13-10-1977, the appellant sent a letter to the first respondent along with a cheque in his favour of

Rs. 10,538-91 being the amount awarded by the Labour Court plus bonus for 1970 and 1971. To this letter, the first respondent sent a reply on

24th October, 1977 in the following terms:

The averments in your letter are incorrect. Under protest and without prejudice to my right to file a writ, I have accepted your cheque for Rs.

10,538-91. The acceptance of the cheque will not in any way affect my right to claim benefits for an order of reinstatement with back wages and

continuity of services. I am taking all required steps to file a writ to get appropriate reliefs. I am entitled to gratuity and your cheque is not in full

settlement of this claim. The acceptance of the cheque is not full and final settlement. Still you are liable to pay gratuity. My service is not four

years. In any event, I reserve right to take appropriate action for all my reliefs in due course of time. You please note that there is no full and final settlement. You are also informed that I am accepting the cheque under protest and without prejudice to my rights. Kindly acknowledge receipt of this letter.

On 2nd December, 1977, the first respondent filed a writ petition in this Court, numbered as W.P. 4359 of 1977, praying for quashing of the

Award passed by the second respondent. The first respondent claimed that the second respondent was in error in denying the normal relief of

reinstatement to him when it had found that the charges framed against him were not proved and that it was unjust and inequitable to have

dismissed him from service. The said writ petition was heard by Padmanabhan, J., and allowed on 22nd July, 1980. The learned single Judge has

held that the Labour Court had not exercised its discretion judicially and in accordance with the well - settled principles laid down by the Supreme

Court in deciding the question whether an employee whose dismissal has been found to be wrongful is entitled to reinstatement or not. The learned

Judge has also found that the Management has not either pleaded or established any special circumstances which would have justified the refusal of

the relief of reinstatement to the employee. While setting aside the Award, in so far as it refused to grant the relief of reinstatement, the learned

single Judge has ordered that the petitioner before him would be reinstated in service with consequential monetary benefits. It is this order of the

learned single Judge, which is challenged "" before us in this writ appeal.

3. Mr. M.R. Narayanaswami, learned senior counsel for the appellant, contended that the first respondent is precluded from questioning the

Award of the Labour Court in so far as it declined to grant the relief of reinstatement, by His own conduct in accepting the amount awarded by the

Labour Court as compensation, to which he would not be otherwise entitled. In the beginning of his arguments, when a question was put to him by

the court, whether he rested his case on the principle of estoppel, he answered it by saying that he relied on the doctrine of accord and satisfaction

and not on; the principle of estoppel. However, later, after the arguments had proceeded to some extent, when the court wanted him to state his

proposition specifically he stated thus : - By accepting the amount awarded by

the Labour Court as compensation, to which he would not be otherwise entitled, the first respondent is precluded from questioning the award in so far as it declined to grant the relief of reinstatement, by his conduct." Later on, he submitted that he was not raising it as a preliminary issue or a question of jurisdiction, but he was only placing the matter before the court so that the discretion of the court under Article 226 of the Constitution of India should not be exercised in favour of the first respondent because the first respondent cannot be allowed to approbate and reprobate. It can be taken that Learned Counsel for the appellant put forward his contentions both on the basis of the doctrine of approbation and reprobation and the discretion of the Court to refuse to exercise its jurisdiction in favour of a person who, by his own conduct, is precluded from claiming relief.

4. Learned Counsel for the appellant relied upon *Niang Deong Ltd. v. Jip Hong Ltd.* (1985) 1 All. E.R. 120 for the proposition that where a

litigant has taken the benefit under an order or decision in his favour, he is precluded from setting up, in any subsequent proceeding between the

same parties by way of appeal or otherwise, that such an order or decision was erroneous. In that case, the purchaser brought an action against

the vendor seeking specific performance of a contract for the sale of a property in Singapore, or alternatively, for damages for breach of contract.

At the trial, the Judge refused the relief of specific performance in the mistaken belief that it was not open to him to grant that relief because the

vendor had, after the date of the contract, sold the property to a third party who was not before the court. The Judge accordingly awarded the

purchaser damages in lieu of specific performance. The vendor appealed against the damages awarded and, in the meantime, at the purchaser's

insistence and to forestall the purchaser levying execution, the vendor paid the damages awarded into a bank account in the name of the

purchaser's solicitors to be held by them as stakeholders to await the outcome of the appeal. When the appeal came on for hearing by the

Singapore Court of Appeal, the court pointed out that the purchaser's right to specific performance at the date of the trial could not be affected by

any sale to a third party with notice and gave leave to the purchaser to cross-appeal for specific performance. The vendor's appeal was

accordingly adjourned. At the resumed hearing of the appeal, the Court dismissed the vendor's appeal as to quantum and allowed the purchaser's

cross appeal for specific performance. At no time was the Court informed of the deposit of damages into a bank account. The vendor appealed to

the Privy Council. At the hearing before the Board the vendor was given leave to argue for the first time that the purchaser was estopped from

seeking specific performance after electing to enforce the order for damages. In these circumstances, the Judicial Committee held that the

purchaser had made an election to accept the trial Judge's award of damages and abandon his right of appeal seeking specific performance, when

he demanded and accepted the deposit of damages passed by the trial Court. It was held that the vendor had altered his position to his detriment

by raising and paying over the damages when he would not have been required to do so if the purchaser had sought specific performance on

appeal. It must be noted that in that case, the purchaser had not filed any appeal against the decree of the trial court or given notice of cross-appeal

to the vendor. It was only at the time of the hearing of the appeal by the Singapore court, the purchaser was granted leave to file a cross appeal,

before which time the purchaser had himself insisted upon the payment of damages by the vendor as decreed by the trial court. In those

circumstances, the Privy Council held that the principle of estoppel by election would apply to the court of appeal in Singapore (Sic) was wrong in

granting leave to the purchaser to file a cross appeal.

5. The next decision relied upon by the Learned Counsel for the appellant is that reported in H.G. Krishna Reddy and Co. Vs. M.M. Thimmaiah

and Another, . That case also related to the specific performance of a contract. The principle of estoppel had to be considered with reference to

the acceptance of the refund of the advance money paid by the purchaser under the contract. There, the vendor's counsel wrote to the counsel for

the purchaser that his client did not propose to keep the contract for sale alive and that he could not execute any agreement for sale. Along with the

letter, he returned a sum of Rs. 13,000 paid as advance of sale consideration. This amount was received without prejudice by the purchaser. The

question arose before the Division Bench whether the receipt of the refund of advance without prejudice would preclude the purchaser from

enforcing the contract at a later stage. It was held by the Division Bench that the use of the words "without prejudice" would not help the purchaser

and he must be taken to have accepted the refund amount thereby waiving his right to enforce the contract. The relevant observations relied upon

by Learned Counsel for the appellant are in paragraph 34 of that judgment and they are as follows:

We are of the view that the same principle applies to the case on hand. The second respondent had already stated that he was not intending to

execute the draft contract for sale and that the contract was no longer in existence. Assuming that Ex. P1 amounted to a concluded contract for

sale, the first respondent has accepted the refund amount of Rs. 13,000 knowing full well that the second respondent has cancelled the contract. In

the context, therefore, the mere conditional acceptance by the use of the words "without prejudice" to his rights under the contract for sale cannot,

in any manner, derogate from the fact that he had acquiesced in the breach of the contract committed by the second respondent. As was observed

in *Doed Marcrafft v. Heux* 1825 1 Cer.& P. 347 what was of importance was what the first respondent did and not what he said. The first

respondent had received the money back and the effect of it cannot be taken away by the words "without prejudice" which he said

(Underlining ours).

Learned Counsel laid stress upon the words underlined and argued that in this case, the mere fact the first respondent had sent a letter on 24th

October, 1977 stating that he was accepting the cheque under protest, would not take away the effect of acceptance of the amount. According to

the Learned Counsel, the conduct of the first respondent in encashing the cheque without returning the same to the Management would prevent him

from challenging the correctness of the award passed by the Labour Court.

6. Learned Counsel next relied upon the observations of Scrutton, L.J. in *Dexters Ltd. v. Hill Greet Old Co.* (Bredford) (1926) 1 K.B. 348. The

relevant portion is at page 358 and is as follows:

It startles me to hear it argued that a person can say that the judgment is wrong and, at the same time, accept payment under the judgment as being right.

Learned Counsel then referred to the decision of this Court in *Sakku Bai Amman*

Vs. R. Babu Reddiar and Others, . In that case a Division Bench

took the view that an appeal filed by the plaintiffs in a suit for specific performance with an alternative prayer for damages was not maintainable

when the trial Court had granted one of the alternative reliefs, namely, the damages. The Bench held that when one of the alternative reliefs was

decreed, the plaintiff could not be said to be an aggrieved person and he could not, therefore, maintain the appeal against the decree claiming relief

of specific performance. We are informed that the correctness of this decision is to be considered by a Full Bench on a reference which has has

been made at the instance of another Division Bench of this Court. At present, we refrain from expressing our opinion with regard to the

correctness of this judgment.

7. Mr. M.R. Narayanaswami relied upon the decision in Bhau Ram Vs. B. Baijnath Singh and Others, and contended that the principle of

approbation and reprobation is applicable to cases of this kind. He relied on the observations in paragraph 5 which read thus:

Upon the principles underlying the aforesaid decision, a person who takes benefit under an order de hors the claim on merits cannot repudiate the

part of the ore which is detrimental to him, because the order is to take effect in its entirety.

He also points out that in paragraph 12 the Supreme Court refers only to a statutory right of appeal and contends that in the case of a writ petition,

which is not a statutory appeal, the principle of approbation and reprobation would apply.

8. The further contention of the Learned Counsel for the appellant is that the learned single Judge was wrong in directing reinstatement on the facts

of the case. According to him, the Labour Court has taken into account all the relevant matters and came to the conclusion that reinstatement is not

the appropriate relief in this case. Learned Counsel submitted that while exercising the jurisdiction under Article 226, the conclusion arrived at by

the Labour Court should not have been interfered with. In this connection, reliance was placed upon the observations of the Supreme Court in The

Punjab National Bank Ltd. Vs. Its Workmen, . The Supreme Court has observed:

In this connection, it would be relevant to remember that in dealing with industrial disputes arising out of dismissal of employees the tribunal,

undoubtedly, has jurisdiction to direct reinstatement in proper cases....It is obvious that no hard and fast rule can be laid down in dealing with this

problem. Each must be considered on its own merits and in reaching the final decision, an attempt must be made to reconcile the conflicting claims"

made by the employee and the employer. The employee is entitled to security of service and should be protected, against wrongful dismissals, and

so the normal rule would be reinstatement in such cases. Nevertheless, in unusual or exceptional cases, the tribunal will have to consider whether,

in the interests of the industry itself, it would be desirable or expedient not to direct reinstatement. As in many other matters arising before the

Industrial Courts, for their decision, this question has also to be decided after balancing the relevant factors and without adopting any legalistic or

doctrinaire approach.

Learned Counsel referred to the decision in *I.T.C. Ltd., Monghyr, Bihar Vs. Presiding Officer, Labour Court, Patna (Bihar) and Others*, wherein

the Supreme Court set aside the order of reinstatement passed by the Labour Court and ordered compensation in lieu of reinstatement.

9. It is therefore contended on behalf of the appellant that the learned single Judge should not have interfered with the conclusion of the Labour

Court while exercising his jurisdiction under Article 226 of the Constitution. At the end of his arguments, Learned Counsel for the appellant

referred to certain passages in *Judicial Review of Administrative Action* by S.A. de Smith, 3rd Edn, at pages 372 and 374, which read as follow:

It does not always follow however, that a party adversely affected by a, void decision will be able to have it set aside. As we have seen, certiorari

and prohibition are, in general, discretionary remedies, and the conduct of the applicant may have been such as to disentitle him to a remedy.

Waiver, acquiescence and laches are not the only discretionary bars to the award of certiorari and prohibition. The Court is entitled to have regard

generally to the conduct of the applicant and to the special circumstances of the case in deciding whether to grant him the remedy he seeks.

Mr. G. Venkataraman, Learned Counsel for the first respondent contended that on the facts of the case, there is no question of election or

estoppel, and the doctrine of approbation and reprobation cannot apply to this case. He laid stress on the language of the first respondent's letter,

dated" 4.10.1977 written to the Management. It is next contended by him that the citizen cannot be prevented from getting constitutional remedy

by any principle of waiver, acquiescence or estoppel. He pointed out that on the facts of the case, the decision of the Labour Court was wholly

unsustainable and the reasons given by the Labour court for refusing the relief of reinstatement are untenable and against settled principles of law,

as laid down by the Supreme Court repeated in several cases. In this connection, he referred to the decisions in *The Punjab National Bank Ltd.*

Vs. Its Workmen, , Swadesamitran Limited, Madras Vs. Their Workmen, , Assam Oil Company Vs. Its Workmen, , Hindustan Steels Ltd.,

Rourkela Vs. A.K. Roy and Others, , Management of Panitile Tea Estates v. Workmen (1971) L.L.J. 233. Workmen of Assam Match Co. Ltd v.

Labour Court (1973) 2 L.L.J. 279 and Vinayak Bhagwan Shetty v. Kismet Pvt. Ltd. (1984) 1 L.L.J. 203. It is not necessary to deal with the

aforesaid decisions in detail. Suffice it to point out that the cardinal principle laid down in the abovesaid decisions is that the normal rule is to grant

reinstatement whenever it is found that the termination of service of a workman is unjustified or illegal, and that the award of compensation in lieu of

reinstatement should be resorted to only if the circumstances of the particular case are unusual or exceptional so as to make reinstatement

inexpedient or improper.

10. When once the Labour Court has held that the dismissal of the first respondent was most inequitable and unjust, it should have granted the

relief of reinstatement following the normal rule. There was no question of any unusual circumstance which could bring it under the exception. The

only reason given by the Labour Court was the lapse of a long time during which the first respondent was not in service. The Labour Court

overlooked that it was not due to any fault on the part of the first respondent, but it was only due to the pendency of the proceedings initiated by

the Management against the reference of the dispute to the Labour Court.

11. Learned Counsel for the first respondent went one step further and contended that even if there had been an express contract between the first

respondent and the appellant to the effect that the first respondent would not challenge the award of the Labour Court and had accepted the

amount of compensation as a term of the contract, the first respondent would

not be prevented from challenging the award in the writ petition. For this purpose, Learned Counsel relied upon the decision of the Supreme Court in Central Inland Water Transport Corporation Ltd. and Anr. v. Brojorath Ganguly and Anr. C.A. No. 4412 of 1965 of the Supreme Court dated 6.4.1986. In that decision, the Supreme Court had occasion to consider the enforceability of a contract between two parties who were not equal in bargaining power. The Supreme Court has laid down that in such cases, the contract is not enforceable. We do not think it necessary to consider the applicability of the said decision of the Supreme Court to the present case as we may prefer to rest our conclusion on the facts of this case in so far as this aspect of the matter is concerned.

12. In our view, a reading of the letter dated 24th October, 1977 written by the first respondent to the appellant will show that it is unequivocal in its terms. The first respondent has clearly pointed out that he is not accepting the award in so far as it refused to grant the relief of reinstatement. He has made it clear that he would be filing a writ petition challenging the award. We are unable to dissociate this letter from the acceptance of the cheque and hold that the acceptance of the cheque is an independent act and it could be construed as an approbation of the award. In our view, it is the intention of the person concerned, as reflected by his act and words, which will govern the situation. Such intention could be found out only by taking into account both the act and the words of the said person, particularly when they are simultaneous in time.

13. The doctrine of "approbation and reprobation" has been elucidated in Halsbury's Laws of England, 4th Edn, Volume 16, at page 1012, paragraph 1507 thus:

The principle that a person may not approbate and reprobate expresses two propositions: (1) that the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile, and (2) that he will not be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his subsequent conduct is inconsistent.

14. The House of Lords in Lissenden v. Bosch Ltd. (1940) 1 All.E.R. 425 : (1940) A.C. 412, has considered this doctrine at some length. In that

case, an award of workmen's compensation at the rate of 12S.3d.per week was made in favour of a workman under the Act of 1925 in respect

of his incapacity caused by industrial disease for the period from October, 1936 until the date of the hearing, namely, 31st October, 1938 together

with the costs of the arbitration. The workman received and signed a receipt for the arrears of compensation due under the award and the taxed

costs were paid to his solicitors. The workman thereafter appealed from the award in so far as it terminated the weekly payments of compensation

on 31st October, 1938, on the ground that he had not wholly recovered from the effects of the industrial disease. It was held that in accepting the

arrears of compensation, the workman was exercising a legal, right to be paid what admittedly was due to him, and, in serving his notice of appeal,

he was exercising another and independent legal right of claiming the further relief to which he maintained he was entitled, and therefore, there was

no case of election and the workman had a right of appeal. Viscount Maugham has observed as follows:

It is perhaps well to observe here that the equitable doctrine of election has no connection with the common law principle which puts a man to his

election (to give a few instances only) whether he will affirm a contract induced by fraud or avoid it, whether he will in certain cases waive a tort

and claim as in contract, or whether, in a case of wrongful conversion he will waive the tort and recover the proceeds in an action for money had

and received. These cases mainly relate to alternative remedies in a court of justice. The history of the common law rules, the principles which

apply to them, and the effect of the election are all very different from those which prevail where the equitable principle is in question. I will not

attempt to summarise all the rules which are applicable to election in equity, but it is desirable for my present purpose to state some general

propositions, which are not, I believe in doubt. In the first place, till *Johnson v. Newton Fire Extinguisher Co. Ltd.* (1913) 2 K.B. 111, the

doctrine seems to have been confined, in England as in Scotland, to cases arising under wills and deeds, and other instruments inter vivos. In the

second place, the doctrine is founded on the intention, explicit or presumed, of the testator in the case of a will, and of the author or donor in the

case of instruments-namely, the intention that a man shall not claim under the will or instrument and also claim adversely to it. The intention, it may

be added, is not presumed in the case of two clauses in the same will, and in such a case the doctrine does not not apply. Nor could the doctrine

be applied in the case of a married woman where either of the properties between which she would prima facie have to elect was subject to a

restraint on anticipation, for the imposition of the restraint showed an intention that the married woman should not be put to her election; *Re*

Vardon's trust (1885) 31 Ch.D. 275 In the third place, the doctrine proceeds upon the principle, not of forfeiture, but of compensation. The

beneficiary electing against an instrument is required to do no more than to compensate the disappointed beneficiaries. The balance of the property

coming to him under the instrument he may keep for himself. In the fourth place, no person is taken to have made an election until he has had an

opportunity of ascertaining his rights, and is aware of their nature and extent. Election is other words, being an equitable doctrine, is a question of

intention, based on knowledge.

My Lords, I am quite unable to see how this doctrine can be made to apply to the rights of a litigant to appeal either from a judgment or from an

award of a county Court judge made under the Workmen's Compensation Act, 1925. For the present purpose, there is no difference between the

two. Both are the result of judicial proceedings.

15. This decision of the House of Lords was quoted with approval and followed in *Bhau Ram Vs. B. Baijnath Singh and Others*, . The relevant

observations of the Supreme Court in that case run thus-

It seems to us, however, that in the absence of some statutory provision or of a well recognised principle of equity, no one can be deprived of his

legal rights including a statutory right of appeal. The phrase "approbate and reprobate" is borrowed from Scots Law where it is used to express

the principle embodied in the English doctrine of election, namely, that no party can accept and reject the same instrument (per Scrutton, L.J. in

Verchures Chermeries Ltd. v. Hull and Netherlands Steamship Co. Ltd. (1921) 2 K.B. 608. The House of Lords further pointed out in

Lissendem v. C.A.V. Bosch. Ltd. (1940) A.C. 412. that the equitable doctrine of election applies only when an interest is conferred as an act of

bounty by some instrument. In that case, they held that the withdrawal by a workman of the compensation money deposited by the employer could

not take away the statutory right of appeal conferred upon him by the Workmen's Compensation Act. Lord Maugham, after pointing out the limitation of the doctrine of approbate and reprobate observed towards the conclusion of his speech:

It certainly cannot be suggested that the receipt of the sum tendered, in any way, injured the respondents. Neither estoppel nor release in the ordinary sense was suggested. Nothing was less served than the principles either of equity or of justice.

16. The Supreme Court had occasion to consider the doctrine of approbation and reprobation in *R.C. Chandiok and Another Vs. Chuni Lal*

Sabharwal and Others, . In that case, a suit was filed for specific performance of a contract and, in the alternative, for recovery of Rs. 7,500, being

the amount of earnest money and Rs.15,000 as damages together with interest. The trial court granted a decree for return of the sum of Rs. 7,500.

An appeal was filed in the High Court and, during the pendency of the appeal, the sum of Rs. 7,500 was deposited by the respondents herein in

satisfaction of the decree passed by the trial court. In its judgment, the High Court had taken the view that the appellants in the appeal were

disentitled to a decree for specific performance as the decree for Rs. 7,500 was satisfied. The Supreme Court had to consider the question

whether that view of the High Court was correct. The Supreme Court took the view that the High Court was wrong in applying the doctrine of

approbation and reprobation. The relevant passage runs thus:

Coming to the last point, the High Court has held that the appellants were disentitled to a decree for specific performance because a statement was

made at the bar that during the pendency of the appeal they had executed the decree of the trial Court and an amount of Rs. 7,500 had been

deposited by the respondents pursuant to the execution proceedings. It is true that the appellants could not accept satisfaction of the decree of the

trial Court and yet prefer an appeal against that decree. That may well have brought them within the principle that when the plaintiff has elected to

proceed in some other manner than for specific performance, he cannot ask for the latter relief. This is what Scrutton, L.J. said in *Dexters Ltd. v.*

Mill Crest Oil Com. Bradford Ltd. (1926) 1 K.B. 348 . So, in my opinion, you cannot take the benefit of a judgment as being good and then

appeal against it as being bad.

It was further observed : It startles me to hear it argued that a person can say the judgment is wrong and, at the same time, accept payment under

the judgment as being right. This illustrates the rule that a party cannot approbate and Reprobate at the same time. These propositions are so well

known that no possible exception can be taken to them. In the present case, however, the above rule cannot apply because the appellants had, by

consistent and unequivocal conduct, made it clear that they were not willing to accept the judgment of the trial court as correct. It has already been

mentioned at a previous stage that after the decision of the trial court the appellants had even applied on March 31, 1958 for an injunction

restraining the respondents from selling or otherwise disposing of the plot as it was apprehended that they were trying to do so. It was stated in this

application that the plaintiffs would be preferring an appeal, but it would take time to secure certified copies. An appeal was in fact preferred and

seriously pressed before the High Court on the relief relating to specific performance. This relief is discretionary but not arbitrary and discretion

must be exercised in accordance with the sound and reasonable judicial principles. We are unable to hold that the conduct of the appellants, which

is always an important element for consideration, was such that it precluded them from obtaining a decree for specific performance.

In our case also, it can be seen that the first respondent had made it clear that he did not accept the award of the Labour Court to be correct.

17. Mr. Venkataraman, Learned Counsel for the first respondent, referred to the definition of the words, under protest in the Law Lexicon of

Venkaramiah, Volume II. Besides that, he referred to Superintendent (Tech. I) Central Excise, I.D.D. Jabalpur and Others Vs. Pratap Rai, , which

has considered the meaning of the words without prejudice. In the view which we have taken on the facts of the case, it is not necessary for us to

consider those decisions. We rest content by pointing out that the conduct of the first respondent is not one from which it can be inferred in any

manner that he had accepted the award of the Labour Court to be correct. On the other hand, he has been unequivocally pointing out the other

way.

18. In the view which we have taken on the facts of this case, the authorities

relied upon by the Learned Counsel for the appellant will not apply to this case. Each case will have to depend on its own facts. In the present case, the conduct of the appellant was not such that he became disentitled to the discretionary relief under Article 226 of the Constitution of India, by the doctrine of approbation and reprobation or any other principle of law. The decisions cited by the Learned Counsel for the appellant will not help him in the present case.

19. We do not agree with the contention of the Learned Counsel for the appellant that the principle of accord and satisfaction would apply to this

case. The doctrine of accord and satisfaction is that, where there is a subsisting unilateral obligation by which A is bound with reference to B to do

a particular act as paying money or delivering a chattel. A, instead of doing the act, may, with the consent of B, do some other act or deliver some

other thing and this will operate to satisfy the existing obligation. *Scrutton, L.J. in British Russian Gazette v. Associated Newspapers Ltd. (1933) 2*

K.B. 616, points out.

accord and satisfaction is the purchase and release. from the obligation arising under a contract or tort by means of any valuable consideration not

being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the

consideration which makes the agreement operative.

Learned Counsel for the appellant contended that the learned single Judge is wrong in granting an order for reinstatement with consequential

monetary benefits. According to him, the question of back-wages has to be decided only by the Labour Court and it is not for the High Court,

exercising its jurisdiction under Article 226 of the Constitution, to order back-wages. Mr. Venkataraman contended that it is for the Management

to prove that the first respondent is not entitled to the consequential relief of back-wages. He referred to the decision of the Supreme Court in

Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sanik (1980) 1 L.L.J. 137, wherein the Supreme Court has affirmed the grant of back-

wages made by the High Court with regard to the workmen who were reinstated. Learned Counsel also referred to the decision in *Hindustan Tin*

Works Ltd. v. Its Employees (1978) 2 L.L.J. 474, wherein the Supreme Court has laid down the criteria for granting back-wages and observed at

page 478 that full back-wages could be the normal rule and the party objecting to it must establish the circumstances necessitating departure. He

also relied on the decision in *S.S.N. Goyal v. Bank of Baroda* (1983) 2 L.L.J. 415. It is observed by the Supreme Court at page 423 as follows:

The Management is thus seen to have been taking steps periodically to see that the dispute is not disposed of at any early date one way or the

other. The blame for not framing an issue on the question whether or not the workman was gainfully employed in the intervening period cannot be

laid on the Tribunal alone. It was equally the duty of the Management to have got that issue framed by the Tribunal and adduce the necessary

evidence unless the object was to take up that question at some later stage to the disadvantage of the workman as in fact it has been done. The

Management appears to have come forward with the grievance for the first time only in the High Court. There is no material on record to show that

the workman was gainfully employed anywhere. The Management has not furnished any particulars in this regard even before this Court after such

a long lapse of time. The workman could have been asked to furnish the necessary information at the earliest stage. The Management has not

resorted to that course. The workman was not expected to prove the negative. In these circumstances, we do not think that it would be in the

interests of Justice to prolong any further the agony of the workman whose power to endure the suffering of being out of employment for such a

long time and to oppose the Management Bank, a nationalised undertaking with all the money power at its disposal in this prolonged litigation is

very limited, by allowing, the Bank to have the advantage belatedly sought in the application dated 8th February, 19 79, in an industrial dispute

which arose so early as in 1965.

In view of the fact that the first respondent had been kept out of employment for nearly fifteen years by the fault of the Management and the fact

that the Management has failed to place before the Labour Court or this Court any material for refusal of back-wages, we think it just and proper

to grant the consequential relief of back-wages.

20. At any rate, as pointed out by the Supreme Court in *Gujarat Steel Tube Case* (1980) 1 L.L.J. 137, we are only sitting in appeal over the

judgment of the learned single-Judge, and an appellate Court should not

interfere with the judgment appealed against unless it is clearly wrong. We do not think that in this case the learned single Judge is wrong in granting reinstatement and the consequential benefits.

21. In the result, the appeal fails and it is dismissed with costs. Leave to appeal to Supreme Court refused.