

Hareesh Vs. Baby

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Court : Kerala

Decided On : Feb-14-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Hareesh

Respondent : Baby

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT:- THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN FRIDAY,THE14H DAY OF FEBRUARY201425TH MAGHA, 1935 O.P.(LC).No.3344 of 2013 (O) ----- (AGAINST THE

ORDER

S IN I.NO.77/2013 DATED1106.2013 & I.A.NO.88/2013 DATED2008.2013 IN I.D.NO.3/2007 OF THE ' LABOUR COURT, ERNAKULAM). ----- PETITIONER(S):- ----- THE MANAGING DIRECTOR, KERALA BOOKS & PUBLICATION SOCIETY, KAKKANAD - 682 030. BY ADVS.SRI.K.ANAND (SENIOR ADVOCATE) SMT.LATHA KRISHNAN. RESPONDENT(S):- ----- 1. LABOUR COURT, ERNAKULAM - 682 031.

2. K.M.BUCKER KALAPPURAKKAL HOUSE, THIRKKAKARA, KOCHI - 682 021. R1 BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE. R2 BY ADV.

SRI.A.V.XAVIER. THIS ORIGINAL PETITION (LABOUR COURT) HAVING BEEN FINALLY HEARD ON 14-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:- OP(LC).No.3344 of 2013 (O) -----
APPENDIX PETITIONER(S)' EXHIBITS:- ----- EXHIBIT P1. COPY OF THE VERIFIED PETITION, IA NO.77/2013 IN ID32007 FILED BEFORE LABOUR COURT, ERNAKULAM. EXHIBIT P2. COPY OF THE COUNTER FILED IN IA77/2013 IN ID32007 FILED BEFORE LABOUR COURT, ERNAKULAM. EXHIBIT P3. COPY OF THE

ORDER

PASSED BY THE HONB'LE LABOUR COURT DATED 11-06-2013 IN I.A.NO.77/2013 IN ID.3.2007 FILED BEFORE LABOUR COURT, ERNAKULAM. EXHIBIT P4. COPY OF THE VERIFIED PETITION, MP NO.88/2013 IN ID32007 FILED BEFORE LABOUR COURT, ERNAKULAM. EXHIBIT P5. COPY OF THE COUNTER FILED IN IA NO.88/2013 IN ID.3/2007 FILED BEFORE LABOUR COURT, ERNAKULAM. EXHIBIT P6. COPY OF

ORDER

PASSED BY THE HONOURABLE LABOUR COURT DATED 20-08-2013 IN I.A.88/2013 IN ID.3.2007 FILED BEFORE LABOUR COURT, ERNAKULAM. RESPONDENT(S)' EXHIBITS:- ----- NIL. vku/- (true copy) "C.R." K. Vinod Chandran, J -----
O.P.(LC).No.3344 of 2013-O ----- Dated this the 14th day of February, 2014

JUDGMENT

The petitioner is an employer, who is before this Court challenging the orders of the Labour Court, produced as Exhibits P3 and P6. Suffice it to say that the 2nd respondent was dismissed from service and a reference was made at the instance of the Union. The reference was numbered, I.D.No.3 of 2007, and the Labour Court took up the matter. The management adduced its evidence. Subsequently, when the workman was being examined, the management filed an application, Exhibit P1, to reopen the evidence of the management and to call for a witness on behalf of the management. The said application was dismissed by Exhibit P3 and

a further application filed for re-hearing the matter was also dismissed by Exhibit P6.

2. To understand the dispute, a few background facts are necessary, which occurred when the matter was pending before the Labour Court. As was noticed above, the reference itself OP(LC).No.3344/2013 - 2 - was initiated by the Union on behalf of the workman, on the latter's dismissal from service. It is admitted that, later the Union and the workman fell out and on no instructions being received from the Union, the lawyer who was representing the Union, who had raised the dispute on behalf of the workman, relinquished his Vakkalath. Consequently, as is permissible, the workman sought impleadment in the said Industrial Dispute and the same was allowed. What transpired at the stage of evidence, which gave rise to this Original Petition, has been noticed by this Court in the earlier paragraph.

3. It is pertinent that, the witness the management wanted to summon was the Secretary of the Union which had initiated the reference and which was a party in the dispute pending before the Labour Court. The learned counsel for the petitioner would contend that the Labour Court misdirected itself, since the reliance placed on two decisions of this Court, being Syed Mohammed v. Aziz [1990 (2) KLT952 and Jortin Antony v. S.P.D.Marthanda Varma [2000 (2) KLT680, are not germane for consideration, since those decisions dealt with the procedure OP(LC).No.3344/2013 - 3 - under the Code of Civil Procedure ("CPC" for short). The procedure as prescribed under the CPC has limited application with respect to the Industrial Disputes Act, 1947 (for brevity "I.D.Act") and, hence, the contention is that the Labour Court misdirected itself. The learned counsel also takes me through paragraphs 13 and 15 of Jortin Antony (supra) to contend that the Court has the discretion to call for any witness and the approach of the Court should always be to further justice and not shut out any reliable evidence on any aspect.

4. The management had filed Exhibit P1 application contending that, the reopening of evidence and summoning another witness on behalf of the management has been necessitated, only by reason of the workman having created a confusion in his deposition, with regard to the manner an Operator is expected to discharge his duties. However, for that the management has picked

on the Secretary of the Union, which had initiated the reference and had earlier been represented by counsel, in the dispute and had been canvassing the case of the workman. Admittedly it was on the Union and the workman falling OP(LC).No.3344/2013 - 4 - out that the workman was forced to implead himself, so as to urge his contentions properly before Court. It cannot also be gainsaid that the Secretary of the Union alone, could depose with respect to the duties of an Operator. It would be competent for the management to have brought in any other Officer or Supervisor of the management to clear any discrepancies or confusion which had surfaced in the deposition of the workman.

5. The attempt to bring the Secretary of the Union itself, according to this Court, is tainted, insofar as attempting to put the Union, who is a party to the dispute, against the workman, whose dismissal was the subject matter of reference. The contention with respect to the limited application of CPC will be dealt with later. What assumes significance herein is the oft reiterated unequal strength of the parties in an industrial dispute adjudication, that too, between an employer and a workman. The Union and the workmen continuing in employment would be pliable subjects of the employer; easily falling prey to the lure of proffered benefits or succumbing to threats of denial. It is to avoid such winning over, that a dismissed workman was declared to be OP(LC).No.3344/2013 - 5 - entitled to canvass his contentions, in an adjudication, despite his interests being protected by a representative Union. Turning the tables against a workman, by winning over the Union would be an endeavour to 'render abortive' the spirit of the legislation and an attempt to "embarrass judicial investigation", as has been commended by the Privy Council in *Kishori Lal v. Chunni Lal* (XXXVI I.A.9), referred to in *Jortin Antony* (supra).

6. The further contention of the learned counsel for the petitioner that the CPC has only limited application to the proceedings under the I.D.Act, also cannot be countenanced on the facts of the above case. It cannot be gainsaid that *Jortin Antony* (supra) found that the CPC prohibits examination of an opposite party. The plea of the plaintiff, who sought examination of defendants, as his witness was that the decisions interdicting such practice was without noticing the amendment brought to Rule 21 of Order XVI of the CPC. Rule 21 provides that where a party

to a suit is required to give evidence or produce a document, the provisions as to witnesses, as far as applicable, shall apply to him. Rule 21 of Order XVI was held to confer no substantive right as OP(LC).No.3344/2013 - 6 - such on a party to summon an opposite party as witness. It was also contended that, by the amendment of Rule 14 of Order XVI, in 1976, the powers of the Court was enlarged to include a power to summon a party to the suit also to give evidence. It was held that before or after the amendment, no right was conferred on a party to the suit to summon his opponent for being examined as a witness, on his own behalf. The plea that the CPC permitted such conduct, was negatived. To say that the Division Bench found CPC to prohibit examination of opposite parties and the prohibition to do so under the CPC cannot be imported to industrial adjudication; is to misconstrue the decision and distort the dictum laid down therein.

7. It has to be noticed that in Exhibit P3 what the Labour Court has done is to keep the principles laid down in the afore-cited decisions, in mind, and then refuse to exercise discretion to direct a named witness, being the Secretary of the representative Union, to depose in favour of the management. This Court does not see any infirmity in the order of the Labour Court refusing to exercise such discretion. It is also to be OP(LC).No.3344/2013 - 7 - specifically noticed that the Labour Court has recorded in Exhibit P3 order that the management had addressed no argument to highlight the reason compelling the said witness alone to depose for and on behalf of the management. In the teeth of the above findings, there is absolutely no infirmity in Exhibit P3 order, and the refusal to re-hear the matter, as is evident from Exhibit P6, also cannot be assailed. The Original Petition, hence, stands dismissed. Parties left to suffer their costs. Sd/- K.Vinod Chandran Judge. vku/- (true copy)

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