

(2011) 03 P&H CK 0697

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 6083 of 2008 (O and M)

Regional Provident Fund

Commissioner

APPELLANT

Vs

DR. O.P. Mittal and Another

RESPONDENT

Date of Decision: March 8, 2011

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14

Citation: (2011) 31 FLR 260 : (2011) 162 PLR 557

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Ram Chand Gupta, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 23.10.2007 passed by learned Additional Civil Judge, Senior Division, Bathinda, vide which application filed by Petitioner under Order VII Rule 11 of the CPC (hereinafter to be referred as "the Act") was dismissed.

2. I have heard learned Counsel for the parties and have gone through the whole record carefully including the impugned order passed by learned trial Court.

3. Facts relevant for the decision of present revision petition are that Respondent No. 1-Plaintiff is running a clinic by employing more than 19 employees. List of employees as on 31.7.2006 alongwith coverage proforma was provided by Respondent No. 1-Plaintiff himself to the concerned Officer of Petitioner. Respondent No. 1 was also issued Code number vide letter dated 4.8.2006 by the office of Petitioner. As no acknowledgment was received from Respondent No. 1-Plaintiff, another letter dated 31.7.2006 was issued through registered post to Respondent No. 1 to produce the record. As Respondent No. 1 was employing more than 19 employees, he was covered under the Employees Provident Funds and

Miscellaneous Provisions Act, 1952 (hereinafter to be referred to as "the Act"), as per the scheme framed under the Act and he was required to pay contribution at the prescribed rate under para 29 of the scheme, failing which the establishment is liable to pay damages u/s 14 of the Act. However, Respondent instead of depositing the provident fund dues, as prescribed under the Act filed the present suit challenging the order of present Petitioner, vide which Code number under the Act was allotted to him. Respondent No. 1-Plaintiff has sought decree for declaration to the effect that his clinic is not covered under the Act and that he is not liable to make any contribution or deposit the amount of his employees under the said Act and that the allotment of Code number by covering him under the Act vide letter dated 11.8.2006 is illegal and void.

4. After receiving notice of the suit, an application was filed by Petitioner that Civil Court is having no jurisdiction to entertain and decide the controversy in dispute as appeal has been provided u/s 71 of the Act and however, instead of availing the said remedy of appeal, the present suit has been filed by Respondent No. 1-Plaintiff and hence, the application is liable to be rejected.

5. Learned trial Court vide impugned order decided issue regarding jurisdiction by treating the same as a preliminary issue against the present Petitioner-Defendant by observing as under:

Heard on preliminary issue No. 3 pertaining to the jurisdiction of the court. Case of the Defendant is that jurisdiction of the Civil Court is not there in the light of Section 7(1) of the Employees Provident Fund and Miscellaneous Act, 1952 (in short the Act 1952). Learned Counsel for the Defendant has also relied upon the order passed in Civil Writ Petition No. 12096 of 2004 and therefore, prayed that the suit be dismissed.

Learned Counsel for the Plaintiff has argued that in the light of provision of Section 9 of Code of Civil Procedure, there is no such provision expressly or impliedly barred of the jurisdiction of the civil Court so, the civil Court is having jurisdiction to entertain the suit Learned Counsel for the Plaintiff has also relied upon "1994 (1) CCC 611 (S.C.), 1986 P.L.J. 651, 1996 (1) CCC 398 (P&H), 2004 (1) CCC 592 (P&H), K.S. Venkataraman and Co. Vs. State of Madras, , and has prayed that since the Defendant failed to prove if the Civil Court has no jurisdiction, so the suit is to be tried by this very Court.

It has been observed in the above referred authorities that the jurisdiction of the civil Court can only be ousted by the special statute and unless and until special statute is there, the jurisdiction of the civil Court cannot be ousted. Further more, it has been observed that even if the jurisdiction of the civil Court is ousted, if the order of the Defendant is beyond the jurisdiction illegal, null and void, the jurisdiction is only lying with the civil Court and therefore, I have come to the conclusion that in this case, the Defendant failed to prove if by such and such

Section of Act, 1952, the jurisdiction of the civil Court has been taken away and, therefore, this issue No. 3 stand decided in favour of Plaintiff and against the Defendant.

Case stands adjourned to 28.3.2008 for evidence of the Plaintiff. P.F./D.M. and list of witnesses, if any, be filed within 15 days. It is further ordered that the affidavit of the witnesses be supplied in advance at least 7 days prior in order to enable the other party to conduct cross-examination.

6. It has been contended by learned Counsel for the Petitioner that learned trial Court has committed illegality and material irregularity in passing the impugned order by observing that Civil Court is having jurisdiction to entertain the present suit. Rather, it has been contended that when specific remedy has been provided by way of an appeal and when a Tribunal has already been constituted by Government of India for deciding the appeal, jurisdiction of civil Court has been impliedly barred.

7. On the other hand, it has been contended by learned Counsel for Respondent No. 1-Plaintiff that under the Act, there is no provision for specifically ousting the jurisdiction of the civil Court. It is also contended that moreover the impugned order is null and void as clinic of Respondent No. 1-Plaintiff is not covered under the Act as he has not employed the requisite number of employees and that the order has been passed without giving him any opportunity of being heard.

8. Law on the point has been settled by a Coordinate Bench of this Court in Central Board of Trustee through its Regional Provident Fund Commissioner v. Raghav Farm & Resorts Pvt. Ltd. 2008 (1) S.C.T. 225, wherein after discussing all the aspects of the case under the Act and after placing reliance upon NDMC v. Satish Chand (Deceased) by L.Rs. Ram Chand 2003 (10) Supreme Court Cases 38, observed as under:

9. Learned Counsel for the Respondent thereafter placed reliance on the Full Bench judgment of this Court in the case of State of Haryana and Ors. v. Vinod Kumar and Ors. 1986 P.L.J. 161 to contend that civil Court jurisdiction to entertain any case against an order passed by Tribunal of special jurisdiction in violation of the provisions of the statute or principles of natural justice, cannot be treated to be barred as the order of the Tribunal would be a nullity.

However, this contention of the learned Counsel for the Respondent also cannot be accepted as he has not chosen to challenge the order of recovery passed by the authorities under the Act by filing appeal before the special Tribunal constituted under the Act. Once the jurisdiction is given to a special tribunal then the remedy of the civil Court is to be held to be impliedly barred. It is only in case of tribunals not acting in accordance with law or acting in violation of the statute that an order can be challenged as a nullity before the civil Court, as was held in the case of State of Haryana v. Vinod Kumar and Ors. (supra). However, in the present case the Plaintiff instead of choosing remedy provided under the statute has chosen to maintain the

present suit which would be deemed to be barred in view of the law laid down by the Hon"ble Supreme Court in the case of NDMC v. Satish Chand (Deceased) by L.Rs. Ram Chand (supra). Even otherwise, in view of the provisions of Section 41(h) of the Specific Relief Act the suit filed by the Plaintiff was barred under law and, therefore, was liable to be rejected.

Consequently, this revision is allowed. The impugned order is set aside and the plaint filed by the Plaintiff Respondent is ordered to be rejected.

9. The facts of the present case are fully covered by the aforementioned judgment. Respondent No. 1-Plaintiff filed the present suit without availing the remedy of appeal provided under the Act before special Tribunal constituted under the Act.

10. Hence, once jurisdiction is given to a special Tribunal, the remedy of filing a civil suit is to be held to be impliedly barred. The pleas taken in the present suit can be challenged by Respondent No. 1-Plaintiff before the special Tribunal.

11. Hence, in view of these facts, I am of the view that learned trial Court has committed illegality and material irregularity in passing the impugned order.

12. Consequently, the present revision petition is accepted. The impugned order is set aside and the plaint filed by Respondent No. 1-Plaintiff under Order VII Rule 11 of the Code is ordered to be rejected.

Disposed of accordingly.