Ramkrishna Haribhaoo Vadke Vs Emperor

Court: Bombay High Court

Date of Decision: March 26, 1919

Citation: AIR 1919 Bom 96 : 52 Ind. Cas. 669

Hon'ble Judges: Shah, J; Heaton, J

Bench: Division Bench

Judgement

Heaton, J.
The main purpose of the con-tract is that the artificer shall work for ten years for his employer. One of its stated objects, and a

most important one, is to prevent the artificer leaving his employer"s service during the period of ten years. I cannot believe that sash contracts as

this were ever intended to come under Act XIII of 1859. To me the words taken with the declared object of the Act definitely suggest that they

were not. Therefore, I think the Rule should be made absolute.

Shah J.

2. The question arising in this application is whether the contract between the parties falls within the purview of Act XIII of 1859. The applicant

entered into a contract with his employer on the 17th January 1917, whereby he agreed to serve for a period of ten years on a salary of Rs. 40 per

mensem as an artisan and not to go elsewhere leaving his service. The employer purported to advance Rs. 286; but it is found that Rs. 186

represented the previous advances and that Rs. 100 only were advanced in cash at the date of the contract. The advance is described as having

been made in cash for the work to be done under the contract. The applicant agreed to re-pay this sum of Rs. 286 by deducting Rs. 5 out of his

salary every month. He agreed to pay off the advance in ten years. The contract contemplates further advances, and also provides that if any part

of the sum advanced or to be advanced remains unpaid at the expiry of the ten years he will serve on the same terms till the whole amount is paid

off.

3. Taking the terms of the contract as a whole, it seems to me that the principal item is the undertaking on the part of the applicant to serve on a

salary of Rs. 40 per mensem for ten years, and that the advance is really a subordinate thing intended to secure as far as possible a due fulfilment of

the contract of service. The sum of Rs. 186 advanced from time to time prior to the contract cannot be treated as an advance of money on account

of the work to be performed under the contract. The remaining sum of Rs. 100 advanced in cash has no doubt some relation to the work under the

contract. But in effect it is nothing more than a loan, which the workman is bound to pay in any event, and which the contract provides may be paid

off at the rate of Rs. 5 per month. The Act of 1859 relates to contracts in which workmen have received advances of money on account of the

work which they have contracted to perform. I do not think that the advance in the present case fulfils that condition. I think that the present

contract is in the main a contract of service for ten years, accompanied with an advance of money which may be paid off from the wages which the

workman is to earn under the contract, but which cannot be said to have been made on account of the work which he has contracted to perform.

In my opinion the Act does not apply to such a contract. I, therefore, agree that the Rule should he made absolute and the order of the lower

Court set aside.