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Writ Appeal No.932 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13/4/2023

C O R A M

The Hon'ble Mr.Justice S.VAIDYANATHAN
a n d

The Hon'ble Ms.Justice R.KALAIMATHI

Writ Appeal No.932 of 2022

a n d

C.M.P.No.6078 of 2022

The Management of
M/s.Jafra Insoles India Limited
rep. By its Authorised Signatory
Mr.D.C.Ravi
Gudiyatham Road, Thuthipet, Ambur
Thirupattur District
(Previously Vellore District) ... Appellant

Vs

1. The Presiding Officer
Principal Labour Court
Vellore.
2. R. Ramani
3. The Management
M/s. Alhamra Leatherware Private Limited
Gudiyatham Road
Thuthipat, Ambur
Thirupattur District
(Previously Vellore District) ... Respondents

PRAYER : Appeal filed under Clause 15 of Letters Patent to set aside the



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order, dated 28/1/2022 made in W.P.No.6428 of 2015.

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For appellant ... Mr.N.V.N.Margandeyan

For respondents ... R. 1 – Labour Court
Mr.E.Srinivasan
for R.2.

J U D G M E N T

(Judgment of the Court was delivered by S.VAIDYANATHAN, J)

The present appeal has been preferred by M/s.Jafra Insoles India Limited, questioning the order of the learned Single Judge in W.P.No.6428 of 2015, confirming the order of the labour Court, dated 8/8/2014 in C.P.No.189 of 2013.

2. The sum and substance of the issue on hand is that the employee concerned in this appeal approached the labour Court, claiming monetary benefits which is said to be due to him from Alhamra Leatherware Private Limited, has sold the property to Jafra Insoles India Limited and that the appellant is the successor in interest. He would further submit that Mr.Mecca Ahmed Iqbal is one of the common Directors in both the Company. Admittedly, no proof has been filed. That apart, employee has also not let in any evidence to show there is a transfer and that other employees who worked with him has been taken in service by the appellant



herein.

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3. A petition filed under Section 33 (C) (2) of the Industrial Disputes Act, is maintainable, provided there is an accrued right which can be determined by the labour Court, to extend the monetary compensation while deciding the Computation Petition. If there is any dispute of fact, which is not incidental to the computation petition, the only remedy is to raise Industrial Dispute.

4. In the present case on hand, the employee without getting the issue adjudicated that the appellant Company is a transferee Company and that erstwhile Management i.e., Alhamra Leatherware Private Limited is due to him and in terms of agreement between the two Management, appellant has a right to pay the amount due to the Management. In the counter filed by the second respondent in C.P., there is a categorical averment to the effect that Jafra Insoles India Private Limited and Alhamra Leatherware Private Limited are completely distinct. When there is no iota of evidence to show that the respondent is not a new Establishment and that their successor in interest of Alhamra Leatherware Private Limited, computation petition is not maintainable.



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5. The Hon'ble Apex Court in a decision reported in ***MUNICIPAL CORPORATION OF DELHI Vs. GANESH RAZAK AND ORS (C.A.No.7138 of 1994), (1995) 1 SCC 235***, has categorically held that the labour Court/Tribunal cannot entertain the disputed question of fact and adjudicate upon the issue unless the claim is based on award or settlement. Of course, the instant question can be gone into by the labour Court. It is relevant to extract paragraph Nos.11 and 12:-

“11. In Central Inland Water Transport Corpn. Ltd. v. Workmen and Another MANU/SC/0292/1974 : (1975) 1 SCR 153, it was held with reference to the earlier decisions that a proceeding under Section 33-C(2) being in the nature of an execution proceeding, it would appear that an investigation of the alleged right of re-employment is outside its scope and the Labour Court exercising power under Section 33-C(2) of the Act cannot arrogate to itself the functions of adjudication of the dispute relating to the claim of re-employment. Distinction between proceedings in a suit and execution proceedings thereafter was pointed out. It was indicated that the plaintiff's



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right to relief against the defendant involves an investigation which can be done only in a suit and once the defendant's liability had been adjudicated in the suit, the working out of such liability with a view to give relief is the function of an execution proceeding. This distinction is clearly brought out in that decision as under: "In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of

(i) the plaintiff's right to relief;

(ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and

(iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding.

Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under [Section 33-C\(2\)](#) is in the nature



of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under [Section 33-C\(2\)](#), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'Incidental'. To call determinations (i) and (ii) 'Incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under [Section 33-C\(2\)](#) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions-say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'Incidental' to its main business of computation. In such cases, determinations (i) and (ii) are not 'Incidental' to the computation. The computation itself is



consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in [State Bank of Bikaner and Jaipur v. R.L. Khandelwal MANU/SC/0372/1967,](#) that a workman cannot put forward a claim in an application under [Section 33-C\(2\)](#) in respect of a matter which is not based on an existing right and which can be appropriately the subject matter of an industrial dispute which requires a reference under Section IO of the Act."

12.The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being, no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33- C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under [Section](#)



33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33- C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. “

6. This decision has been followed by the subsequent Bench of the Hon'ble Apex Court in ***BOMBAY CHEMICAL INDUSTRIES Vs. DEPUTY LABOUR COMMISSIONER AND ORS (2022) 5 SCC – 629***, holding that the labour Court is empowered to interrupt the award or settlement based on which the claim is passed. Paragraph No.6 is extracted hereunder:-

“At the outset it is required to be noted that respondent No.2 herein filed an application before the labour Court under Section 33 (C) (2) of the Industrial Disputes Act, demanding difference of wages from 1/4/2006 to 31/3/2012. It was thus the



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case on behalf of respondent No.2 that he was working with the appellant as a salesman. However, the appellant had taken a categorical stand that respondent No.2 was never engaged by the appellant. It was specifically the case on behalf of the appellant that respondent No.2 had never worked in the establishment in the post of salesman. Therefore, once there was a serious dispute that respondent No.2 had worked as an employee of the appellant and that there was a very serious dispute raised by the appellant that respondent No.2 was not in employment as a salesman as claimed by second respondent, thereafter, it was not open for the labour Court to entertain disputed questions and adjudicate upon the employer-employee relationship between the appellant and respondent No.2. As per the settled proposition of law, in an application under Section 33 (C) (2) of the Industrial Disputes Act, the labour Court has no jurisdiction and cannot adjudicate



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dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. As held by this Court in the case of Ganesh Razak and Anr. (supra), the labour Court's jurisdiction under Section 33 (C) (2) of the Industrial Disputes Act is like that of an executing Court. As per the settled preposition of law, without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33 (C) (2) of the Industrial Disputes Act. (See Municipal Corporation of Delhi Vs. Ganesh Razak and Anr. (MANU/SC/0532/1995: (1995) 1 SCC 235).

In the case of Kankuben (supra), it is observed and held that whenever a workman is entitled to receive from his employer any money or



any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach labour Court under Section 33 (C) (2) of the I.D.Act. It is further observed that the benefit sought to be enforced under Section 33 (C) (2) of the ID Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit in one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of labour Court exercising powers under Section 33 (C) (2) of the ID Act while the latter does not.”

7. In view of the aforesaid pronouncements, issue raised by the workmen cannot be considered as an incidental question and hence, the order of the learned Single Judge and the award of the labour Court are interfered with.



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S.VAIDYANATHAN,J
a n d
R.KALAIMATHI,J

mvs.

8. Accordingly, this Writ Appeal is allowed. We make it clear that it is open to the employee to raise the Industrial Dispute either individually if permissible or through the Union depending upon the nature of the dispute, it can be decided by the appropriate labour forum in case of failure on conciliation. The amount lying in deposit shall be returned to the Management, within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected M.P is closed.

(S.V.N.,J) (R.K.M.,J)
13th April, 2023

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Presiding Officer
Principal Labour Court
Vellore.

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