

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2017

Delivered on : 20.04.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

S.A.No.393 of 2016
and CMP.No.6958 of 2016

Nilgiris Industrial and General Workers Union
Yellamalai Labour Association, Regd. Office at
No.85, Javaharpet, Coonoor, Nilgiris
represented by its President,
Mr.Khalid,

.. Plaintiff/1st Respondent/
Appellant

Vs.

1.M/s.Mahavir Plantations Pvt. Ltd.,
A Registered Company incorporated under
the Indian Companies Act,
Having its Regd. Office at Mahavir House,
XIV/1551, Indira Gandhi Road,
Willington Island, Cochin-682 003,
Kerala State represented by its Managing Director,
Sailesh T.Bansali, S/o.T.A.Bhansali,
XIV/1551, Indira Gandhi Road,
Willington Island, Cochin-682 003,
Kerala State.

2.M/s.Mahavir Plantations Pvt. Ltd.,
Seaforth Estate, represented by its Senior Manager,
Seaforth Estate, Seaforth Post, Gudalur.

.. Defendants 1 and 2/Appellants/
Respondents 1 and 2

3.The State of TamilNadu, represented by
The Collector of Nilgiris, Ootacamund.

4.The Labour Officer,
Ootacamund.

.. Defendants 3 and 4/
Respondents 3 and 4/
Respondents 3 and 4

Prayer: Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.33 of 2014 on the file of the Subordinate Judge, Udthagamandalam dated 15.12.2015, reversing the judgment and decree made in O.S.No.512 of 2011 on the file of the District Munsif Court, Gudalur dated 30.10.2014.

For Appellant : Mr.S.Thiruvengkataswamy,
assisted by
Mr.U.M.Ravichandran and
Mr.S.Vijayakumar

For Respondents : Mr.R.Parthiban for R1 and R2
Mr.T.Jayaramaraj,
Govt. Advocate for R3 and R4

J U D G M E N T

The appellant is the plaintiff in O.S.No.512 of 2011 on the file of the District Munsif Court, Gudalur and it succeeded before the Trial Court and on appeal by the defendants 1 and 2/respondents 1 and 2 in A.S.No.33 of 2014 on the file of the Sub-Court, Udthagamandalam, Nilgiris District, it lost it and hence, this Second Appeal.

2. Facts leading to the filing of these Second Appeal, briefly narrated, are as follows:

2.1. The appellant/plaintiff Union is affiliated to Nilgiris Industrial and General Workers Union, constituted for the welfare of the workers of Mahavir Plantations Private Limited, Seaforth Estate, Yellamalai Division, Gudalur Taluk and the said company owns estates in the Nilgiris District and one such estate owned by the company is Seaforth Estate, Yellamalai Division situated at Yellamalai. According to the appellant/plaintiff, most of the estates managed by the company are in disarray on account of gross mismanagement on the part of the company and lack of professionalism on the part of the directors of the company, who belong to a single family and they are interested only in enriching themselves at the cost of labourers. It is further averred by the appellant/plaintiff that on account of mismanagement of the estate by the company, debts started building up and accumulated to a point where the directors of the company are unable to move around in the society, as there are warrants pending against them in various courts across the length and breadth of the country and the company is one of the biggest defaulters in making statutory payments to the Government.

2.2. It is the categorical stand of the appellant that there are more than

100 criminal cases pending against the directors of the company and they have defaulted in making contribution towards the Provident Fund of the employees. It is further averred by the appellant/plaintiff that since the first respondent company was unable to pay wages to the workers, the Jurisdictional Deputy Commissioner of Labour intervened during the year 1999 and on account of the same, the workers of the first respondent company were permitted to manage the estate and the agricultural activities and the workers started plucking green tea leaves and sold the same and appropriated the proceeds towards their wages and it was not disturbed by the first respondent company and the directors also did not object to the same.

2.3. It is further averred by the appellant/plaintiff that conciliatory efforts were also made between the management and the workers and vide proceedings No.627 of 2007 dated 12.12.2007, marked as Exs.A3 and A5, through the fourth respondent/fourth defendant, namely the Labour Officer, Ootacamund, amicable settlement was arranged between them and as per the said arrangement, the workers are entitled to maintain the plantation from and out of the sale proceeds of green leaves and the workers are to be paid Rs.75.00 per day and the works are under obligation to pluck minimum 22

kgs. of green tea leaves and they have to work for 8 hours per day. The said arrangement went smoothly and for the reasons best known, the first respondent/management started interfering with the said arrangement and on 02.11.2011, the defendants 1 and 2/respondents 1 and 2, with the assistance of some of their supporters, made efforts to prevent the workers from plucking green tea leaves and once again the defendants 1 and 2/respondents 1 and 2 made such efforts on 07.12.2011.

2.4. It is also averred by the appellant/plaintiff that in the event of the above arrangements being disturbed, more than 180 workers would be put to grave hardship and therefore, came forward to file the Suit in O.S.No. 512 of 2011 on the file of the District Munsif Court, Gudalur, praying for the relief of permanent injunction restraining the defendants 1 and 2/respondents 1 and 2, their men, agents, servants or any person claiming through them from preventing the workers of Seaforth Estate, Yellamalai Division from plucking green tea leaves from Seaforth Estate, Yellamalai Division as per the proceedings of the Labour Officer, Ootacamund in Na.Ka.No.627 of 2007 dated 12.12.2007/Exs.A3 and A5 and to carryout the instructions specified therein and also cost of the Suit.

2.5. The second defendant had filed the written statement, which was

adopted by the first defendant, wherein apart from refuting the averments made in the plaint, contended that because of illegal activities of the workers and intruders right from the year 1999, debts and liabilities of the company started accumulating and the management of the company is facing lot of statutory obligations and also criminal proceedings and the said proceedings are being attended to and denied about many Non Bailable Warrants pending against the directors of the company. The second defendant admitted about the pendency of the cases before the Judicial Magistrate, Gudalur and further contended that the Deputy Commissioner of Labour, Coimbatore, in the year 2000, has not permitted the workers to manage the estate and manage the agriculture activities and pursuant to the understanding before the Deputy Commissioner of Labour, Coimbatore dated 16.06.2000 in Na.Ka.No.2/6599/2000, the workers were prevented from plucking green tea leaves, selling the same and appropriating the sale proceeds towards wages.

2.6. It is further stated by the defendants 1 and 2 that to stop the illegal activities on the part of workers, before the jurisdictional police, an understanding came to be reached and admitted the plucking of green tea leaves, selling the same and appropriating the sale proceeds towards wages. The defendants 1 and 2 also took a stand that the fourth defendant, being the

statutory officer, cannot pass orders in violation of statutory notifications and under Exs.A3 and A5 dated 12.12.2007, the defendants 1 and 2 never permitted the workers to carryout their illegal activities and the said proceedings are advisory in nature and it cannot bind them and since they are not the owners of the property, such kind of illegal activities cannot be permitted. Insofar as the jurisdiction of the Civil Court to entertain the Suit is concerned, it is the stand of the defendants 1 and 2 that the relief sought for by the plaintiff could be solved under the provisions of the Payment of Wages Act and other connected labour acts, namely Industrial Disputes Act and as such, the Civil Court has no jurisdiction to try the Suit and prayed for the dismissal of the Suit.

2.7. The fourth respondent, namely the Labour Officer, Udthagamandalam had filed the written statement which was adopted by the third defendant, namely the Collector of Nilgiris District and they took a stand that the labourers of the plaintiff company had submitted a complaint dated 20.09.2007 to the fourth respondent alleging that the estate management has not been providing regular work to them and for the works extracted from them, no wages were paid to them and that the management has been practicing oppression and victimization against them and taking note of the same, number of conciliatory talks were held in the presence of the

Revenue Divisional Officer, Gudalur and the fourth respondent had also took conciliatory efforts and on 12.12.2007, both of them jointly represented to resolve the issue amicably and have been acting as per the agreement/Exs.A3 and A5 from October 2007 and subsequently it was reduced into writing. The defendants 3 and 4 would further state that the terms of the agreement were signed by the Divisional Manager and Senior Manager of the plaintiff company on one part and the President and Secretary on the other part and the representatives of the Nilgiris District Estate Workers Union (INTUC), Gudalur and it appears that the defendants 1 and 2 are indulging in Unfair Labour Practice and Oppression against the labour force and also took a stand that they are not the necessary parties in the said proceedings.

2.8. The Trial Court, on consideration of pleadings, framed the following issues:

1. Whether the jurisdiction of the Civil Court is barred?
2. Whether the plaintiff is entitled to sue against the defendants?
3. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

During the course of trial, on behalf of the plaintiff, one Khalid was examined

as PW1 and Exs.A1 to A8 were marked. On behalf of the defendants, one Mr.Krishnan Kutty and one Mr.Selvaraj were examined as DWs.1 and 2 respectively and Ex.B1- List maintained in the office of the Deputy Commissioner, Labour has been marked.

2.9. The Trial Court, on consideration of the pleadings, oral and documentary evidence, has extracted the terms of the agreement under Ex.A3 and also Ex.A4, in and by which a committee has been constituted to reconcile the accounts and found that as per Exs.A3 and A5, the workers started plucking green leaves and appropriated the same towards wages and they acted in terms of the said agreement, which was also agreed by the defendants 1 and 2. The Trial Court further found that though the contents of Exs.A3 and A5 were denied by the defendant, but unfortunately they did not let in any evidence in that regard. Insofar as the jurisdiction of the Civil Court to entertain the Suit is concerned, the Trial Court found that conciliatory efforts were made by the Revenu Divisional Officer, Gudalur before the jurisdictional officer, namely the fourth defendant and the terms of the understanding were reduced into writing and were signed by the representatives of both the parties and since the Civil rights of the plaintiff is involved, it is having jurisdiction to entertain and try the Suit. The Trial

Court, on consideration of the materials placed before it, has decreed the Suit as prayed for, vide judgment and decree dated 30.10.2014. Challenging the legality of the judgment and decree passed by the Trial Court, the defendants 1 and 2 filed an appeal suit in A.S.No.33 of 2014 on the file of the Sub-Court, Udhagamandalam.

2.10. The Lower Appellate Court, on consideration of the grounds of appeal, formulated the following points for determination:

1. Whether the Civil Court is having jurisdiction to intervene in the labour dispute ?
2. Whether the judgment and decree passed by the Trial Court are liable to be set aside?

The Lower Appellate Court, on going through Exs.A3 and A5/agreement, found that it was only an advice given by the fourth respondent and it was reduced into writing and subsequently, Ex.A4 came into being for the purpose of reconciliation of accounts and also payment of wages and in the light of Ex.A4, the Trial Court has committed an error in placing reliance upon Exs.A3 and A5 to grant the relief to the plaintiff. The Lower Appellate Court further found that it is not the case of the plaintiff that the defendants 1 and 2 did not act as per the terms of Ex.A4 and ignoring the same, had given its

findings based on Ex.A5 and the acts of the members of the plaintiff Union in plucking the green tea leaves and selling it and appropriating the same towards wages, is unsustainable. The Lower Appellate Court had taken into consideration that very many conciliatory efforts were also made and taking into consideration the decision of the Hon'ble Supreme Court of India in ***The Rajasthan State Road Transport Corporation and another v. Krishna Kant and Others [AIR 1995 SC 1715]***, found that the Suit is not maintainable and in terms of Ex.A4, which came into being after Ex.A5, the Trial Court ought not to have granted the relief and therefore, allowed the appeal, reversing the judgment and decree passed by the Trial Court and dismissed the Suit, vide judgment and decree dated 16.12.2015. The Appellant/plaintiff, aggrieved by the reversal of the judgment and decree passed by the Trial Court by the Lower Appellate Court, has filed this Second Appeal.

3. The Second Appeal was listed for hearing before this Court on 26.04.2016 and on behalf of the respondents 1 and 2/caveators, their counsel took notice and notices were ordered to the respondents 3 and 4.

4. The learned counsel appearing for the appellant/plaintiff would

contend that the Trial Court has totally misconstrued the terms of Exs.A3 and A5 viz-a-viz Ex.A4 and based on assumptions and presumptions, had reversed the well considered findings rendered by the Trial Court. The learned counsel appearing for the appellant/plaintiff has drawn the attention of this Court to the decision in ***Rajasthan State Road Transport Corporation and Another v. Bal Mukund Bairwa [(2009) 4 SCC 299]*** which refers to the decision reported in ***AIR 1995 SCC 1715 (cited supra)*** and would contend that if an employee intends to enforce his constitutional rights or right under a statutory regulation, the Civil Court will have the necessary jurisdiction to try a Suit and admittedly, the respondents 1 and 2 did not dispute the terms and conditions of Exs.A1 and A3 and the subscribed their signatures to the said agreement on their behalf and as such, it is not open to them to turn around and question it, in the absence of any specific challenge to the said proceedings. It is the further submission of the learned counsel appearing for the appellant/plaintiff that Ex.A4 dated 20.09.2011 pertains to arrears of wages payable by the management as well as the income earned out of sale of green tea leaves and the said agreement/proceedings did not dilute the contents of Exs.A3 and A5 and therefore, the findings rendered by the Lower Appellate Court are *per se* unsustainable in law and prays for interference.

5. *Per contra*, the learned counsel appearing for the respondents 1 and 2 would submit that the Lower Appellate Court had rendered its findings based on proper consideration of materials and on an independent application of mind to the oral and documentary evidence in proper perspective and would further contend that Exs.A3 and A5 is merely an understanding reduced into writing and though it is signed by their representatives, it will not cloth the parties with any statutory or legal right and since the matter pertains to non payment of minimum wages, any dispute relating to the same ought to have been adjudicated before the authority constituted under the Payment of Wages Act and other labour Acts like Industrial Disputes Act and taking into consideration of the settled legal position, the Lower Appellate Court has rightly reversed the findings rendered by the Trial Court and prays for dismissal of this Second Appeal.

6. This Court has considered the rival submissions and also perused the impugned judgment and decree passed by the Courts below.

7. In the Memorandum of the Grounds of Appeal, the following Substantial Questions of Law are raised:

- (i) Whether the Lower Appellate Court is correct in holding that the jurisdiction of the Civil Court is barred in view of the provisions contained in the Industrial Disputes Act, 1947, when the Suit filed by the plaintiff is to enforce and protect the rights of the appellant given under Exs.A3 and A4 ?
- (ii) Whether the findings of the Lower Appellate Court based in misreading and misconstruing the Exs.A5, A3 and A4 are sustainable in law when the Trial Court has given findings after appreciating the contents of the same?
- (iii) Whether the judgment and decree of the Lower Appellate Court is sustainable in law when the appellants have shown that the defendants 1 and 2 are bound by the terms of understanding entered under Ex.A3?

8. In *The Rajasthan State Road Transport Corporation and Another v. Krishna Kant and others [AIR 1995 SC 1715]*, the jurisdiction of the Civil Court to interfere in the dispute between employer and employee came up for consideration and it is relevant to extract para 32, wherein the following principles have been summarised:

“35. We may now summarise the principles flowing from the above discussion:

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an “industrial dispute” within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 — which can be called “sister enactments” to Industrial Disputes Act — and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a

provision enabling a workman to approach the Labour Court/Industrial Tribunal directly — i.e., without the requirement of a reference by the Government — in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to “statutory provisions”. Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

9. The above said decision was subsequently considered by the Hon'ble Supreme Court of India in a subsequent decision in ***Rajasthan State Road Transport Corporation and Another v. Bal Mukund Bairwa (2) [(2009) 4 SCC 299]*** and once again the question arose as to the jurisdiction of the Civil Court viz-a-viz Labour Court in employer -employee dispute in corporations like the Rajasthan State Transport Corporations which are both “State” under

Article 12 of the Constitution of India as well as “industry” under the Industrial Disputes Act came up for consideration and it is relevant to extract the following portions of the said judgment:

“36. If an employee intends to enforce his constitutional rights or a right under a statutory regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the Standing Orders certified under the 1946 Act, ipso facto the civil court will have no jurisdiction. This aspect of the matter has recently been considered by this Court in *Rajasthan SRTC v. Mohar Singh* [(2008) 5 SCC 542 : (2008) 2 SCC (L&S) 290] . The question as to whether the civil court's jurisdiction is barred or not must be determined having regard to the facts of each case.

37. If the infringement of the Standing Orders or other provisions of the Industrial Disputes Act are alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. If no right is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction.

38. Where the relationship between the parties as employer and employee is contractual, the right to enforce the contract of service depending on personal volition of an employer is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. It has, however, four exceptions, namely, (1) when an employee enjoys a status i.e. his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India; (2) where the conditions of service are

governed by statute or statutory regulation and in the event mandatory provisions thereof have been breached; (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the Industrial Disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof.

39. The appellant Corporation is bound to comply with the mandatory provisions of the statute or the regulations framed under it. A subordinate legislation when validly framed becomes a part of the Act. It is also bound to follow the principles of natural justice. In the event it is found that the action on the part of the State is violative of the constitutional provisions or the mandatory requirements of a statute or statutory rules, the civil court would have the jurisdiction to direct reinstatement with full back wages.

.....

42. When there is a doubt as to whether the civil court has jurisdiction to try a suit or not, the courts shall raise a presumption that it has such jurisdiction.”

10. This Court keeping in mind the ratio laid down in the above cited decisions has carefully scanned through the entire materials placed before it.

Substantial Questions of Law No.1

11. The respondents 1 and 2/defendants 1 and 2 did not dispute as to the arrears of wages payable to the workmen of the estate and deny the fact of facing lot of statutory obligations and criminal prosecution and deny the fact about the pendency of Non-Bailable Warrants against their directors. It is also very pertinent to point out at this juncture that the defendants 1 and 2 did

not dispute about the signing of Exs.A3 and A5/agreement dated 12.12.2007, but took a stand that the said proceedings is merely an understanding reached between the workmen and the management and it cannot be enforced. It is relevant to extract the contents of Exs.A3 and A5:

- (i) The tea plant – tea leaves, after growing to a certain limit, have to be cut and tea plants are to be maintained properly by putting fertilizers and pesticides and it should be looked after by the workmen and necessary expenses have to be borne by them.
- (ii) Out of the income generated by selling the green tea leaves, the workmen are entitled to a daily wage of Rs.75/- per day.
- (iii) Workmen are to be provided with employment during all working days in a week.
- (iv) Necessary expenses for maintaining the tea plantation and other incidental expenses are to be borne by the workmen.
- (v) Workmen have to cut/pluck a minimum of 25 kgs of green tea leaves.
- (vi) The male workers shall complete their task work for a minimum of 8 hours per day.

12. As already pointed out, on account of serious dispute between the

workmen and the management as to the non-payment of wages and other grievances, the Revenue Divisional Officer, Gudalur had conducted many meetings and also due to the efforts of the fourth respondent/fourth defendant, the above said agreement came into being and according to the appellant/plaintiff, it went on very well. Thereafter, for the purpose of reconciliation as to the wages payable to the workmen and the income generated out of the works carried out by the workmen in terms of the agreement under Exs.A3 and A5, subsequently conciliatory talks were had and reduced into writing under Ex.A4 dated 20.09.2011 and it is relevant to extract the same:

“For the purpose of arriving at the arrears amount payable to the workmen as per their calculation and as per the calculation of the management, a Committee has been constituted under the chairmanship of the Labour Officer, Gudalur and on behalf of the management, Tvl. Sailesh Bansali – Managing Director, Laalu Bansali - Director, Krishnan Kutty – General Manager, Venkatachalam were nominated as members and on behalf of the workmen, Tvl. Balakrishnan, AITUC, Rajagopal – PLO, Balan – INTUC were nominated as members and after verification of the receipts and payments accounts, the arrears of wages due and payable to the workmen will be ascertained.”

13. The Lower Appellate Court had rendered its finding that Ex.A4 diluted the terms of Exs.A3 and A5 and in the considered opinion of the Court, the said finding is *per se* unsustainable for the reason that only for the purpose of reconciliation of the amounts due and payable towards workmen and since the said issue cropping up between them and the management, the above said Committee has been constituted.

14. It is the vehement and forceful submission of the learned counsel appearing for the respondents/management that the contents of Exs.A3 and A5 is merely an understanding and the same is unenforceable in law and if at all if there is any remedy, the plaintiff Union is to approach the forums constituted under the Payment of Wages Act and the Industrial Disputes Act.

15. It is a well settled legal position that the party aggrieved by the invalidity of the order or decision has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him and he must approach the Court within the prescribed period of limitation and if the statutory time limit expires, the Court cannot give declaration sought for.

16. In *State of Kerala v. M.K.Kunhikannan Nambiar Manjeri Manikoth Naduvil (Dead) and Others [(1996) 1 SCC 435]*, judicial review of void order came up for consideration and it is held that “even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations; Ordinarily, such an order will, in fact, be effective inter parties until it is successfully avoided or challenged in a higher forum..... There are decrees of invalidity depending upon the gravity of the infirmity, as to whether it is fundamental or otherwise.”

17. In *Tayabhai M.Bagasarwalla and Another v. Hind Rubber Industries Pvt. Ltd. and Others [(1997) 3 SCC 443]*, the question arose as to the objection as to the jurisdiction to be decided by the Court as a preliminary issue and it has been held that pendency of the objection would not prevent the Court from passing interim orders and the Scope of Section 9-A of the Civil Procedure Code, 1908 (as inserted by Maharashtra Amendment Act 65 of 1977) was taken into consideration and it has been further held that a mere objection to jurisdiction does not instantly disable the Court from passing any interim orders and it can yet pass appropriate orders and at the same time, it

should also decide the question of jurisdiction at the earliest possible time and the interim orders so passed are orders within the jurisdiction when passed and effective till the Court decides that it has not jurisdiction to entertain the Suit.

18. In *Sultan Sadik v. Sanjay Raj Subba and Others* [(2004) 2 SCC 377], disqualification of elected Member of Legislative Assembly in the State of Assam on the ground of holding office for profit came up for consideration and in para 40 of the said judgment, the Hon'ble Supreme Court of India had taken into consideration the information from Wade H.W.R. And Forsyth C.F.: Administrative Law, 8th Edition and it is relevant to extract the following portion of the said judgment:

“40. In Wade H.W.R. and Forsyth C.F.: *Administrative Law*, 8th Edn., at p. 309, it is stated:

“*Effect on third parties*

If an act or order is held to be ultra vires and void it is natural to assume that, being a nullity, it is to be treated as non-existent by all who would otherwise be concerned. But the judgment of a court binds only the parties to it, so that here also there are problems of relativity. Once again Lord Diplock has supplied the answer:

‘Although such a decision is directly binding only as between the parties to the proceedings in which it was made, the application of the doctrine of precedent has the consequence of enabling the benefit of it to accrue to all other persons whose legal rights have been interfered with in reliance on

the law which the statutory instrument purported to declare.’

In effect, therefore, the court's judgment of nullity operates *erga omnes* i.e. for and against everyone concerned.

Patent and latent invalidity

In a well-known passage Lord Radcliffe said:

‘An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.’

This must be equally true even where the ‘brand of invalidity’ is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects. Lord Diplock spoke still more clearly, saying that:

‘it leads to confusion to use such terms as “voidable”, “voidable ab initio”, “void” or “a nullity” as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a court of competent jurisdiction’.

19. In ***M.Meenakshi and Others v. Metadin Agarwal (Dead) by LRs.***

And Others [(2006) 7 SCC 470], the order of competent authority under Section 9 of the Urban Land (Ceiling and Regulation) Act, 1976 in determining the excess land and the scope of judicial review of such order in

Letters Patent Appeal arising out of a Suit for Specific Performance of Contract came up for consideration and in para 18 of the said judgment, it is observed that “It is well settled that even a void order is required to be set aside by a competent court of law. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus nullities”.

20. Similar view has been taken in the subsequent decisions in ***Sneha Gupta v. Devi Sarup [(2009) 6 SCC 194]*** and ***Krishnadevi Malchand Kamathia and Others v. Bombay Environmental Action Group and Others [(2011) 3 SCC 363]***.

21. It is not in dispute that the fourth respondent is the competent authority to initiate conciliatory efforts to solve the issue as regards non-payment of wages to the workmen and in fact, the said official intervened and had conciliatory talks and as a result of which, Exs.A3 and A5/agreement dated 12.12.2007 came into being and the representatives of the defendants 1

and 2 had subscribed their signatures and it went for some time for about 4 years and on 20.09.2011, Exs.A4 came into being as there was a dispute as to the quantum of arrears claimed by the workmen and to reconcile the same only, the Committee constituting the representatives of the management and the workmen came to be constituted. As already discussed in the earlier paras, it does not dilute/set at nought Ex.A4 and the Lower Appellate Court had committed grave error in arriving at the said finding.

22. Even if the arguments advanced by the learned counsel appearing for the respondents 1 and 2/defendants 1 and 2 are accepted that the matter involve labour dispute, Civil Court is not having jurisdiction to entertain the Suit, this Court is of the view that unless the order/decision is set aside by a competent Court of law or forum vested with jurisdiction, it is not open to the respondents 1 and 2/management to turn around and go against the terms of the same. It is not at all in dispute that the workmen employed in the concerned estate run and maintained by the respondents 1 and 2 have not been paid with wages and the management are also facing prosecution and other cases as to the non-compliance of relevant Acts and in order to minimize

the sufferings undergone by the poor workmen, due to the efforts of the Revenue Divisional Officer, Gudalur, the competent authority, namely the fourth respondent had conducted conciliatory talks and as a result of which, Exs.A3 and A5 came into being and admittedly, the truth, legality or otherwise of Exs.A3 and A5 is not disputed by the defendants 1 and 2 and therefore, it is not open to them to take such a stand.

23. The written statement of the fourth defendant/fourth respondent, as adopted by the third defendant/third respondent would disclose that the management is not providing work to the workmen and for the work extracted, no wages have been paid and the management is practicing oppression and further that they have been indulging in Unfair Labour Practices against the members of the plaintiff Union, who are having poor economic background and the mighty management, namely the respondents 1 and 2 is expected to show fairness but the materials available in the form of evidence would reveal that they are acting otherwise. The respondents 1 and 2 had gone back on their words and the livelihood of the workmen guaranteed under Article 21 of the Constitution of India is gravely affected and as such, Civil Court is having jurisdiction and therefore, the Suit filed by the appellant/plaintiff is maintainable.

24. Therefore, Substantial Questions of Law No.1 is answered in affirmative and in favour of the appellant/plaintiff.

Substantial Questions of Law Nos.2 and 3

25. This Court, while answering Substantial Questions of Law No.1, has given a finding as to how the Lower Appellate Court has misconstrued the contents of Exs.A3 and A5 viz-a-viz., Ex.A4 and also extracted the contents of both the agreements and also noted that both the agreements have been signed by the representatives of the workmen as well as the management and as such, they are binding upon both the parties.

26. Therefore, the Substantial Questions of Law Nos.2 and 3 are also answered in affirmative and in favour of the appellant/plaintiff.

27. Since the substantial questions of law are answered in affirmative and in favour of the plaintiff, the impugned judgment and decree passed by the Lower Appellate Court, reversing the judgment and decree passed by the Trial Court, is to be set aside.

28. In the result, this Second Appeal is allowed and the judgment and decree dated 16.12.2015 made in A.S.No.33 of 2014 passed by the learned Subordinate Judge, Udhagamandalam is set aside and the Suit in O.S.No.512 of 2011 on the file of the District Munsif Court, Gudalur is decreed as prayed for with costs. Consequently, connected miscellaneous petition is closed.

20.04.2017

Index : Yes / No

Internet : Yes / No

jvm

To

1.The Subordinate Judge, Udhagamandalam.

2.The District Munsif Court, Udhagamandalam.

3.The Record Keeper, VR Section,
High Court, Madras.

M.SATHYANARAYANAN. J

jvm

Judgment
in S.A.No.393 of 2016

20.04.2017