Supreme Court of India
Malwa Bus Service Pvt. Ltd vs Mohinder Kaur on 8 April, 1993
Equivalent citations: 1994 SCC, Supl. (2) 140
Author: M Punchhi
Bench: Punchhi, M.M.

PETITIONER:
MALWA BUS SERVICE PVT. LTD.

Vs.

RESPONDENT:
MOHINDER KAUR

DATE OF JUDGMENT08/04/1993

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
BHARUCHA S.P. (J)

CITATION:
1994 SCC Supl. (2) 140

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.This is an appeal against the judgment and order of the Punjab & Haryana High Court passed in Civil Revision No. 1965 of 1984.

2.Eighty marlas, which is half an acre, of vacant land was rented out by Mohinder Kaur-respondent to the Malwa Bus Service Private Ltd., a transport company, the appellant herein. On July 27, 1979 an eviction petition was moved by the landlord-respondent against the tenant-appellant and one Amar Singh, who is not a party herein, but was a party in the courts below, on the allegations that a portion of the rented land had been sublet by the tenant in favour of Amar Singh, described as the sub-tenant. The other ground of eviction was bona fide requirement for personal use and occupation. The Rent Controller as well as the Appellate Authority held both grounds to be unsubstantiated which led the landlord to move the High Court in revision. The High Court allowed the eviction petition on the ground of sub- letting and this is how the case is before us.

3.The High Court allowed the eviction petition on such ground after granting permission to the landlord to introduce additional evidence. It is on the basis of additional evidence alone that the eviction order was passed. The additional evidence is a certified copy of the statement of Amar Singh subtenant dated April 15, 1977 (more than two years prior to the institution of the eviction petition) in a different suit in which the tenant-appellant herein was not a party. Being not a party, the appellant obviously had no opportunity to have that statement tested in cross-examination. In that statement the sub-tenant appears to have admitted that he had got the site in his possession from the Malwa Bus Service Pvt. Ltd., the appellant herein. Beyond that there is nothing more. Relief to the landlord on such statement of the sub-tenant (who is not a party to the instant proceedings) was granted against both the tenant as also the sub-tenant. Now here lies the error. The High Court was perfectly justified in using that statement against sub-tenant. But it is difficult to conceive that the said statement could be used against the tenant too. It is true that the sub-tenant, as also the tenant, had denied the existence of the sub-tenancy and the subtenant stands falsified on account of his earlier statement if his earlier statement is trustworthy. Be that as it may, the High Court in the facts and circumstances obviously was in error in ordering eviction of the appellant herein on the basis of the said statement of Amar Singh sub- tenant. We have thus no option but to allow the appeal and set aside the order of eviction. Accordingly we do so.

4.After having set aside the order it remains to be seen whether the High Court could still go into the question of sub-letting because the other ground of personal necessity, the High Court thought was not necessary to be considered for the view it was taking. On the evicting ground of personal necessity, the matter has to be remanded back to the High Court. When we are remitting the matter back to the High Court, we do not see any reason why the ground of subletting be buried for there may yet be material on the record which may justify the finding of sub-letting, which material the High Court has not adverted to. The High Court shall now be free to consider the matter afresh on the plea of sub-letting also. So there is a total remand for a fresh hearing of the matter on all aspects, subject to the observations aforemade.

5.For the above reasons, this appeal is allowed, the judgment and order of the High Court is set aside and the matter is remitted back to the High Court for disposal. We request the High Court to dispose of the matter preferably within four months as this matter is very old and should reach a finale. In these circumstances, we make no order as to costs.

ORDER

1. The dispute in this appeal is if the appellant a manufacturing unit and employing more than twenty persons set up in 1959 was liable to pay Employer's Special Contribution under Chapter V-A introduced as "Transitory Provisions" by Amendment Act of 1951 in the Employees' State Insurance Act, 1948 (referred to as ESI Act) for the period 1960 to 1973.

2. Section 73-A added by the Amending Act required an employer to make special contribution of such percentage not exceeding 5% of the total wage bill of the employer as the State Government specified from time to time. According to sub-section (4) of Section 73-A the contribution fell due as soon as the liability of the employer to pay wages accrued and Section 73-D empowered the opposite

parties to recover the special contribution payable by the employer as if it were an arrear of land revenue. Chapter V-A remained in force from November 24, 1951 to July 1, 1973. Since the appellant's unit was established in 1959 and it had the requisite number of employees the provision of the Act were applicable to it. In January 1976 the respondent issued notice to the appellant that it was covered under the Employees' State Insurance Act with effect from January 1, 1960 and as the factory was located in a place where the provisions of the ESI Act had been extended it was required to pay employer's special contribution. The appellant denied any obligation to pay any contribution. The opposite party after considering the reply of the appellant informed it by letter dated March 12, 1976 that the appellant was liable to pay special contribution as the factory premises of the appellant were situated in non- implemented area (sic) and that non-compliance of the direction to deposit the money shall force the opposite party to take recovery proceedings in accordance with law. Since the payment was not made and the appellant went on reiterating its stand in the reply to show-cause notice and claimed that no amount was payable, the opposite party initiated proceedings to recover the amount as arrears of land revenue. These proceedings were challenged by way of writ petition which was dismissed by the learned Single Judge in limine. The order was affirmed in appeal as well. The Division Bench held that the claim of the appellant that the provisions of the Act had not been extended to the locality where the appellant's mill was situated was without any substance. It found that the appellant did not raise this factual controversy clearly nor it established it affirmatively. Even in this Court no material could be placed to prove that the finding was erroneous.

3. The learned counsel urged that the provisions of the Act having been repealed, in 1973 the opposite parties could not have initiated proceedings in 1976. This submission was raised in the High Court as well. But it was repelled as liability under Chapter V-A having accrued when the Act was in force it was not effected in absence of any provision to the contrary in the repealing Act. The High Court relied on Section 6 of the General Clauses Act in this regard. It provides that where an Act is repealed and unless a different intention appears the repeal shall not affect any right, privilege, obligation or law acquired, accrued or incurred under any enactment so repealed. The learned counsel for appellant could not show any provision from which it could be gathered that the provisions in the Act at the time of repeal indicated that the legislature intended otherwise than what is provided in Section 6 of the General Clauses Act.

4. The learned counsel for the appellant vehemently urged that the proceedings for recovery were barred by time. He urged that by virtue of Section 29(2) the provision of the Limitation Act applied to Employees' State Insurance Corporation Act and, therefore, any suit or proceedings for recovery initiated after three years from the date it became due could not be recovered. The learned counsel, however, could not point out any provision either in the ESI Act or in the Recovery Act laying down any period of limitation for recovery of such dues.

5. In the result this appeal fails and is dismissed. But there shall be no order as to costs.