

A. F. R.

Order reserved on: 18.12.2023

Order delivered on: 11.01.2024

Court No. 50

Case :- MATTERS UNDER ARTICLE 227 No. - 12595 of 2023

Petitioner :- Jayant Srivastava

Respondent :- Prescribed Authority, Payment Of Wages Act, 1936 And Additional Labour Commissioner and 4 Others

Counsel for Petitioner :- Prabhav Srivastava

Counsel for Respondent :- Satyendra Narayan Singh

Hon'ble Ashutosh Srivastava, J.

1. Heard Shri Prabhav Srivastava, learned counsel for the petitioner and Shri Satyendra Narayan Singh, learned counsel, who has appeared on behalf of respondent No. 2 on caveat.

2. Learned counsel for the petitioner is permitted to make necessary correction in the Serial Number of the parties appearing at various places of the petition.

3. The instant petition under Article 227 of the Constitution of India has been filed for setting aside the final judgment/order dated 19.9.2023 and formal order dated 16.11.2023 passed by the Addl. District & Sessions Judge, -IX at Kanpur Nagar in Misc. Civil Appeal No. 3 of 2023 (Jayant Srivastava and another versus Prescribed Authority, Payment of Wages Act, 1936/Assistant Labour Commissioner, Kanpur Nagar, Kanpur and others) as also the final Award dated 4.6.2022 passed by the Prescribed Authority/Addl. Labour Commissioner, Kanpur in PW Case No. 47 of 2018 (Shyamji Verma and others versus Jayant Srivastava and another). A further direction to the respondent No. 2 to release/return the amount deposited in pursuance to the Award dated 4.6.2022 in favour of the petitioner has also been prayed for.

4. It is the case of the petitioner that he is the Managing Director of M/s

Bhoomi Shakti Developers Pvt. Ltd., a Limited Company incorporated under the Provisions of Companies Act, 1956. The said company entered into a Builders' Agreement with one Smt. Madhubala for development of a residential house. In furtherance of the said Builders' Agreement, a sub contract was given to Shri Shyam Ji/respondent No. 2 for doing false ceiling etc., in the building in question. A sum of Rs.30,000/- was advanced to the said Shri Shyam Ji. However, the work was not got done through Shri Shyam Ji and the payment of Rs.30,000/- was stopped by the Bank upon the instructions from the company. The respondent Nos. 2 to 5 filed an application under the Payment of Wages Act, 1936 before the Prescribed Authority (Addl. Labour Commissioner) which proceeding were registered as PW Case No. 47 of 2018. It was alleged that the respondent Nos. 2 to 5 were engaged as mason on daily wages of Rs.500/- and they worked for the period 1.10.2017 to 28.3.2018 regularly. They were paid a sum of Rs.32,500/- out of total amount of Rs.75,000/-. The company M/s Bhoomi Shakti Developers Pvt. Ltd., was not made a party to the proceedings and only the petitioner was impleaded in the personal capacity as Builder. The learned Prescribed Authority vide its order dated 4.6.2022 allowed the claim of the respondent Nos. 2 to 5 and directed the petitioner to deposit a sum of Rs.2,50,500/- with the Labour Commissioner, Kanpur, failing which the amount would be recovered by issuing recovery certificate. The appeal preferred by the petitioner under Section 17 of the Payment of Wages Act, 1936 before the Appellate Authority i.e. the District & Sessions Judge, Kanpur Nagar has been rejected.

5. At the very outset, a preliminary objection has been raised on behalf of the contesting respondent regarding the maintainability of the petition under Article 227 of the Constitution of India. Learned counsel for the contesting respondent submits that the order of the Appellate Authority under the Payment of Wages Act, 1936 is liable to be assailed in a writ petition under Article 226 of the Constitution of India and the present petition under

Article 227 of the Constitution of India is not maintainable. Learned counsel for the petitioner, however, has asserted that the petition under Article 227 of the Constitution of India is maintainable. Shri Ishan Mehta, learned Addl. Chief Standing Counsel for the State of U.P. has also assisted the Court by making submissions that a civil revision under Section 115 CPC would be maintainable.

6. Since the parties are at variance as to the maintainability of the present petition, the Court is of the opinion that the preliminary objection as to the maintainability should be brought to rest before the merits of the respective case can be gone into. The Court, therefore, proceeds to decide the issue regarding maintainability.

7. According to the petitioner, the order passed in Appeal under Section 17 of the Payment of Wages Act, 1936 is assailable under a petition under Article 227 of the Constitution of India and not a writ petition under Article 226 of the Constitution of India as suggested by the counsel for the contesting respondents. The learned Addl. Chief Standing Counsel for the State of U.P., however, contends that a revision petition under Section 115 CPC is maintainable against the order passed under Section 17 of the Payment of Wages Act, 1936.

8. Before the Court proceeds to examine the respective stand, it would be apt to reproduce the relevant provisions of the Payment of Wages Act, 1936, which provides for an appeal. The relevant provision under Section 17 of the Payment of Wages Act, 1936 is reproduced hereunder:-

“17. Appeal.—

(1) ⁶⁹ [An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of section 15, or against a direction made under sub-section (3) or sub-section (4) of that section] may be preferred, within thirty days of the date on which ⁷⁰ [the order or direction] was made, in a Presidency-town ⁷¹ [***] before the Court of Small Causes and elsewhere before the District Court—

- (a).....
- (b).....
- (c).....
- (1A).....
- (2).....
- (3).....
- (4).....”

9. A perusal of the provision of Section 17 (1) contemplates that an appeal against an order passed under Section 15 sub-section (2), (3) or (4) may be preferred within 30 days of the date on which the order or direction was made may be preferred in a Presidency Town before the Court of Small Causes and elsewhere before the District Court. The issue is, therefore, as to whether an order passed in appeal under the Payment of Wages Act, 1936 can be held to be a judicial order passed by a Civil Court and as to whether the same would be amenable to a petition under Article 227 or Article 226 or in a Civil Revision under Section 115 CPC.

10. Learned counsel for the petitioner contends that the Court of Small Causes or the District Court by virtue of Section 17 (1) functions as a Court and not as a *persona designata*, the High Court has the power to test the order passed in Appeal under Article 227 of the Constitution of India in view of the law laid down by the Apex Court in the case of **Radhey Shyam versus Chhabi Nath** reported in **2015 (5) SCC 423**. Learned counsel for the contesting respondents, however, has submitted that the Court of Small Causes or the District Court (the Addl. District & Sessions Judge-IX, at Kanpur Nagar in the case at hand) functions as a *persona designata* and in such circumstances, the order passed in appeal would be amenable in a writ petition under Article 226 of the Constitution of India and the petition under Article 227 of the Constitution of India is not maintainable. Shri Ishan Mehta, learned Addl. Chief Standing Counsel has also submitted that in the context of the Payment of Wages Act, the Court of Small Causes or the

District Court by virtue of Section 17 (1) of the Act functions as a Court and not as a *persona designata* and as such, being subordinate to the High Court, the orders passed in exercise of powers under Section 17 (1) are subject to revisional jurisdiction under Section 115 of the Code of Civil Procedure. Reliance has been placed upon a Division Bench decision of the High Court of Jammu & Kashmir at Jammu in the case of ***Abdul Rashid versus Block Development Officer*** (Civil Revision No. 38 of 2000, decided on 6.8.2004).

11. Though the counsel for the petitioner and the learned Addl. Chief Standing Counsel are on the same floor on the issue that the Court of Small Causes or the District Court while exercising powers under Section 17 (1) of the Payment of Wages Act, 1936 function as Civil Courts and not as *persona designata*, but are at variance as to remedy available against the orders passed in exercise of appellate powers under Section 17 (1). The counsel for the contesting respondents asserts that the Court of Small Causes and District Courts (i.e. District Judge), functions as *persona designata* and as such, orders passed under Section 17 (1) shall be amenable under a writ petition under Article 226 of the Constitution of India. The air is to be cleared of any such ambiguity.

12. In the opinion of the Court where a judge is appointed purely in his individual capacity by name, he acts as a *persona designata*, but where he is appointed by his designation alone, he acts as a Court and not as a *persona designata*. The test to determine whether an appointment has been made as a *persona designata* or as a member or a class is to find out whether the person appointed has been appointed by his name alone, the description or designation being given only to identify him. Where only the profession or the occupation of the person or the post held by him is mentioned, the appointment is not as *persona designata*. The Apex Court in the case of ***Central Talkies versus Dwarka Prasad (AIR 1961 SC 606)*** made the following observations:-

“The argument that the District Magistrate was a persona designata can not be accepted. Under the definition of 'District Magistrate' the special authorisation by the District Magistrate had the effect of creating officers exercising the powers of a District Magistrate under the Eviction Act. To that extent, those officers would, on authorization, be equated to the District Magistrate. A persona designata is 'a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character'. (See Osborn's Concise Law Dictionary, 4th Edn. page 253). In the words of Schwabe C.J. in AIR 1924 Mad 561 (FB) personae designatae are 'person selected to act in their private capacity and not in their capacity as judges'.”

13. Shri Ishan Mehta, learned Addl. Chief Standing Counsel has argued that the High Court of Jammu & Kashmir at Jammu while deciding the case of Abdul Rashid (*supra*) has observed in Para 9 of the judgment that there appears a consensus of judicial opinion throughout the country. In ***Debidutt Dube v. Central India Electrical Supply Co., AIR 1945 Nagpur 244***, the Nagpur High Court held that District Court acting under Section 17 of the Payment of Wages Act is subordinate to the High Court. It decides a 'case' within the meaning of Section 115 of the Civil Procedure Code when it decides an appeal under Section 17 of the Act and the High Court has power to revise an order passed by the District Court in appeal under Section 17 of the Payment or Wages Act.

14. In ***Jogendra Nath versus Chandreswar Singh, AIR 1951 Calcutta 29***, it was held by a Division Bench of the Calcutta High Court that the Small Causes Court (which is at par with the District Court within the meaning of Section 17 of the Payment or Wages Act) does not act as a persona designata but as a court and, therefore, its orders are revisable by the High Court under Section 115 of Civil Procedure Code.

15. In ***Rajkumar Mills Ltd., Indore versus Inspector, Payment of Wages, AIR 1955 MB 60***, a Division Bench of the then Madhya Bharat High Court held that when an appeal is provided under Section 17 of the Payment of Wages Act to the District Court, that Court is appealed to as one of the ordinary courts of the country, consequently its orders and decrees will be governed by the rules of Civil Procedure Code. Therefore, a revision is

competent against the decision of the District Court under Section 115 of Civil Procedure Code.

16. In ***A. C. Arumughan versus Manager, Jawahar Mills Ltd., AIR 1956 Madras, 79***, it was held that the word 'final' in Section 17(2) of the Payment of Wages Act prohibits further appeal and not revision under Section 115 of the Code of Civil Procedure and, therefore, the revision would be competent.

17. In ***Manager, Codialabail Press versus K. Monappa, AIR 1963 Mysore 128***, the Mysore High Court taking the same view, observed that since the District Court hearing an appeal under Section 17 from an order under Section 15 is a 'court subordinate to the High Court', the revisional power of the High Court under Section 115 of the Code of Civil Procedure, clearly extends to its decision and to the proceedings before it. The District Court functioning under Section 17 is not a *persona designata*, but a court, and, so long as that court is subordinate to the High Court, the proceedings before it are clearly revisable under Section 115 of the Code of Civil Procedure. There is nothing in Sub-section (2) of Section 17 which precludes the exercise of such revisional jurisdiction.

18. In ***The General Manager versus Paras Nath Tewari, AIR 1967 Allahabad 576***, a Division Bench of the Allahabad High Court held that when the power to hear an appeal is given under Section 17 to the District Judge as such, and not to any individual, it must be assumed as power given to the court of the District Judge and not as a *persona designata* to any particular Judge. Hence the District Court hearing an appeal under Section 17 of the Payment of Wages Act acts as a civil court subordinate to the High Court and not as a *persona designate*.

19. In ***Rameshwar Lal versus Jogendra Das, AIR 1970 Orissa 76***, a Division Bench of the Orissa High Court held that though an order passed by the authority under Section 15 of the Payment of Wages Act is not directly revisable by High Court under Section 115 of Civil Procedure Code for the

reason that the Authority is not a 'Court' but only a persona designata, the appellate order by the Court of Small Causes or the District Court, as the case may be, passed in an appeal under Section 17 of the Act from the original order by the Authority under Section 15 of the Act is revisable, they being civil courts subordinate to the High Court.

20. In *French Motor Car Co. Ltd. Workers' Union versus French Motor Car Co. Ltd., 1989 Lab. I. C. 2134*, the Gauhati High Court has also held that the appellate court constituted under Section 17 of the Payment of Wages Act is amenable to the revisional jurisdiction of the High Court and error of jurisdiction committed by them can be corrected under Section 115 of the Code of Civil Procedure.

21. It would appear from the above brief survey of the case law on the point that almost all the High Courts have unanimously taken the view that the appellate orders – passed by the District Court or the Small Causes Court, as the case may be, being courts subordinate to the High Court in the hierarchy, their orders would not lie outside the scope of Section 115 of the Code of Civil Procedure which empowers the High Court to interfere with the orders of any court subordinate to it. Whereas opinion seems to be divided as to whether the Authority under Section 15(2) is amenable to the revisional jurisdiction of the High Court, there is no discordant note as regards the amenability of the appellate orders of District Court/Small Causes Court to the revisional jurisdiction of the High Court.

22. It is thus submitted that the order passed in Appeal under Section 17 (1) of the Payment of Wages Act, 1936 would be amenable to a revision under Section 115 CPC

23. I have considered the rival submissions of the parties.

24. There can be no doubt that the Court of Small Causes or the District Court, as the case may be, while exercising the powers under Section 17 (1)

of the Payment of Wages Act, 1936 functions as a Civil Court and not as *persona designata*. The Apex Court in ***Mukri Gopalan vs Cheppilat Puthanpurayil Aboobacker*** reported in **1995 (5) SCC 5** observed that the Appellate Authorities constituted under the enactment constitute a class and cannot be considered as a *persona designata*. Further, the Appellate Authority functions as a Court.

25. Now, coming to the other issue i.e. whether an order of the Civil Court is amenable to writ jurisdiction under Article 226 or 227 of the Constitution of India before the High Court or to the Revisional jurisdiction of the High Court under Section 115 CPC? The Apex Court in the case of ***Radhey Shyam versus Chhabi Nath, [2015 (5) SCC 423]*** while drawing a distinction between judicial acts of Tribunals and judicial orders of Civil Court held that judicial orders of Courts stand on a different footing and the remedy of a writ petition under Article 226 of the Constitution of India is available against judicial Acts of Tribunals and quasi-judicial authorities and not against judicial orders of Civil Courts, which can be assailed under Article 227 of the Constitution of India. Their Lordships of the Apex Court proceeded to hold that (i) judicial orders of Civil Court are not amenable to writ jurisdiction under Article 226 of Constitution of India (ii) Jurisdiction under Article 227 of the Constitution of India is distinct from jurisdiction under Article 226.

26. The Apex Court in the case of ***Life Insurance Corporation of India Vs. Nandini J. Shah and others*** reported in **2018 (15) SCC 356** in para 58 of the judgment held as under:

“In other words, the Appellate Officer while exercising power under Section 9 of the 1971 Act, does not act as a persona designata but in his capacity as a pre existing judicial authority in the district (being a District Judge or judicial officer possessing essential qualification designated by the District Judge). Being part of the district judiciary, the judge acts as a Court and the order passed by him will be an order of the Subordinate Court against which remedy under Article 227 of the Constitution of India can be availed on the matters delineated for exercise of such jurisdiction.”

27. In view of the above discussion, I hold that the learned Additional District and Sessions Judge-IX, Kanpur Nagar while exercising powers in Appeal under Section 17 of the Payment of Wages Act, 1936 functions as a Civil Court and not as a *persona designata* and the order passed in exercise of such powers is amenable before this Court in a petition under Article 227 of the Constitution of India. ***The instant petition under Article 227 is held maintainable and the objections are overruled.***

28. Now, coming to the merits of the petition.

29. On the perusal of the order of the Prescribed Authority dated 04.06.2022, I find that the claim of the respondent Nos. 2 to 5 has been allowed merely on surmises and conjectures. The learned Prescribed Authority has relied upon the shortcoming of the defence of the petitioner that he failed to produce the attendance register for the period the respondent Nos. 2 to 5 allege to have worked. The petitioner failed to demolish the case of the respondent Nos. 2 to 5. In the opinion of the Court, the learned Prescribed Authority was liable to consider the case of the respondent Nos. 2 to 5 who had instituted the proceedings before it. No written agreement/contract was placed on record and yet, the Prescribed Authority proceeded to allow the claim of the respondent Nos. 2 to 5. A Builder Agreement dated 04.02.2017 executed between Smt. Madhubala and M/s Bhoomi Shakti Developers Ltd., under which a sub contract is stated to have been given to Sri Shyamji Verma, respondent no. 1 herein, has been brought on record. There is no written contract between the petitioner with Shyamji Verma or other respondent nos. 3 to 5. The Prescribed Authority has overlooked the basic principle that a plaintiff must stand on his own legs and not rely upon the shortcomings of the defendant. The Appellate Authority committed the same mistake as was committed by the Prescribed Authority. Both the Authorities have not addressed the issue regarding the maintainability of the case against M/s Bhoomi Shakti Developers Pvt. Ltd., of which the petitioner was simply the Managing Director. Prima facie, the

Court is of the view that the claim if any could be raised against M/s Bhoomi Shakti Developers Pvt. Ltd., and not the petitioner in his individual capacity describing him as a Builder. No liability of payment of wages could be fixed on the Director of the Company under Section 3 of the Act and the petitioner cannot be brought under the ambit of employer under the Act.

30. Matter requires consideration.

31. Issue notice to the respondent Nos. 3 to 5, returnable within a month. Steps be taken within a week.

32. Notice on behalf of respondent No. 2 has been accepted by Shri Satyendra Narayan Singh, learned counsel who has filed caveat.

33. List this case on the date fixed in the notice.

34. All the respondents, if so advised, may file counter affidavit during the said period.

35. Considering the submissions advanced by learned counsel for the petitioner and taking note of the fact that the amount awarded by the Prescribed Authority as upheld in Appeal, has already been deposited by the petitioner with the respondent No. 1, the respondent No. 1 is restrained from releasing the same in favour of the respondent No. 2 to 5 without leave of this Court.

Order Date : 11.01.2024
Ravi Prakash

(Ashutosh Srivastava, J.)