

Bombay High Court

Tulsidas P. Kheraj And Anr. vs Association Of Engineering ... on 15 March, 2001

Equivalent citations: (2001) 3 BOMLR 395, (2002) IVLLJ 941 Bom, 2001 (3) MhLj 572

Author: R J Kochar

Bench: R Kochar

ORDER R. J. Kochar, J.

1. This petition reflects how the process of law and the Court can be abused to harass a party which is ex facie neither necessary nor a proper party to the litigation in the form of complaint filed by the Respondent No. 1 Union under Section 28 of the M.R.T.U. & P.U.L.P, Act, 1971 under items 1(b) and 2(a) of Schedule II and Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 filed against only one M/s. Salvi Super the employer of the employees who were represented by the Complainant-Union, Respondent No. 1 in the present Petition. This complaint was filed by the complainant Union against the Respondent employer in the year 1984. The Petitioners (Respondent Nos. 2, 3 and 4 in the complaint) were subsequently impleaded as Respondents in the year 1994 being necessary and proper party to the complaint. By an order dated 1.2.1994 on the application made by the complainant Union to implead the said Respondents, who are the Petitioners in the present Petition. Since the petitioners were not heard before they were impleaded as respondents in the complaint they filed an application before the Industrial Court to discharge them from the complaint as they were neither necessary nor proper party in the complaint. The Industrial Court however by its order dated 7.8.1995 refused to discharge them on some curious ground and curious logic that the order impleading them in the complaint should have been challenged by them in the High Court and that they should not have filed the said application before that Court to get themselves discharged from the complaint.

2. The Petitioners are aggrieved by the aforesaid two orders of the Industrial Court. Shri Kamdar, the learned counsel for the Petitioners has furnished the following dates and events of the checkered history of the present litigation.

19.10.1961 The Lease was executed in favour of S. R. Salvi for a period of 10 years with an option to renew.

17.4.1972 The Lease was renewed for a period of 7 years with some modifications in terms i.e. the grant was restricted to lease and building only.

24.1.1984 Respondent No. 1 filed Complaint being Complaint (U.L.P,) No. 420/1984 originally only against Respondent No. 2. The said complaint is u/s. 284 read with Item 1(b). 2(a) & Schedule 11 and Item 9 of Schedule IV of the M.R.T.U, & P.U.L.P. Act.

1971. Averments of the said complaint indicate that the allegations of unfair labour practices are only against 2nd Respondent herein. The complaint inter alia seeks a prayer that the said 2nd Respondent ts engaged in unfair labour practice under Item 1(b), 2(a) & 6 of Schedule II and Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 . Other reliefs which are sought are that the 2nd Respondent should be restrained from effecting lockout effected under the guise of layoff and

Respondent No. 2 may be directed to pay full wages for the period of partial illegal lockout and various other reliefs of injunction restraining the Respondent No. 2 from, removing, transferring or alienating the land, building, plant, machinery etc. Further reliefs were also prayed In respect of the salary as well as bonus and exgratia amount.

25.7.1984 Petitioners gave notice terminating the tenancy of the said S. R. Salvi.

31.8.1984 S.R.

Salvi surrendered the tenancy of the said land & building in favour of the Petitioners and executed necessary documents.

March, 1985 Said S. R. Salvi filed Writ Petition No. 220 of 1985 Impleading the State Government. Municipality, Provident Fund Authorities & the workmen falsely alleging therein that he could not enter the said premises as the same was sealed by the Collector's Office In Recovery In Proceeding. The Petitioners who were necessary parties they being in possession of the premises on that date wore not joined.

5-311985 S.

R. Salvi in collusion with the workers obtained exparte orders In Writ Petition No. 220 of 1985.

19.3-1985 Petitioners were dispossessed from the said premises by Salvi in collusion with (he workers, by the office of the Collector of Bombay and the police In alleged Implementation of the said order dated 5.3.1985.

18.1.1991 The appeal preferred by Salvi from the order directing restitution of possession to the petitioners was dismissed.

20.2.1991 Order in Notice of Motion No. 509 of 1991 taken out by the Petitioners by which the Court Receiver was directed by the Division Bench to give possession of the said premises to the petitioners on or before 21.2.1991.

27.7.1992 Order of the Division Bench in Appeal No. 1 96 of 1 99 1 directing that the order dated 15.2.1991 passed in Pauper Petition No. 2 of 1991 in favour of Salvi be vacated and the Court Receiver as Receiver in the Suit filed by the Bank of Maharashtra against Salvi for recovery of its dues was directed to remove the machineries hypothecated to the Bank within four weeks.

22.9.1992 Special Leave Petition filed by Salvi from the order dated 27.7.1992 of the Division Bench in Appeal No. 196 of 1991 was dismissed by the Hon'ble Supreme Court and the order of restoration of possession to thepetitioners as landlords was confirmed.

12.6.1994 Consent Terms filed In Pauper Petition No. 2 of 1991 entered into by which Salvi confirmed that the Petitioners were the owners and in possession thereof.

In pursuance of a valid surrender of tenancy rights and that he had no interest in the premises- It was further specifically agreed that Salvi alone would be liable for all liabilities of Salvi Super Structure and the claim " of the workmen If any in Complaint U.L.P. No. 420/ 1994 and other claims if any.

24.6.1994 Order in terms of Consent Terms.

Jan.. 1994 Exparte application made by Respondent No. 1 Union for impleadng the petitioners as party respondent to Complaint U.L.P. No. 420 of 1985- No notice of the said application or copy thereof was furnished to the petitioners.

1.2.1994 The application by the Respondent No. 1 Union for impleadng the petitioners as party respondents was allowed exparte without even primaface holding that the petitioners were in any way liable for the claims of the Respondent No. 1 Union in the said petition.

July, 1995 Application made by the petitioners for being discharged as Respondents.

7.8.1995 The application for being discharged by the petitioners as party respondents from complaint U.L.P. No. 420 of 1985 was rejected.

3. From the aforesaid facts and events, which are not disputed, it is clear that the Petitioners are the owners of the suit land and the structure which was given on lease to the firm known as M/s. Salvi Super, which was a Proprietary concern running the business in the premises as Lessee. There is no dispute that the said M/s. Salvi Super, the Respondent No. 2 before me and the Respondent No. 2 before the Industrial Court, did not own the suit land and the suit structure and that he was only a Lessee under the lease agreements between the parties. There is no dispute that the Petitioners had absolutely no concern with the business of the said M/s. Salvi Super. There is also no dispute that the Petitioners were not the employers of the employees employed by the said M/s. Salvi Super and still the petitioners were dragged in the complaint of unfair labour practice filed by the Respondent No. 1 Union before me to implead the Petitioners as necessary and proper party.

4. In the application filed by the Union to implead the Petitioners there is not even a whisper of reason or ground why they were sought to be impleaded as necessary or proper party. It is only averred that there was a litigation in respect of the lease agreement between the petitioners and the said M/s. Salvi Super, the Lessee of the premises, and that the Lessee has finally lost in the litigation upto the Supreme Court and that the Lessee has handed over the said premises to the Lessors, the Petitioners in the present Petition. It is only averred that "to bring the logical end to this complaint the following persons are necessary to be impleaded as party in the present complaint." It is not even averred in the said application that Petitioners were either necessary or proper party. I am rather surprised how even without issuing a show cause notice to the proposed respondents as to why they should not be impleaded in the complaint the Industrial Court passed an exparte order against the petitioners to implead them in the complaint by the impugned order dated 1.2.1994. The learned Members of the Industrial Court has only given the following reason to implead the petitioners in paragraph 9 of his judgment, which reads as under :

"9. Suffice to state that in order to decide the controversy in these two old complaints, it is necessary that the party now in possession of the property, and the party now intending to run the business there, and the party now declared to be the real owner of the property and business must be joined as a necessary party to this proceeding. No doubt the matters are old one and part evidence has been recorded, but that cannot be the ground to reject the application. Abnormal delay committed in filing the application for joining the three persons, mentioned above, as necessary party, cannot be a ground to reject the application of the complaint. Hence, I pass the following order."

In fact this reason in my opinion is no reason at all to implead any party as a necessary or proper party. Merely because the owner of the property has given such property to a party on lease the lessor does not become liable or responsible for the acts and omissions committed by the proprietor of the business in the business. The owner of the property i.e. the Lessor is not responsible to the workmen employed in the business. The Lessor does not become the employer of such workmen. The learned Member of the Industrial Court has also brushed aside the very valid and basic objection of the Petitioners that it was only after a decade that the petitioners were being impleaded as the respondents in the complaint of unfair labour practice which should be filed within 90 days of the occurrence of the alleged unfair labour practice. According to me, the impugned order of the learned Member of the Industrial Court impleading the petitioners as the Respondents in the complaint is per se illegal and improper which deserves to be quashed and set aside forthwith.

5. It is very pertinent to note that in the entire complaint filed by the Union there is not even a whisper against the petitioners as to how they could be accused of an unfair labour practice alleged against the Respondent No. 1 M/s. Salvi Super, the admitted employer of the workmen, represented by the Union. The learned member of the Industrial Court also lost sight of the fact that there was no whisper or an iota of allegation of unfair labour practice against the petitioners in the entire complaint and even in the application filed by the Union to implead the petitioners there was no mention in what way the petitioners had engaged in any unfair labour practice alleged against the said M/s. Salvi Super. I have already stated that there is not even a ghost of averment anywhere in the application how the petitioners were necessary or proper party to be impleaded in the complaint. Further in my considered opinion merely because the Petitioners were the Lessors as the owners of the property where the Lessee was conducting his own independent business can be said to be a necessary or proper party in the litigation between the employer and the employees in respect of their service conditions and in respect of the labour dispute between them unless it is specifically pointed out that the proposed respondents had any share or responsibility of any nature in the business of the Lessee. I am not prepared to hold a view as canvassed by Shri Ganguli that as the owners of the property the petitioners were necessary and proper party. Shri Ganguli has not pointed out even a single word from the entire proceedings to show that the petitioners were necessary and proper party in the complaint of unfair labour practice which is maintainable against the employers only. The Union has not been able to establish or show or even averred any where any ground to substantiate its plea to implead the petitioners as necessary or proper party. I am further not able to appreciate the submissions of Shri Ganguli that the complaint of unfair labour practice is still pending before the Industrial Court and the question of the petitioners being necessary and proper party would be finally decided before the Industrial Court. In my opinion at the outset if the petitioners were not necessary and proper party why they should be penalised or harassed by

compelling them to suffer and undergo the litigation when ex facie there is no reason for them to do so. Shri Ganguli has submitted that the question of the petitioners being necessary and proper party would be finally decided by the Industrial Court after full-fledged trial and that I should not interfere at this stage. I am unable to agree with the said submissions of Shri Ganguli.

6. According to me, the Petitioners have rightly approached the Industrial Court by making an application to discharge the petitioners from the complaint as they were wrongly impleaded under the ex parte order dated 1.2.1994 qua them without hearing them, and therefore, they have rightly approached the Industrial Court to get the said ex parte order vacated before approaching the higher forum. The Petitioners have followed the right procedure of approaching the Trial Court to get the ex parte order set aside or vacated and thereafter they have approached this Court under Article 226 of the Constitution of India to challenge both the aforesaid orders of the Industrial Court. There is absolutely no substance in the submission of Shri Ganguli that the plant, machinery of the said M/s. Salvi Super were lying in the suit premises and therefore the petitioners were necessary to be impleaded in the complaint. Shri Kamdar, has further pointed out that the petitioners had nothing to do with the said plant and machinery. In the litigation between the said M/s. Salvi Super and the Bank of Maharashtra a Court Receiver was appointed for the plant and machinery and under the orders of the Court the Court Receiver had taken away plant and machinery for the benefit of the said Bank of Maharashtra. Since the Petitioners were not the owners of the business and they were not even the owners of the plant and machinery and they were not employer of the employees represented by the Union and there is absolutely no allegation or averment of any nature against the petitioners the Petitioners were unnecessarily dragged in the litigation and were impleaded as the Respondents in the complaint before the Industrial Court. In my opinion both the impugned orders deserve to be quashed and set aside being totally illegal, improper and unjust. The Respondent No. 1 Union in the above Petition has deliberately impleaded the petitioners in the said complaint of unfair labour practice with a view to harass them for the reasons best known to them. Such tendency of the parties need to be curbed and curtailed, as no party can be dragged in any litigation for the pleasure of the party in charge of the litigation. On the top of this it was submitted on behalf of the Union that the petitioners should be compelled to continue in the litigation before the Industrial Court and that their fate would be finally decided in the complaint and that they should subject themselves and submit to the proceedings pending before the Industrial Court, I am unable to agree with the submissions of the learned Advocate. In these circumstances I allow the Petition and make the rule absolute in terms of prayer (a) of the Petition with costs which is quantified as Rs. 10,000/- to be paid by the Respondent No. 1 Union to the Petitioners. Interim order dated 20th July, 1996 stands vacated. It is needless to mention that the complaint pending before the Industrial Court can continue against the Respondent No. 2 in the Petition i.e. M/s. Salvi Super only.

7. All parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.