

M. Ganesan and ors. Vs. Management of Blue Star Ltd.

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Court : Chennai

Decided On : Jun-20-1989

Reported in : (1989)2MLJ110

Appellant : M. Ganesan and ors.

Respondent : Management of Blue Star Ltd.

Judgement :

ORDER

Bakthavatsalam, J.

1. This Civil Revision Petition has been preferred under Article 227 of the Constitution of India against the order of interim suspension made in C.M.P. No. 566 of 1980 in O.P. 107 of 1989 by Principal Judge, City Civil Court, Madras on 7.4.1989.

2. The petitioners filed C.M.P. No. 6076 of 1989 along with C.R.P.NO. 1276 of 1989 and got an interim stay till 12.6.1989 and notice returnable by then. The respondent has preferred a petition in C.M.P.NO. 6687 of 1989 for vacating the stay in C.M.P. No. 6076 of 1989 and C.M.P. No. 6682 of 1989 to dismiss the order in C.R.P. No. 1276 of 1989 made on 13.5.1989. When these petitions came up for hearing, by consent of both parties, the main C.R.P. itself is taken up for disposal.

3. The petitioners herein who are the plaintiffs have filed O.S. No. 3202 of 1989 on the file of VIII Assistant Judge, City Civil Court, Madras for a declaration that the action of the defendant the respondent herein as per their notice dated 20.3.1989 is illegal and contrary to law and consequently to issue a mandatory injunction restraining the defendant from making any deduction, much less penal deduction, from the salaries payable to the plaintiffs in March, 1989 or in any subsequent month for the incident on; 20.3.1989, They have also preferred I.A. No. 6974 of 1989 in O.S. No. 3202 of 1989 for an interim injunction under Order 39, Rules 1 and 2 of C.P.C. restraining the respondent therein from making any deduction including penal deduction from the salary payable to the petitioners/plaintiffs/for the month of March, 1989 as per notice dated 20.3.1989 or from any subsequent month's salary, pending disposal of the suit. The learned VIII Assistant Judge, City Civil Court, Madras on 28.3.1989 granted an interim injunction as prayed for. It seems that on 31.3.1989 the respondent management filed an I.A. to vacate the injunction and in that application notice has been ordered returnable by 3.4.1989. On 3.4.1989, the counsel for the petitioners herein appeared and the matter was adjourned to 4.4.1989 for counter and disposal. On 4.4.1989, a counter was filed. The case was argued partly and it seems that during the course of the argument, an objection was taken on behalf of the petitioners that the Court was making proposal detrimental to the workers. The application stood adjourned to 5.4.1989 to enable the petitioners to move a transfer O.P. On 5.4.1989, the learned VIII Assistant Judge, City Civil Court, Madras was on leave. But the daily cause list put up in the notice board showed that the urgent cases should be mentioned before the IX Assistant Judge, City Civil Court, Madras and it will be taken up. In view of the absence of the learned VIII Assistant Judge, that I.A. was adjourned to 10.4.1989. On 7.4.1989, the transfer O.P. 113 of 1989, which was filed by petitioner on 5.4.1989 was represented, numbered and posted to 10.4.1989 as 8th and 9th April, 1989 were holidays. The prayer in O.P. 113 of 1989 filed by the petitioners herein was to withdraw O.S. No. 3202 of 1989 on the file of the VIII Assistant Judge and send it to the file of any other learned Judge. In the meantime, it seems that the respondent Management moved a transfer O.P. No. 107 of 1989 before the Principal Judge, City Civil Court, Madras under Section 24 of Civil Procedure Code, praying to withdraw I.A. No. 6974 of 1989 in O.S. No.

3202 of 1989 from the file of VIII Assistant Judge, City Civil Court, Madras and transfer to the file of any other Assistant Judge, City Civil Court, Madras with directions to dispose of the above matter immediately. This affidavit was sworn to on 5.4.1989 by the Regional Manager of the respondent Management. Alongwith O.P. No. 107 of 1989, C.M.P. 566 of 1989 was filed)by the management to suspend the operation of the order made in I.A. No. 6974 of 1989 in O.S. 3202 of 1989 passed by the learned VIII Assistant Judge, City Civil Court, Madras on 28.3.1989. This petition was moved by the respondent Management herein and on 7.4.1989 obtained an ex parte interim stay of the operation of the order in I.A.6974 of 1989 passed by the learned VIII Assistant Judge, City Civil Court, Madras, Notice returnable by 27.4.1989, was also ordered in that petition. On 10.4.1989 the transfer OP. filed by the petitioners/workers was numbered, notice was also ordered returnable by 12.4.1989 and the same was posted to 17.4.1989 alongwith the transfer petition filed by the respondent/Management. On 17.4.1989, it was adjourned by Principal Judge, City Civil Court, Madras for want of time to 26.4.1989. On 26.4.1989, petitioner's counsel was present and ready to argue, but the management and counsel were not present and hence the matter an adjourned to 27.4.1989. On 27.4.1989, worker's counsel were present and ready. Management and their counsel were again absent and the matter was adjourned to 22.6.1989. At this stage, the petitioners have come before this Court, with this C.R.P. on 17.5.1989 during vacation. Abdul Hadi, J. by order dated 30.5.1989 admitted the C.R.P. ordering notice returnable by 12.6.1989 granting interim stay till then.

4. N.G.R. Prasad, the learned Counsel for petitioners contends that filing of an application under Section 24 of the Civil Procedure Code by the respondent Management and obtaining an ex parte suspension of the order dated 28.3.1989 in IA. 6974 of 1989 is in gross abuse of presence of Court. The learned Counsel further argues that the trial Court has granted ex parte interim injunction on 28.3.1989 and as such the authorities ought to have paid the wages normally on 31.3.1989. For not paying the wages, the respondent management ought to have moved the IX Court on 5.4.1989 itself. If it thought it necessary to vacate the ex parte injunction. The failure is on the part of the respondent to move the IX Court, but, instead, it sought to move a transfer O.P. with ulterior motive which is a gross

abuse of process of Court. It is submitted by the learned Counsel that the processing under Section 24 of C.P.C. being original in character, the Principal Judge, City Civil Court, Madras ought to have vacated or confirmed the order under Order 30, Rule 4, C.P.C. and ought not to have passed an ex parte suspension of the order of the ex parte injunction. The learned Counsel relies upon a decision of this Court in Subbareddi v. Naraya-naswami Reddy : AIR1949 Mad283 and Sri Rangam Municipality v. R. Palaniswami : AIR1951 Mad807 The learned Counsel further contends that a Civil Revision Petition under Article 227 of the Constitution of India is maintainable, in view of the dicta of this Court which is reported in Sunda-ram Pillai v. V. Govindaswami (1985)2 M.L.J. 374 . The sum and substance of the argument of the learned Counsel for the petitioners is that the action of the respondent in filing the Tr.O.P. No. 107 of 1989 to suspend the operation of order in LA. 6974 of 1989 and the action of the Principal Judge, City Civil Court, Madras in granting interim order suspending the operation of the order in I.A. 6974 of 1989 are illegal, especially when the Principal Judge, City Civil Court, Madras could have disposed of the matter on merits when both sides wanted a transfer and the matter was already before him Prasad, the learned Counsel for petitioners also contends that the respondent cannot deduct the wages as per condition 51. for continues service of the petitioners and as such the learned Counsel contends prima facie, there is No. case for deducting the wages and the order of Abdul Hadi, J. granting interim stay should be respected by the management-respondent. Prasad refers to me a decision of Calcutta High Court in State Bank of India and Ors. v. Amal Kumar Sen and Ors. (1988)1 Labour Law Notes 827 and the judgment of the Bombay High Court in Bank of India, Bombay and Anr. v. T.S. Kelawalar Bombay and Ors. (1988) 2 L.L.J. 264

5. M.R. Narayanaswamy, appearing for the respondent/Management argues that the Civil Revision Petition itself is not maintainable and the petitioners ought not to have been allowed to move this Court under Article 227 of the Constitution. The learned Counsel relies upon a decision of Bench of this Court in Abdul Shakoore Sahib v. Umachandar A.I.R. 1976 Mad. 350 and contends, that when this Court has held that when a petition under Section 115, C.P.C. is not maintainable the petition under Article 227 of the Constitution cannot be maintained. The learned Counsel further contends that the ex parte mandatory injunction granted by the

trial Court (VIII Assistant Judge, City Civil Court) itself is beyond the jurisdiction of the VIII Assistant Judge, City Civil Court, Madras and the Principal Judge, City Civil Court has got jurisdiction to grant an interim suspension of that order. The learned Counsel further contends that when proceedings are pending in the lower Court, that is the petitions for injunction and for vacating injunction along with transfer applications. Article 227 of the Constitution cannot be used and this Court also should not entertain a petition' under Article 227 of the Constitution at this stage. The learned Counsel refers to me Sections 15(2) and 22 of the Payment of Wages Act, 1936 to show prima facie, the suit itself is not maintainable. The learned Counsel refers to me a decision of this Court rendered by Srinivasan, J. which is reported in Rajapalayam Industrial and Commercial Syndicate Ltd. v. Vairaprakasam (1968) 2 M.L.J. 155. The learned Counsel strenuously contends that the petitioners cannot come to this Court under Article 227 when they have invoked the jurisdiction of the lower Court. The learned Counsel points out that even in the prayer in Tr.O.P. 107 of 1989, it was prayed by the petitioners to call for the records in the ex parte interim injunction petition and transfer the same to some other judge.

6, After considering the arguments of Mr .Prasad, the learned Counsel for, petitioners and of Mr .Narayanaswamy, the learned Counsel for respondent - Management, I think it is better not to enter into the merits of this case at this stage, since I feel it is not correct on my part to go into either maintainability of the suit or the merits of the case. In substance, what was happened is that the petitioners have obtained an ex parte injunction under Order 39, Rules 1 and 2 of the C.P.C. in a suit with the following prayer:.declaring that action of the defendant as per their notice dated 20.3.1989 is illegal and contrary to the Law; and consequently issue a mandatory injunction restraining the defendant from making any deduction, much less penal deduction, from the salaries payable to the plaintiffs in March,1989, or in any subsequent month for the incident on 20.3.1989...

The respondent management has entered appearance and filed a petition for vacating the injunction. The matter was originally heard by the learned VIII Assistant Judge, City Civil Court, Madras and when the petitioners were not

satisfied with the hearing of the learned VIII Assistant Judge, City Civil Court, Madras, they wanted a transfer of the case to some other Judge. Equally so, the respondent management also, when they found that the learned VIII Assistant Judge was not sitting on a particular day, they moved the Principal Judge for the transfer of the case to some other Judge. As such, I see the matter has not been disposed at all on merits by the lower Court.

7. I shall take up the point whether the petition under Article 227 is maintainable at this stage. It has been held by the Supreme Court in *Waryam Singh Amarnath* : [1954]1SCR565 that the power of superintendence conferred by Article 227 should be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. In that case, the Supreme Court has considered Sections 107 of Government of India Act, 1915 and Section 224 of Government of India Act, 1935 and held that Section 224 of Government of India Act, 1935 has been reproduced with certain modifications in Article 227 of the Constitution. In that decision the Supreme Court has approved the decision of the Allahabad High Court and observed thus:.. This significant omission has been regarded by all High Courts in India before when this question has arisen as having restored to the High Court the power of Judicial superintendents it had under Section 15 of the High Courts Act, 1861 and Section 107 of the Government of India, Act, 1915. See the cases referred to in *Motilal v. The States* : AIR1952 All963 . Our attention has not been drawn to any case which has taken a different view and as at present advised. We see no reason to take a different view.

This power of superintendence conferred by Article 227 is, as pointed out by Harries G.J. in *Dalmia Jain Airways Ltd v. Sukumar Mukherjee* : AIR1951 Cal193 to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting more errors.

We have to see whether this Court can interfere' with the order of the Principal Judge City Civil Court, Madras which is attacked in this Civil Revision Petition. In *Mohammed Yunus y. Mohammed Mustaqim* A.I.R. 1984 S.C.36: (1983) 4 S.C.C.

966 the Supreme Court has held that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution. While holding so, the Supreme Court in the above cited case, observed as follows: (at p.40).The supervisory jurisdiction conferred on the High Courts under Article 27 of the Constitution is limited 'to seeing that an inferior court or Tribunal functions within the limits of its authority' and not to correct an error apparent on the facts of the record, much less an error of law...

Section 24(1) of Code of Civil Procedure reads as follows:

24(1) On the application of any parties and after notice to the parties and after hearing such of them as desire to be heard or of its own motion without such notice, the High Court or the District Court may at any stage:

(a) transfer any suit, appeal or other proceedings pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same or.

(b) withdraw any suit, appeal or other proceedings pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to the court; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn

It is useful to refer at this stage, the decision of this Court in *Alla Subbareddi v. Lahwki Reddi Mara-tana Swamireddi and Ors.* : AIR1949 Mad283 . In that decision, Sathyanarayana Rao, J. has considered the question whether this Court has jurisdiction to appoint a receiver before the transfer of the suit was ordered and after notice on the petition for transfer had been served on the defendant. In the above mentioned case, the learned Judge after referring to a decision in *Jumma Bai v. Ramanathan Chetti* : AIR1929 Mad29 held as follows:..When an application for transfer of a suit to this Court is made under Section 24, C.P.C. and

notice is ordered, it is in the nature of an original proceedings within the meaning of Section 141, C.P.C. and the procedure provided under the Code in regard to suits becomes applicable...

In that case it was further held that the Court had power to appoint a receiver under Order 40, Rule 1, C.P.C. In view of the decision cited supra, I think the contention of Prasad, the learned Counsel for petitioners that the Principal Judge, City Civil Court, Madras had got no jurisdiction to pass an ex parte suspension order, pending application of the transfer, is not correct. Though Mr. Prasad, the learned Counsel for petitioners cited a decision in Sundaram Pillai v. Govindaswami (1985) 2 M.L.J. 374 in his favour, I am in agreement with Mr. M.R. Narayanaswamy, the learned Counsel for respondent that this judgment supports the case of the respondent management rather than petitioners. I do not find anything wrong in the order of the learned Principal Judge, City Civil Court, Madras suspending the experts order of interim injunction. More so, in view of the recent dicta of this Court in Rajapalayam Industrial and Commercial Syndicate Ltd. Rajapalayam and Anr. v. A. Vairaprakasam and Anr. : (1988) 2 MLJ 155 wherein Srinivasan, J. has considered the decision of a Division Bench of this Court, which is reported in Abdul Bhakoor Sahib v. Umachandar A.I.R. 1975 Mad. 350 and also a judgment of Chandrakar, C.J. in Sundaram Pillai v. Govindaswami : AIR 1985 Mad 199 and has categorically held that a revision petition under Section 115, C.P.C. is not maintainable in the High Court against an ad interim ex parte order. As I have already stated the ratio of the decision of Srinivasan, J. squarely applies to the facts of this case.

8. When a revision petitioner under Section 115, C.P.C. is not maintainable in this Court, against an ex parte ad interim injunction, I do not think it is proper for this Court to assertain a petition under Article 227 of the Constitution of India. I am taking into consideration the facts that the grant of ad interim injunction under Order 30, Rule 3 of C.P.C. by the VIII Assistant Judge, City Civil Court, Madras itself is in violation of the procedure prescribed under Order 39, Rule 3 of C.P.C. When such is the position in law, I do not see any error in the order passed by the learned Principal Judge, City Civil Court, Madras suspending the order of the learned VIII Assistant Judge, pending a transfer, application under Section 24,

C.P.C. I am of the view that the order questioned in this Civil Revision Petition is unassailable. I am arriving at this conclusion on another ground also. If this order is set aside under Article 227 of the Constitution, it means another illegal order is restored, that is, the ex parte injunction order passed by the trial Judge in this case against the principles laid down by this Court as stated supra. With regard to the decision cited by Mr. Prasad, the learned Counsel for petitioners in *State Bank of India and Ors. v. Amal Kumar Ben and Ors.* (1988) 1 LLN 827. I think it is a matter to be argued in the petitions filed in the lower court and I do not want to express any opinion at this stage. The decision rendered in *The Bank of India, Bombay and Anr. v. T.B. Kelawala, Bombay and Anr.* (1988) 2 LLJ 264, has no relevance to the facts of this case. It is well settled that an order should not be set aside if it virtually restores another, illegal order.. This principle is applied for a petition filed under Article 226 of the Constitution of India, I am of the view that the very same principle can be applied, when this Court's aid is sought for under Article 227 of the Constitution also. As I have already stated, the matter is pending before the Principal Judge, City Civil Court, Madras. I am told at the Bar that the hearing is posted in a few days and that is why I am not entering into the merits or the other arguments raised by both counsel. I feel that it will affect the fair hearing of the petitions by the lower Court. In the interests of justice, I feel it is enough to direct the Principal Judge, City Civil Court, Madras to take up the matter by himself to his file and pass final orders, on or before 30.6.1989 after hearing both sides, since I am told the workers/petitioners are on strike and I do not want them to lose wages indefinitely I do hope that both the petitioners and the respondent Management will. give full co-operation to the lower Court in disposing of the matters. As I have already stated, surely this is not a matter to be interfered with under Article 227 of the Constitution. Accordingly, I dismiss the Civil Revision Petition, However there will be no order as to costs.