

(1968) 06 BOM CK 0015

Bombay High Court

Case No: Second Appeal No. 48 of 1966

The Pigment Lakes and Chemical
Manufacturing Co. Private Ltd.

APPELLANT

Vs

Sitaram Kashiram Konde

RESPONDENT

Date of Decision: June 20, 1968

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Industrial Disputes Act, 1947 - Section 10, 16, 18, 2, 25F

Citation: (1969) 71 BOMLR 452 : (1969) MhLj 710

Hon'ble Judges: Patel, J; Chitale, J

Bench: Division Bench

Final Decision: Allowed

Judgement

This Judgment has been overruled by : [Sitaram Kashiram Konda Vs. Pigment Cakes and Chemicals Mfg. Co.,](#) AIR 1980 SC 16 : (1979) 39 FLR 347 : (1979) 2 LLJ 444 : (1979) 4 SCC 12 : (1980) 1 SCR 125 : (1979) 1 SLJ 552

Chitale, J.

This is an appeal by the defendant against the order passed by the learned District Judge, Thana, reversing the decree passed by the trial Court dismissing the suit on the ground that it had no jurisdiction to entertain the suit.

2. The defendant, Pigment Lakes and Chemical Manufacturing Co. Private Ltd., has a factory at Bhandup, taluka Kalyan, district Thana. The plaintiff, Sitaram Kashiram Konde, was employed by the defendant as a chemist, and he served the defendant for about fourteen years. The plaintiff alleges that he was an active Union worker and claims to have helped the defendant in settling industrial disputes in the past. By its letter dated February 28, 1959, the defendant informed the plaintiff that due

to unavoidable reasons the factory would remain closed for an indefinite period from March 31, 1959, and the plaintiff's services were not required after that date. The plaintiff points out that the said letter did not mention specially the reason for closure and consequent retrenchment. In October 1959, the defendant issued letters to other employees stating that the defendant intended to re-start the factory under a different management. The factory was accordingly re-started on or about October 23, 1959. The plaintiff alleges that the defendant deliberately avoided to issue similar notice to the plaintiff about the intended re-starting of the factory and calling upon him to join service, if he so desired. On these allegations, the plaintiff filed the present suit for a declaration that he, was illegally removed, the defendant failed and neglected to re-employ him, as was obligatory on the defendant, while re-starting the factory and prayed for re-employment or reinstatement in the alternative he claimed compensation.

3. The defendant contested this suit on various grounds; one of the contentions raised was that civil Court had no jurisdiction to entertain the suit.

4. The trial Court framed issues. Issue No. 5 was "Whether this Court has no jurisdiction?" By consent, this issue was tried as a preliminary issue. The trial Court following the decision of this Court in Ramkrishan Etc. Mfg. v. Officer, Labour Court (1962) 63 Bom. L.R. 109 held that it had no jurisdiction to entertain the suit and dismissed the same on that ground. The plaintiff preferred an appeal to the District Court, Thana. The learned District Judge referred to two decisions of the Supreme Court, viz. [Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan](#), and [The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.](#), sought to distinguish the Bombay case relied upon by the trial Court and came to the conclusion that the only forum which had jurisdiction to entertain the plaintiff's suit was civil Court. Having taken this view, he allowed the appeal, set aside the decree, dismissing the suit passed by the trial Court and directed the proceedings to be sent back to the trial Court for disposal according to law. It is against this decision that the present appeal is preferred by the defendant.

5. Mr. Shetye, who appears for the appellant, submits that the view taken by the trial Court is correct, while that of the lower appellate Court is wrong. Mr. Shetye submits that Industrial Disputes Act, 1947 (hereinafter referred to as the Act), has set up a separate Tribunal to decide matters similar to those which are the subject-matter of the present suit, thus a separate Tribunal having been set up, civil Court has no jurisdiction to entertain the present suit. It is urged that the allegations in the plaint and the prayers therein make it clear that the present suit does not seek to enforce the terms of the contract of employment, nor is there a claim for damages for the breach of that contract, thus none of the reliefs claimed in the plaint is such as can be granted by a civil Court under the Specific Relief Act, hence civil Court has no jurisdiction to entertain the present suit.

6. A reference to the plaint will make it clear that this is not a suit for damages for breach of service agreement, nor for the enforcement of the terms of that agreement.

7. The reasoning of the lower appellate Court is that the allegations in the plaint in the present suit do not disclose an industrial dispute, the dispute raised by the plaint is of a civil nature, hence it is only the civil Court that can have jurisdiction to entertain the present suit. In our opinion, this reasoning is not quite correct. The dispute in the present suit may not be an industrial dispute, it may be a dispute of a civil nature, but from that it does not necessarily follow that civil Court can entertain the present suit even though the reliefs claimed in the present suit fall within the scope of Chapter VA and the Second Schedule to the Industrial Disputes Act, 1947, Act (amended) and none of the reliefs falls within the scope of the Specific Relief Act.

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8. Section 9 of CPC reads thus:

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

The question for our consideration is whether the jurisdiction of civil Court to entertain a suit like the present one is expressly or impliedly barred. The first relief claimed in this suit is a declaration that the defendant has removed the plaintiff from service illegally and without any reason. The second relief claimed is a declaration that the defendant failed and neglected to re-employ the plaintiff although the defendant re-started the factory. The third relief claimed is a mandatory injunction directing the defendant to re-employ or reinstate the plaintiff. In the alternative, the plaintiff claimed compensation--such compensation as the Court may deem fit. In view of the allegations in the plaint, it is obvious that these reliefs are not sought by way of enforcement of the terms of the contract of employment. In paras. 2 and 3 of the plaint the plaintiff mentions the circumstances in which his services were terminated. He admits that one month's notice was given before his services were terminated on account of the closure of the factory for an indefinite period. He does not allege that what was payable to him u/s 25F of the Act was not paid to him. Paragraph 4 of the plaint reads thus:

4. The plaintiff states that the defendant in or about October 1959 issued letters to Narayan Chandoo and Shantarani Mahadeo and others stating that the Company intended to re-start its factory under a different management. The factory was re-started on or about 28th October 1959. But the defendant failed to observe or intentionally did not follow the provisions of the Industrial Disputes Act, 1947, and the Rules made thereunder in so far as the plaintiff as retrenched person is concerned. The defendant did not maintain a seniority list of retrenched workmen including the plaintiff. The defendant did not give an opportunity to the plaintiff to

offer himself for re-employment. The defendant thereafter employed number of Chemists and/or persons who could do or have done a Chemist's job and called by different designations. The plaintiff, therefore, by his pleader's letter dated 9th November 1959 called on the defendant to re-employ the plaintiff, but the defendant failed and neglected to send a reply to the same.

9. In view of the allegations in the plaint and the reliefs claimed, it is clear that the plaintiff by the present suit seeks reliefs which-according to him- are available u/s 25FFF and Section 25H of the Act. In view of the allegations in the plaint and the reliefs claimed, it is equally clear that no relief which a civil Court can grant under the Specific Relief Act is claimed in the present suit. A contract of personal service cannot be specifically enforced in a civil Court: See [S.B. Dutt Vs. University of Delhi](#), and [Rambhau Jairam Dhamange and Others Vs. The President, Vinkar Co-operative Society Ltd., Chanda and Others](#), . As already pointed out, the present suit is not one for enforcing the rights under the contract of employment, but one for enforcing the rights under the Industrial Disputes Act, 1947. There is no doubt that the dispute in question is of a civil nature. The question for consideration, however, is whether jurisdiction of civil Court is impliedly barred in view of the provisions of the Act, In this respect reference may usefully be made to [Lala Ram Swarup and Others Vs. Shikar Chand and Another](#), In that case Gajendragadkar C.J. observed (p. 896) :

...It cannot be seriously disputed that the jurisdiction of the civil Courts to deal with causes can be excluded by the Legislature by special Acts which deal with special subject-matters; but the exclusion of the jurisdiction of the civil Courts must be made by a statutory provision which expressly provides for it, or which necessarily and inevitably leads to that inference. In other words, the jurisdiction of the civil Courts can be excluded by a statutory provision which is either express in that behalf or which irresistibly leads to that inference.

One of the points which is often treated as relevant in dealing with the question about the exclusion of civil Court's jurisdiction, is whether the special statute which, it is urged, excludes such jurisdiction, has used clear and unambiguous words indicating that intention. Another test which is applied is : docs the said statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions ?...

10. There is no provision in the Industrial Disputes Act, 1947, which expressly bars the jurisdiction of civil Court to entertain suits like the present one. There can, however, be no doubt that the Act confers 011 workmen i.e. employees in any industry certain rights even though they are not included in the contract of employment. The Act also provides special Tribunals for the enforcement of these additional rights which are mentioned in Chapter VA of the Act read with Schedules 2 to 4 of the Act. Chapter II of the Act sets out the machinery for the enforcement of these rights. Sections 6, 7, 7A and 7B of the Act mention the special Courts and Tribunals set up by the Act for dealing with industrial disputes and other matters

appearing to be connected with or relevant to industrial disputes. Section 10 authorises the appropriate Government to refer an industrial dispute, existing or apprehended, by an order in writing to, a Board for settlement or to a Labour Court or Tribunal under the Act for inquiry into the matters referred and for making a report or an award as contemplated by Section 16 of the Act. Section 18 of the Act makes such report or award binding on the parties concerned. Thus the Act i.e. the Industrial Disputes Act, 1947, confers on employees in industry special rights and provides machinery for enforcing such rights. Considering the various provisions of that Act, it appears to us that jurisdiction of civil Court to deal with matters mentioned in Chapter VA of the Act read with Schedules 2 to 4 to the Act is impliedly barred. In this respect we may refer to *Ramkrishan Etc. Mfg. v. Officer, Labour Court*. Relevant observations are as follows (p. 115) :

Section 33C was inserted for the first time by the Amending Act of 1956 which also created Labour Courts u/s 7. It is not disputed that the statutory liabilities created under Chap. VA were not the liabilities known to common law and it was a moot question whether those rights could be enforced in a civil Court in the absence of a properly constituted tribunal. Reference was made to Section 9 of the CPC and it was pointed out that if no special forum was created for the purpose of enforcing the rights they could be enforced in a civil Court because Section 9 provided that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. Whatever may have been the position between 1058 and 1956, regarding the proper forum in which such rights could be enforced, it seems that there is no manner of doubt, at least after the amendment of 1856, that the only forum is the Labour Court which came into existence under the same Amending Act, namely, the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. By this Act, the original Section 7 was substituted by a new one and for the first time the Labour Court, apart from industrial tribunals, came into existence. These Labour Courts were constituted to adjudicate on industrial disputes relating to any matters prescribed in the Second Schedule and for performing such other functions as may be assigned to them under the Act. One of such functions was the function referred to in Section 83C(2). It is, therefore, evident that with the constitution of Labour Courts to deal with the determination of benefits receivable by a workman, inter alia, under Chap. VA of the Industrial Disputes Act, 1947, the jurisdiction of a civil Court, if any, was clearly barred by implication. Therefore, it is no longer open, to contend after the amendment of 1036 that the compensation payable under Chap. VA of the Industrial Disputes Act was recoverable through a civil Court as an alternative forum. The only forum was the labour Courts which the appropriate Government had constituted u/s 7 of the Act...

These observations were no doubt made while considering" the question whether Labour "Courts are governed by the Law of Limitation or principles thereof. Nonetheless, the reasoning indicated by the above quoted observations would be

material even for the determination of the question before us.

11. It is pointed out on behalf of the respondent that in the present case although the reliefs claimed fall within the scope of Chapter VA of the Act, when he applied to the Industrial Tribunal, he was informed that his application could not be entertained unless there was reference by the appropriate Government. It is further pointed out that no Union has taken up his cause. Belying on these facts, it is urged that the plaintiff cannot be without any remedy for the enforcement of his rights; if on the above facts the dispute raised by him is not an industrial dispute as held by the Supreme Court in [Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate](#), C.P.T. Service v. Raghunath and Newspapers Ltd. v. State Industrial Court, it should be held that the dispute being one of civil nature, civil Court has jurisdiction to entertain the suit. The lower appellate Court has also relied on these decisions. These decisions no doubt interpret Section 2(k) of the Act and indicate the scope of the expression "industrial dispute", but they do not lay down that if the dispute in question does not fall within the scope of Section 2(k), it could necessarily be entertained and decided upon by a civil Court. Whether a suit raising such a dispute, i.e. a suit claiming reliefs falling within the scope of Chapter VA of the Act, but not involving an industrial dispute as denned by Section 2(k) of the Act, can be entertained by a civil Court or not must depend upon the nature of the allegations and the reliefs claimed in the plaint. The reliefs claimed in the present suit can be awarded only under the provisions of the Act, in fact the allegations in the plaint leave no doubt whatever that the plaintiff is seeking to enforce his special rights under the Act, and not his rights under the contract of employment. If the Legislature while conferring on the employees in industry special rights under the Act thought it proper and necessary to provide a special mode for enforcement of these special rights by constituting special Courts or tribunals, it would be a legitimate inference that the jurisdiction of a civil Court to grant relief in respect of these special rights is impliedly barred. In this respect, we may refer to the following observations of Willes, J. in *The Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 C.B. (N.S.) 886:

...There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contains words which expressly or by necessary implication exclude the common-law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz. where liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course

applicable to cases of the second class.

12. In our opinion, the present case falls under the third class mentioned in the passage quoted above. We may also refer to the following observation appearing at page 126 of "Maxwell" on Interpretation of Statutes", 11th edn.

Where, indeed a new duty or cause of action is created by statute, and a special jurisdiction out of the course of the common law is prescribed, there is no ouster of the jurisdiction of the ordinary Courts, for they never had any...

The above principle does apply to the facts of the present case, inasmuch as the plaintiff by the present suit does seek to enforce only the special rights alleged to have been conferred on him by the Act.

13. As held in several decisions, the Act i.e. the Industrial Disputes Act, 1947, was enacted with a view to minimise industrial disputes, to promote industrial peace and to have industrial disputes decided by special forums provided by the Act as expeditiously as possible. In view of this, it could not be the intention of the Legislature to allow each workman or employee to start litigation in a civil Court to enforce the special rights conferred by the Act. If that is allowed, the very object of the Act would be defeated to a considerable extent. Any construction which would lead to such a result must obviously be avoided. -The object of the Legislature appears to be to discourage frivolous disputes which -even a labour Union does not find it worth while to support. [See observations of Gajendragadkar "C. J. in [Workmen of Dharampal Premchand \(Saughandhi\) Vs. Dharampal Premchand \(Saughandhi\)](#)].

14. Section 33C of the Act specifically provides a special mode of recovery, of, money due from an employer. It is urged that since no such special mode is. provided for re-employment or reinstatement, it should be held that jurisdiction of civil Court is not barred. We are unable to accept this contention. As held in [Rohtas Industries Ltd. Vs. Brijnandan Pandey](#),, Dr. S. Dutt v. University of Delhi (para. 11) and Rambhau v. President, Vinkar Co-op. Society (pp. 885-886), contract of personal service cannot be specifically enforced, nor can civil Courts make contracts for parties which they did not enter into. Thus, it is, in our opinion, clear that relief of re-employment or reinstatement would be available only to the extent indicated by the Act,, it could be obtained only by the mode provided by the Act and civil Court has no jurisdiction to entertain a suit seeking this relief. Individual relief is provided for where the Legislature thought it proper and necessary to do so, e.g. Section 33C of the Act. In cases where individual relief is not provided for, observations of the Supreme Court in para. 9 of the judgment in C. P. T. Service v. Raghunath would be applicable.

15. Reference may also be usefully made to [State of Kerala Vs. Ramaswami Iyer and Sons](#),. Observations in paras. 4 and 5 of the judgment are material. Pertinent observations are:

4. But the jurisdiction of the civil court may be excluded expressly or by clear implication arising from the scheme of the Act. Where the Legislature sets up a special tribunal to determine questions relating to rights or liabilities which are the creation of a statute, the jurisdiction of the civil court would be deemed excluded by implication...

16. Applying this principle to the provisions of the Act i.e. Industrial Disputes Act, 1947, we have no doubt that jurisdiction of civil Court to grant reliefs covered by Chapter VA of the Act is barred by necessary implication, and as observed by the Privy Council in *Raleigh Investment Co. Ltd. v. Governor-General in Council* (1947) L.R. 74 IndAp 50. 49 Bom. L.R. 530 the doubt, if any, would be whether an express provision to exclude jurisdiction of civil Court would be necessary.

17. Mr. Bhokarika on behalf of the plaintiff contends that the plaintiff did apply to the Industrial Tribunal, but by its reply dated April 11, 1960, he was told that unless the dispute was referred for adjudication by a competent authority, the Industrial Tribunal could not entertain the plaintiff's application. Mr. Bhokarika submits that the plaintiff is driven from pillar to post and it would be astounding to find that there is no tribunal which can grant him relief. This contention is based on an erroneous assumption that the plaintiff is without a remedy. He could have satisfied the appropriate Government that an industrial dispute really existed and that it should be referred to Labour Court or Industrial Tribunal. Instead of doing that, he rushed to the civil Court without considering the nature of his claim. Mr. Bhokarika referred to *Workmen v. Dharam Pal* and [Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union,](#) . In our opinion, these decisions do not support the plaintiff. The first decision reiterates the principles laid down earlier in *O.P.T. Service v. Raghunath and Newspapers Ltd. v. State Industrial Tribunal*. There is, however, nothing in this decision to indicate that an individual dispute which does not amount to an industrial dispute can be the subject-matter of a civil suit even though the reliefs sought are available only under Chapter VA of the Act. The second decision, *P.S. Mills Ltd v. P.S. Mills Mazdoor Union*, has no application to the facts of the present case.

18. The learned appellate Judge in his judgment observes that admittedly the plaintiff's case is not taken up by the Union, it is also not stated that the workers as a class have any substantial interest in the grievance of the plaintiff, thus the plaintiff alone was interested in the dispute, it cannot, therefore, be said to be a dispute falling within the scope of the Industrial Disputes Act, hence civil Court alone will have jurisdiction to entertain the present suit. For reasons indicated above, in our opinion, this reasoning of the learned appellate Judge is erroneous. It may be that in the opinion of the Unions there is no merit in the claim made by the plaintiff and that is why no Union took up his cause. So also, the fact that other employees did not feel interested in the dispute raised by the plaintiff may also indicate that there is no merit in the plaintiff's claim. From that it does not necessarily follow that

the relief claimed by the plaintiff is one which the civil Court has jurisdiction to grant.

19. We, therefore, allow the appeal, set aside the order passed by the lower appellate Court and restore that passed by the trial Court. The plaintiff shall pay the costs of this appeal and that in the lower appellate Court.