
(1973) 02 BOM CK 0004

Bombay High Court

Case No: Letters Patent Appeal No. 74 of 1972

The Premier
Automobiles Limited

APPELLANT

Vs

Kamlakar Shantaram
Wadke

RESPONDENT

Date of Decision: Feb. 15, 1973

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, 10(1), 12, 18, 18(1)

Citation: (1974) 76 BOMLR 47 : (1974) 29 FLR 365 : (1974) 2 LLJ 66 : (1974) MhLj 646

Hon'ble Judges: Joshi, J; B.N. Deshmukh, J

Bench: Division Bench

Judgement

Deshmukh, J.

This is an appeal under clause 15 of the Letters Patent by the original defendant No. 1 against a decree of injunction passed by the City Civil Court and confirmed in appeal by the learned single Judge of this Court. Only two points of law are raised before us, but, in order to appreciate them, a few facts may be noted.

2. The dispute in the suit relates to the Motor Production Department in the Kurla Factory of defendant No. 1-Company known as "Premier Automobiles Limited". Originally, there were 425 workers in this department to which were added by about September, 1970, twenty-seven more workers who were learners. Long before this event, there was an incentive scheme in operation introduced by defendant No. 1 under an agreement dated August 5, 1964 with the Engineering Mazdoor Sabha of which plaintiffs Nos. 1 and 2 are members. A certain scale of payment was contemplated under this agreement and this was an agreement under S. 18(1) of the Industrial Disputes Act, 1947. The incentive scheme was modified twice and the final scheme which was in operation at the time when the dispute arose was under an agreement dated December 31, 1966. Plaintiffs, who have filed this suit under O.I.R. 8 of the Civil Procedure Code, complain that some new

agreement has been arrived at between defendant No. 1-company and defendant No. 2 which is an association of engineering workers and which is also a trade union registered under the Trade Unions Act. This new scheme was given retrospective effect from September 1, 1970, but it became known to the plaintiffs only when the notice dated March 15, 1971 was displayed upon the notice board of the company. To the surprise of the plaintiffs, they found that this was a scheme to which they were not party, and the union of which they were members which, according to the plaintiffs, has a much larger membership, was also not a party to the new scheme. This new scheme was sought to be unilaterally enforced upon the plaintiffs whose right to receive incentive bonus payments under the incentive scheme was being adversely affected. Initially, the plaintiffs made two prayers. One was to declare that the settlement dated January 9, 1971 arrived at between defendant No. 1-company and defendant No. 2 union is not binding on the plaintiffs and other concerned daily rated and monthly rated workmen of the Motor Production Department of defendant No. 1 company who are not members of defendant No. 2 union and the second prayer was for an injunction restraining defendant No. 1-company, its servants and agents permanently from enforcing or implementing the terms of the said private settlement dated January 9, 1971. An interim order was passed by consent of parties and the hearing of the suit was expedited. Plaintiffs' main contention on merits was that the new scheme so called is mala fide and injurious to the rights of plaintiffs and as such defendant No. 1-company, its servants and agents be permanently restrained by an order and injunction of the Court from enforcing and/or implementing the terms of the agreement dated January 9, 1971. This suit is resisted by defendant No. 1-company mainly in two grounds. According to defendant No. 1, the settlement dated January 9, 1971 arrived at with defendant No. 2 is undoubtedly one under S. 18(1) of the Industrial Disputes Act, 1947, but it is a settlement which has been in operation since September, 1970 and in which the plaintiffs and other workers in the position of plaintiffs have acquiesced. It is pointed out that the dispute, which is sought to be raised in the suit, is, in the real sense of the term, an industrial dispute covered by the provisions of the Industrial Disputes Act, 1947 and as such, the Civil Court could not entertain the suit. It was also urged that a perpetual injunction as claimed for by the plaintiffs could not be granted and also should not be granted in view of the circumstances obtaining in this litigation. Firstly, it was urged that a permanent injunction should not be granted, because the contract of service and the terms of payment are in the very nature of things variable from time to time and there is a provision under the settlement for revising these terms, and if an permanent injunction is granted it would be difficult to revise the terms of the settlement. It was further urged that the new incentive scheme came into operation from September 1, 1970 and the plaintiffs, with the knowledge of the scheme, received payments under it and thereby acquiesced in it. This disentitles them from claiming any injunction which is a discretionary relief granted by the Court.

3. On these pleadings, the learned trial Judge, after taking into account both oral and documentary evidence, found as a matter of fact that the new scheme was mala fide and

injurious to the plaintiffs and the new scheme being a settlement under S. 18(1) of the Industrial Disputes Act, 1947, could be only parties to it and not others. In other words, the members of defendant No. 2 union could alone be bound by this new scheme and not the plaintiffs and others who are not consenting parties to the new scheme and not the plaintiffs and others who are not consenting parties to the new scheme. The learned trial Judge came to the conclusion, after discussing the nature of the litigation, the relief claimed therein and the scheme of the Industrial Disputes Act, that the jurisdiction of the Civil Court does not seem to have been ousted and he could entertain a suit of the present nature. The Learned Judge, however, found that the declaration as claimed in prayer clause (a) of para 16 of the plaint could not be granted. But on the findings arrived at, the learned trial Judge thought that he could give a limited injunction which he gave. The decree for injunction ultimately granted by the learned trial Judge restrains defendant No. 1 from enforcing and/or implementing the terms of the agreement dated January 9, 1971 against the workmen of its Motor Production Department who are not members of defendant No. 2 union. The operation of this injunction was further explained by pointing out that it will not operate in regard to any workman who is not a member of defendant No. 2 union but it will operate against the workman if he in writing agrees to accept the terms of the agreement dated January 9, 1971 from the moment he so agrees. It was further clarified that this injunction will cease to operate if defendant No. 1 takes steps in accordance with law to get and succeeds in getting the agreement dated January 9, 1971 made binding on its workmen of the Motor Production Department who are not members of defendant No. 2 union, from the moment the agreement becomes binding on them. The injunction is further qualified by saying that if defendant No. 1-company gives any notice under S. 9A of the Industrial Disputes Act, 1947, the injunction shall cease to be operative at the expiry of three months after the expiry of twenty-one days from the date of that notice.

4. It may be noted that defendant No. 2 generally supported defendant No. 1 in the trial Court. Though only two plaintiffs filed the suit, the plaintiffs, as stated earlier, obtained the trial Court's permission to sue in a representative capacity under O.I.R. 8 of the Civil Procedure Code. That permission was granted to the plaintiffs and in response to the notice under O.I.R. 8, twenty-seven workmen, who were first taken up as learners, came forward to join the suit as party-defendants, but the learned trial Judge permitted only three of them to be joined as party-defendants (defendants Nos. 3 to 5) for representing the interest of the twenty-seven workmen. They also filed their defence which generally supported defendant No. 1.

5. Being aggrieved by the decree of injunction passed by the learned trial Judge, defendant No. 1 filed an appeal in this Court which was heard by a learned single Judge of this Court who dismissed it on November 9, 1972. The learned single Judge confirmed all findings of fact recorded by the learned trial Judge. He also confirmed generally the view of the trial Court that in the case of a suit of the present nature the jurisdiction of the civil Court is not ousted either expressly or impliedly by the provisions of the Industrial

Disputes Act, 1947. He also came to the conclusion that though injunction was a discretionary relief, in the circumstances of the present case, it was a proper exercise of the discretion on the part of the trial Court to have passed a decree of limited injunction. In arriving at the conclusion, the learned single Judge, relied upon his own judgment given earlier in *Automatic Electric Private Ltd. v. Engineering Mazdoor Sabha*, (1972) Civil Revision Application No. 451 of 1972, decided by Deshpande, J., on September 27/28, 1972 (unrep.) being dissatisfied with the decree of dismissal of appeal, defendant No. 1 has filed this appeal under clause 15 of the Letters Patent.

6. Only two points really arise for our consideration. Firstly, whether the civil Court's jurisdiction has been ousted in view of the provisions of the Industrial Disputes Act, 1947 and secondly, even if the civil Court had the jurisdiction, is it proper to pass and maintain the decree of injunction as passed by the trial Court and as confirmed by the first appellate Court. It is really not necessary to reiterate the position of law which is almost settled that all disputes of a civil nature must ultimately come before a civil Court for decision. The jurisdiction of the civil Court in respect of all civil matters is clearly stated in S. 9 of the Civil Procedure Code. If one wants to assert that that jurisdiction is taken away; it would be for him to so allege and prove it. The position of law in regard to jurisdiction of civil Courts has been unmistakably stated by the Supreme Court in [Abdul Waheed Khan Vs. Bhawani and Others](#), . Not only it is for the party to allege want of jurisdiction and to prove it, but it is equally well settled that the statute ousting the jurisdiction of the civil Court must be strictly construed. The ouster of the civil Court could be either express or implied. Even when the jurisdiction is ousted in an express manner, it has been held that an examination of the scheme of the Act, the remedies it provides and the adequacy thereof as compared with the normal reliefs which could be claimed in a civil Court thus becomes relevant if not decisive. There have been recently several pronouncements of the Supreme Court dealing with this subject and the learned single Judge, who disposed of the appeal, has referred to some of them. However, we find that the Supreme Court has dealt with the relevant decisions on the subject in [Dhulabhai and Others Vs. The State of Madhya Pradesh and Another](#), , and has also summarised in its own way the result that follow from the survey of the case law in the filed. In Dhulabhai's case after examining the various cases on the subject the then learned Chief Justice of the Supreme Court speaking for the Court summarised his conclusions as follows (p. 89) :

"(1) Where the statute gives a finality to the orders of the special tribunals the civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provision of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of particular Act to find the adequacy or the sufficiency of the remedies provided

may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or a liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before the tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, as suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant inquiry.

(7) An exclusion of the jurisdiction of the civil Court is not readily to be inferred unless the conditions above set down apply."

7. In view of the position of law in regard to jurisdiction of civil Courts that now prevails and so clearly been expounded by the Supreme Court, it would be necessary for us to examine the provisions of the Industrial Disputes Act, 1947 and decide whether the jurisdiction of the civil Court in all or some matters and more particularly in respect of the type of relief which is the subject-matter of the present suit, has been ousted. It is not argued before us, nor does it seem to be possible to argue, that the Industrial Disputes Act, 1947 expressly bars the jurisdiction of the civil Courts. The case would naturally fall under the implied ouster of jurisdiction. It is, therefore, relevant to examine the remedies and the scheme of the particular Act to find out the intendment and such examination might lead to a result which would be decisive. When an examination of this type is being done, it becomes necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted and whether remedies normally associated with action in civil Courts are prescribed by the said statute or not. When the provisions of the Industrial Disputes Act,

1947 (hereinafter referred to as "the Act") are so examined, we have to bear in mind the type of suit we are dealing with and the kind of remedy that is being asked for.

Undoubtedly, this is merely a suit for injunction. A declaration was also sought for, but the trial Court found that looking to the words in which the declaration has been couched, it could not be and need not be granted. The trial Court, therefore, merely proceeded to decide the right of the parties and on the conclusions reached, it has held that in the circumstances of the case a relief of injunction in a limited manner, though perpetual, is desirable and must be awarded. Though the objection raised on behalf of the appellant-defendant No. 1 is primarily to the jurisdiction of the civil Court, it is also a second limb of its argument that in the facts and circumstances of the case the plaintiffs have not made out a proper case for awarding them discretionary relief by the civil Court. It is not necessary for us to examine in any greater detail the facts which have been held proved by the two Courts, because we find that on the face of the record the plaintiffs have been able to make out a sufficiently convincing case. Since we find that this is a shorter point, we might dispose it of before the main question of jurisdiction is considered.

[His Lordship after considering the evidence on the point, proceeded].

8. The only impression one gets from the substantive provisions of the revised scheme which are directly injurious to the interests of the workers and are partly against statutory provisions of the Act is that this must be a very suspicious affair between defendant No. 1-company and defendant No. 2 union. And that is the finding given by the trial Court and we are satisfied that on evidence and the circumstances of this case that is the proper finding If at all, therefore, the civil Court has any jurisdiction to entertain civil disputes, this case seems to us to be preeminently a fit case where that jurisdiction must be exercised in favour of the plaintiffs and against the defendants from enforcing the new scheme.

9. This brings us to the question whether the civil Court has jurisdiction to entertain a suit of the present nature and we have already pointed out the principles on which this question is required to be resolved.

10. Mr. Vimadalal, the learned counsel for the appellant-defendant No. 1-company, relied upon the provisions of Ss. 10, 12 and 33C of the Act, besides the general scheme of the Act itself. Out of these section, he was more particularly harping on the provisions of S. 10 as providing a complete remedy for the type of dispute the plaintiffs want to raise in this suit. Since the question of jurisdiction is a question of law, it would be merely academic for us to point out that in the first appeal filed by defendant No. 1-company the main emphasis laid by the counsel on behalf of defendant No. 1 was on the provisions of S. 33C. No reliance is placed on S. 33C before us. Our attention is particularly drawn to the provisions of S. 10. For the purpose of relying upon the provisions of the Act what is argued by Shri Vimadalal for defendant No. 1 is that the cleverness of drafting of the plaint should not be allowed to prevail as against the real nature of the suit. In other words, the Court must find out, by looking at the plaint as a whole, as to whether this is a

suit for a particular relief, though it is couched in a form as to make it appear that some other relief is being claimed. He argued that, in substance and in reality, the plaintiffs are desirous of enforcing the service conditions incorporated in the agreement dated December 31, 1966 and preventing defendant No. 1 from enforcing the service conditions incorporated in the agreement dated January 9, 1971. It is, therefore, a claim, argues the learned counsel, for wages or a claim for money though it has been made to appear that this is a claim for injunction seeking to prevent a particular mischief. The argument in short is that the pith and substance must be borne in mind and when this is done, it would be apparent that the Legislature has provided an entirely separate machinery under the Act which enables a worker to obtain appropriate reliefs. Not only various tribunals provided by this Act are in a position to grant all the reliefs that a worker might claim but even the remedies provided in the sections referred to above are quite adequate and sufficient. When this argument is examined closely, we find that it is difficult to give any countenance to it. The scheme of the Act certainly shows that no express bar to the jurisdiction of the civil Court has been enacted in Chapter II. Chapter II provides the various authorities under the Act and in Chapter IIA the Act provides for a notice of change. If any service conditions are intended to be changed in respect of matters specified in the Fourth Schedule, it is not permissible to do so unless a notice of change contemplated by S. 9A has been given. It is not necessary to refer at this stage to the Government's power to exempt an employer under S. 9B from giving such a notice. Chapter III refers to the Boards, Courts and Tribunals to which the Government may in its discretion refer an industrial dispute. Chapter IV provides for the procedure, powers and duties of the various authorities under the Act. Chapter V contains provisions in regard to strikes and lockouts. Chapter V-A contains provisions in regard to lay-off and retrenchment. Under Chapter VI various penalties have been provided for. Chapter VII contains miscellaneous provisions which include remedies like recovery of money due from an employer by an employee. Then follow the various Schedules. This in short is the scheme of the Act.

11. It would be appropriate now to examine whether S. 10 is capable of giving a workman all the remedies which are normally available in a Court of law and also making available all the reliefs which are claimable before a civil Court. Section 10(1) in the first instance deals with an industrial dispute as defined by S. 2(k). It is a dispute, in the context of the present case, between an employer on the one hand and the workmen on the other. In other words, a dispute which is collective in its form and essence is contemplated to be dealt with by S. 10. Section 10, at any rate, is not the provisions for catering to the needs of individual workers who have their individual rights to assert and enforce. This position would be amply clear from the provisions of S. 2A which provides an exception to S. 2 and by which an individual workman is given an individual right to raise an industrial dispute. The subject-matter covered by S. 2A confines itself to the discharge, dismissal, retrenchment or otherwise termination of service of an individual worker. Short of this subject which is provided for by S. 2A any other industrial dispute must be a collective dispute and an attempt to enforce individual rights would not be covered by the

expression "industrial dispute" as used in the Act. The appropriate Government must be first moved and the appropriate Government will pass an order in writing referring the dispute to the appropriate tribunal in case it is of the "opinion" that an "industrial dispute exists". The language of this section is plain and it contemplates subjective satisfaction of the appropriate Government and gives an unfettered discretion to it either to refer or to refuse to refer any dispute to any of the tribunals under the Act. It may further be noted that there is no procedure provided anywhere in the Act to challenge the opinion of the State Government which, in the circumstance, would be final and conclusive. Mr. Vimadalal argued before us that it has usually been the policy of the State Government, particularly in the interest of industrial peace, to refer all such disputes to the appropriate tribunals. When the question for examination is whether the Act provides for adequate remedies, the behaviour of the State Government from time to time would hardly be of any relevance. What we find is that if the formation of opinion goes against the workers and they are unable to say that the conclusion is either perverse or mala fide, they are left with no remedy of any kind to challenge that opinion. If that were so, it is difficult to say that the approach to the State Government under S. 10 is either adequate or sufficient remedy for the decision of the rights of workmen. In other words, there is no element of compulsion requiring the State Government to refer every dispute raised by the workmen either individually or collectively to an appropriate tribunal under the Act.

12. The same thing could be said about the provisions of S. 12 where the compulsive element is absent as under S. 10, except in case of a dispute which relates to a public utility service and a notice under S. 22 has been given.

13. Mr. Vimadalal for the appellant-defendant No. 1 has pointed out to us a decision of the Supreme Court, [State of Bombay Vs. K.P. Krishnan and Others](#), in which a common judgment has been delivered in respect of two appeals - one by the State of Bombay (now Maharashtra) and the other by the Firestone Tyre and Rubber Co. We will at once point out that the reasons for which conciliation proceedings were not undertaken were obviously irrelevant and beside the point. The Supreme Court pointed out that the refusal by the Government to make a reference must be based upon reasons which are germane to the question under consideration and they must not be extraneous. It is also pointed out by the Supreme Court that in a fit case where the decision is based on extraneous consideration, it would be open for the Supreme Court to issue a writ of mandamus but in that particular case pointed out that it would prefer to remand the matter for reconsideration in the light of its observations. It is the intention of the Legislature that where decisions under Ss. 10 and 12 are not either mala fide or perverse or extraneous there should be no dispute at all which requires consideration ? It is difficult to imagine on the language of Ss. 10 and 12 that all possible disputes are comprised within these two sections and that a suit of the present nature where a certain unilateral mischief is sought to be controlled must also be deemed to have been covered by the wording of S. 10 or 12 of the Act.

14. We may point out that what the plaintiffs in this case are seeking to do is to prevent the implementation of the settlement dated January 9, 1971 as against those who have not already agreed to it or who are not willing to subscribe to that settlement hereafter. The general scheme of the Act shows that there is a provision that where a settlement has ceased to have a binding force either by efflux of time or by reason of termination of the settlement by way of notice served under S. 9A, the settlement or the contract of service has got to continue and shall be the basis of payment unless a new contract of service is replaced. It is not permissible for an employer to change unilaterally the terms and conditions of service without following the due procedure under the Act and to begin to enforce the changed terms and conditions whether the employees agree to it or not. We do not find any provision in the Act, and none has been pointed out to us, which enables a workman to prevent such unilateral mischief on the part of an employer. Reference was made in this connection to a judgment of a learned Judge of the Mysore High Court in Nippani Electricity Co. (Pvt.) Ltd. v. Bhim Rao Laxman Patil, 1972 I L.L.J. 69, and a Division Bench judgment of this High Court in Pigment Lukes, etc. v. Sitaram (1968) 71 Bom. L.R. 452. In the former case, the learned single Judge was considering the case of a workman who were retrenched and who raised the dispute that the retrenchment was not bona fide. In the latter case, the Division Bench was dealing with the case of workman whose services were terminated because of the closure of the factory and who was not re-employed after the re-starting of the factory. We do not think that these two decisions or the ratio thereof can be of any assistance to the present appellant-defendant No. 1, in the present case. Retrenchment or reinstatement in service under certain circumstances form the subject-matter of Chapter VA and remedies are also provided by that chapter. In both the judgments referred to above the question that fell for consideration was whether the relief of declaring that a person continues to be in service or should be reinstated in service could be granted by a civil Court or not. At common law for a breach of contract of service there does not seem to be any remedy available by way of reinstatement or by way of declaration that a person continues to be in the service of the employer, except those cases which are covered by Art. 311 of the Constitution. However, how to deal with a retrenched worker and whether to reinstate him under certain circumstances form the subject-matter of specific legislation contained in Chapter VA of the Act. In the circumstances, therefore, it is clear that the civil Court could have no jurisdiction to entertain suits of the type which were involved in those two judgments. The particular principle that where a special Act creates a special right and also provides adequate remedy for enforcement thereof the jurisdiction of the civil Court must be impliedly held to have been barred would undoubtedly come into play and more so when the civil Court was otherwise unable to grant relief at common law which was sought by the plaintiffs in those suits.

15. This would bring us to the consideration of the provisions of S. 33C which are referred to as providing sufficient and adequate remedy to the present plaintiffs. A close examination of Sub-ss. (1) and (2) of S. 33C would show that the Authority referred in S. 33C is more in the position of an executing Court rather than an Authority seized of a

wider jurisdiction to decide all complicated questions of law and fact involved in the dispute. The very opening clause of Sub-s. (1) of S. 33C, shows that the claims dealt with are primarily claims for money due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA. For the purpose of making recovery under the provisions of Sub-s. (1) of S. 33C, the workman has first to apply to the appropriate Government and the appropriate Government is to be satisfied that the money is in fact due to the workman. This again is dependent on the subjective satisfaction of the appropriate Government and the compulsive element for making the appropriate Government issue the requisite certificate is wanting. The decision of the appropriate Government to refuse to issue a certificate is also not challengeable in a Court of law or elsewhere by any proceeding. Even under Sub-s. (2) of S. 33C it would appear that two conditions have got to be satisfied. The first condition is that the workman must be entitled to some money or some benefit which is capable of being computed in terms of money and the second condition is that if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under the Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government. It was emphatically argued before us that under sub-s. (2), at any rate, it would have been possible for the present plaintiffs to apply for recovery of money due under the earlier settlement and further claim immunity from the enforcement of the second settlement of 1971. Some reliance was placed upon the observations of the Supreme Court in [Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others](#); So far as this judgment of the Supreme Court is concerned we are of the view that the real scope of the tribunal under S. 33C is to be found in its observation that the proceeding contemplated by S. 33C(2) are, in many cases, analogous to execution proceedings and the Labour Court which is called upon to compute in terms of money the benefit claimed by an industrial employee is, in such cases, in the position of an executing Court and to the extent as an executing Court is in a position to interpret the decree and not go behind it, the position of tribunal seems to have been properly indicated. It is only incidental question of interpretation that can be handled by the Courts under S. 33C just as an executing Court can undoubtedly interpret a decree and find out the real meaning thereof. Essentially, however, only money claims are being dealt with under both the Sub-sections of S. 33C. We have already pointed out that under Sub-s. (1) of S. 33C it is again the subjective satisfaction of the appropriate Government which must be brought about before a certificate could be issued. The remedy of recovery under Sub-s. (1) is under the terms of that Sub-section without prejudice to any other modes of recovery which may be available to the particular workman. It is impossible to say in the circumstances that the only remedy that is provided by the Legislature to a workman is under Sub-s. (1) of S. 33C so that the other modes of recovery would be deemed to have been barred. On the contrary, the plain language of the section shows that the mode provided therein could be resorted to without prejudice to any other mode of recovery available under law. Sub-section (2), as we have pointed out, has also obvious limitation, because the Labour Court under that Sub-section primarily performs the functions which are analogous to the function of an

executing Court and the determination of complicated issues, such as, which of the two settlements in the field would really be attracted and which of them should be enforced, seems to be beyond the competence of the Labour Court. All this discussion we have made till now is on the assumption that the plaintiffs in this case have come before the Court with a money claim. However, when the real nature of the claim before us is considered, it becomes clear that it is a simple claim of injunction wanting to prevent a mischief being done to them without their consent. For preventing recurring breaches of an existing contract or for preventing a recurring implementation of a new contract unilaterally by the employer, there seems to be no remedy provided by the Act at all. It is difficult to tell the plaintiffs that they will not file a suit for claiming an injunction restraining their employer from enforcing a particular contract which is not binding on them. The attempt of the employer to enforce that contract month after month could be prevented only by an appropriate injunction of a civil Court and such an injunction seems to be beyond the competence of any Labour Courts or tribunals provided by the Act.

16. The learned counsel on both the sides pointed out to us that there is not much authority on the subject except for one judgment of the Calcutta High Court in [Bidyut Kumar Chatterjee and Others Vs. Commissioner for the Port of Calcutta](#), and the judgment under appeal before us. In the Calcutta case, a suit was filed by pump drivers working under the defendant for a declaration that the report of Jeejeebhoy Committee fixing the scales of pay prescribed for the different classes and categories of posts including the posts of pump drivers is binding on the defendant and for further declaration that the plaintiffs are entitled to a scale of pay as prescribed by that report. The plaintiffs also prayed for the issue of a mandatory injunction directing the defendant to implement the report of the said Committee. The ultimate relief which is given or which has not been given by the learned single Judge does not seem to be of much consequence when the question to be considered is whether a suit of that type was considered to lie in a civil Court. In Para 42 of the judgment the learned Judge comes to the conclusion that the Industrial Disputes Act does not expressly or impliedly bar the jurisdiction of the Court to decide and determine the subject-matter before him although it was otherwise an industrial dispute within the meaning of the Industrial Disputes Act. He, therefore, held that there was a cause of action for the plaintiffs and then disposed of the suit on merits. We think that in the light of the conclusions which have been summarised by the Supreme Court in Dhulabhai's case referred to above, it would be appropriate in each case to find out in the first instance what is the nature of the dispute raised in the civil Court and what are the reliefs claimed. The Court would then proceed to examine whether the adjudication which is claimed could be made under the Industrial Disputes Act and even if some consideration was possible under that Act, whether the provisions of that Act afforded sufficient and adequate remedy for the kind of grievance made by the party concerned. Having examined the provisions of the Industrial Disputes Act which were specifically referred to us by Mr. Vimadalal we are satisfied that none of those provisions are either adequate or sufficient to afford relief of the kind asked for by the plaintiffs. The plaintiffs in the present suit are not seeking to recover money but they

merely want the employer to be prevented from enforcing unilaterally the so-called settlement of 1971 which appears to have been arrived at with defendant No. 2 union. It has need not be repeated that settlement of 1971 being a settlement under S. 18(1) of the Act would always bind those who are signatories to it and would also bind others who are willing to subscribe to it. However, workmen like the plaintiffs and others who are similarly circumstanced and are unwilling to accept that settlement could not be subjected to it and payments could not be made to them under the scheme of that settlement. To prevent this mischief being done, an injunction is being sought by the plaintiffs and for such a relief we find no adequate provision in the Industrial Disputes Act.

17. Before we dispose of this appeal, we may incidentally note that before the learned single Judge who decided the first appeal out of which this appeal arises, some more points were raised which are not specifically raised before us. One of the points whether the present suits is one for specific performance was faintly argued before us and the discussion made by us above would clearly show that there is no attempt on the part of the plaintiffs to claim specific performance of any particular contract. There is merely an attempt to prevent the employer from enforcing a particular settlement or contract. Besides the question whether the suit is one for specific performance, it was argued at considerable length before the learned single Judge that the payments contemplated under the incentive scheme are either bonus or payment in the nature of bonus and, therefore, covered by the provisions of the Bonus Act. The other point that was canvassed before the learned single Judge was that the workers who are neither members of the Engineering Mazdoor Sabha or of the Association of Engineering Workers have no particular contract in their favour and could not have joined the present plaintiff under the provisions of O.I.R. 8, CPC and no adjudication could be made in their behalf by resorting to the procedure laid down in O.I.R. 8. It is needless to point out that it has been held by the trial Court as well as by the first appellant Court that the manner in which payments are made from year after year from 1966 till 1971 itself constitutes a contract and such a contract exists between all workmen, whether members of a particular union or not, and defendant No. 1-company. The third point that was canvassed was that the injunction that is granted by the trial Court is purely a temporary injunction and temporary injunction cannot form the subject-matter of the decree. All these contentions have been negated by the first appellate Court and we need not consider them for the simple reason that none of them has been argued before us.

18. The only other point that was pressed before us was that the injunction granted by the trial Court would not fall under any specific provision of the Specific Relief Act, 1963. We do not see much substance in this argument. The Court's jurisdiction to grant injunctions is covered by the provisions of that Act. The provisions of S. 38(1) or clause (d) of Sub-s. (3) could be properly invoked in the circumstances of the present case. The discussion made by us earlier in this judgment would show that the recurring claims and recurring breaches could not be sufficiently dealt with by the Industrial Disputes Act. An injunction of the type granted by the trial Court in this case would undoubtedly prevent a multiplicity

of judicial proceedings which may have to be resorted to unless the implementation of the settlement of 1971 is prevented. It could not be said in this case that there is no contract at all between the employer and the employees who are being paid for years together. The attempt on the part of the employer-defendant No. 1 to enforce a new contract without the consent of the plaintiffs and other similarly circumstanced would amount to breach of the existing contract. Nobody suggest that the terms and conditions of service could not be changed by ushering in a new contract, settlement or award. The grievance of the plaintiffs is that without resorting to the procedure provided by the Act, a direct interference with the existing terms and conditions of service is resorted to by defendant No. 1, the appellant. We are, therefore, of the opinion that under the provisions of S. 38(1) and clause (d) of Sub-s. (3) of that section it would be appropriate to grant the kind of injunction which has been granted in this case.

19. We may incidentally note that there are cross-objections filed by respondents Nos. 1 and 2 original plaintiffs. Those cross-objections relate to certain observations which appear in the judgment of the learned single Judge. While dealing with the settlement of 1971 the learned single Judge observes that if the agreement dated January 9, 1971 could be styled as a "settlement," it would have the binding effect on all workmen who are not only members of defendant No. 2 union but other workmen as well who are not members of defendant No. 2 union. In fact the settlement is with defendant No. 2 union of which the plaintiffs are not the members and there are many others who are also not members of that union. This is only an incidental observation and could not legitimately form the subject-matter of cross-objections. However, Mr. Damania for the respondents-plaintiffs expressed apprehension that these observations might be used against him in some manner. When we looked at the provisions of the Act, we found that a proviso is now introduced after Sub-s. (1) of S. 18 by Maharashtra Amending Act No. 1 of 1972. The effect of the proviso is that when a settlement which is not arrived in the course of conciliation proceedings takes place with a recognised union under Sub-s. (1) of S. 18, it is now made binding not only upon the members of that union but also upon persons referred to in cls. (c) and (d) of Sub-s. (3) of S. 18. It is our surmise that perhaps these provisions were present in the mind of the learned single Judge when generalisation was made by him about the binding effect of the settlement. However, so far as the facts of this case are concerned, the proviso is not at all attracted and its provisions are not applicable to settlements either of 1966 or 1971. The learned single Judge's observations are merely incidental, perhaps based upon amended provisions of S. 18 and would, therefore, have no binding effect at all on either party to this litigation.

20. In this view of the matter, the appeal fails and is dismissed. The appellant will pay the costs of respondents Nos. 1 and 2 in one set. The appellant and respondents Nos. 3 to 6 will bear their own costs.

21. No orders so far as cross-objections are concerned.

22. We direct that the operation of the decree be suspended for a period of eight weeks from today on the same terms and conditions which are already agreed upon for that purpose and the parties to file a copy of the agreed terms and conditions within a week from today.