



WEB COPY

W.A.No. 286 & 287 of 2



IN THE HIGH COURT OF JUD ICATURE AT MADRAS

Reserved on 17.03.2025	Delivered on 08.04.2025
----------------------------------	-----------------------------------

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.Nos. 286 & 287 of 2013
and
C.M.P.Nos. 7166 & 7167 of 2017

W.A.No.286 of 2013

The Management of Kandasamy
Spinning Mills Private Limited,
P.B.No.14, Bhavani,
Rep. by its Managing Director,
N.Sendamarai
Suriampalayam, Erode Mavattam.

... Appellant

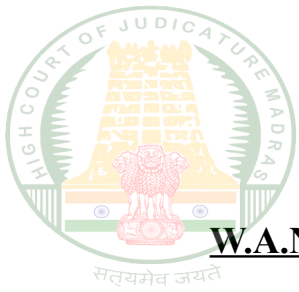
Vs.

1.The Presiding Officer,
Industrial Tribunal,
Chennai - 600 104.

2.The Management of Kamatchi Textiles,
Licencee of Kandasamy Spinning Mills
Private Limited, Bhavani.

3.The Workmen represented by Kovai
Periyar Maavatta Dravida Panchalai
Thozhilalar Munnettra Sangam,
Coimbatore - 641 012.

...Respondents



W.A.No.287 of 2013

WEB COPY

The Management of Kandasamy
Spinning Mills Private Limited,
P.B.No.14, Bhavani,
Rep. by its Managing Director,
N.Sendamarai
Suriampalayam, Erode Mavattam.

... Appellant

Vs.

- 1.The Presiding Officer,
Industrial Tribunal,
Chennai - 600 104.
- 2.The Workmen represented by Kovai
Periyar Maavatta Dravida Panchalai
Thozhilalar Munnettra Sangam,
Coimbatore - 641 012.
- 3.The Management of Kamatchi Textiles,
Licencee of Kandasamy Spinning Mills
Private Limited,
Bhavani.

...Respondents

Common Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 05.10.2012 made in W.P.Nos.29877 & 29878 of
2008.



WEB COPY

W.A.No. 286 & 287 of 2



For Appellants : Mr.N.Manokaran in both appeals
For Respondents : Mr.P.Valliappan, Senior Counsel for
Mr.R.Marudhachalamurthy
for R2 in W.A.No.286 of 2013 and
R3 in W.A.No.287 of 2013

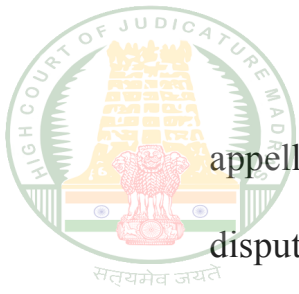
Mr.V.Prakash, Senior Counsel for
Mr.K.Sudalaikannu for R3
in W.A.No.286 of 2013 and
R2 in W.A.No.287 of 2013

COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in the above writ appeals is to the common order made by the writ Court dated 05.10.2012 in W.P.Nos. 29877 & 29878 of 2008. Both the writ petitions were filed by the Management against the award passed by the Industrial Tribunal, Chennai in I.D.Nos. 48 & 25 of 2004 dated 23.07.2008 & 24.07.2008 respectively.

2. Reference in those two industrial disputes was made by the Government on the question of the illegal cessation of operation by the



appellant / Mill. The question that was referred to in both the industrial disputes was identical and it reads as follows:-

WEB COPY

"Whether the demand of the Union to revoke the illegal cessation of the operation of the factory from 02.05.2003 by the Management and payment of back wages with continuity of service is justified."

3. The main contention of the Management before the Industrial Tribunal was that the land, building and the machinery of the Mills were leased out to one Selvamani and others, who started business in the name of M/s.Jupiter Packing Company. The said Company engaged labourers independently and was doing the business of reeling by getting yarn from the Spinning Mills. It is also contended that the Jupiter Packing Company purchased yarn not only from the petitioner Mill but also from others. After expiry of the lease in favour of the Jupiter Packing Company on 27.10.1990, one M/s.Raja Packing Company took over the business along with the workers and they were doing business of cone winding and reeling between 28.10.1990 and 26.10.1995.



WEB COPY

4. It is claimed that one Shanmugam took over the packing business and was doing business from 25.10.1998 to 29.11.2003. Therefore, it was the contention of the Management that right from 27.10.1986, till the industrial disputes were raised by the workmen represented by the Union the appellant / Management was only a lessor collecting rent from the lessees. It was contended that the workmen never received any wages from the appellant / Management and there was no employer - employee relationship. When the dispute was raised, reference was made to the Court on 09.06.2024 vide G.O.(D).No.663 of the Labour and Employment Department. When the reference was made, the name of the appellant / Management was not included. Subsequently, an erratum was issued on 12.01.2006 citing the Management as a 2nd respondent. On a challenge to the said erratum in W.P.No.4171 of 2006, this Court held that all the contentions raised could be raised in the ID itself and there was no merit in the challenge to the erratum.

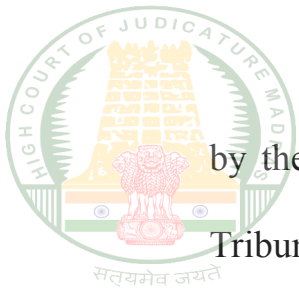
5. It was the contention of the Management that it was the lessee namely, M/s.Kamatchi Packing which was responsible for functioning of the



Mill and also payment of the salary for the said workers. If at all any closure permission ought to have been obtained, it should have been obtained from the lessee and not by the lessor / Management as the workmen were appointed by the lessee.

6. The lessee namely, M/s. Kamatchi Packing resisted the claim of the workmen contending that the agreement was entered into for a period of five years from 18.11.1998 and the Management was always with the Principal Employer and the members of the Union were appointed by the Management. Clause "g" of the Leave and License agreement dated 18.11.1998 was relied upon by the lessee to contend that if the closure is attributable to the lessor then, it is the lessor who would be liable for the payment of salary and other benefits to the workmen, if the Mill ceased working. Reliance was also placed on Clause 4 of the said agreement.

7. The Tribunal on the basis of the materials placed and also on the basis of the undertaking made by the learned counsel for the appellant herein in a proceeding before this Court namely, in W.P.No.24560 of 2004 wherein, permission granted to the Management for sale of few machineries



by the Company Law Board was under challenge was relied upon by the Tribunal to conclude that there was an undertaking by the Management to pay the workers and not to retrench the workers and therefore, the Management would be liable to reinstate the workers and pay their salaries. The Tribunal therefore, passed an award holding that the Management will be liable for the consequences of the closure.

8. It will also be relevant to point out at this juncture that the Mill started facing financial crisis from 1993 and the Mill was leased out to one Kumaravel Rana between 19.05.1995 and 19.05.1999 and after the termination of the said agreement, a fresh agreement was entered into between the Management and one K.M.Ramasamy, proprietor of Kamatchi Textiles on 18.11.1998 and license was in favour of Kamatchi Textiles was from 30.11.1998 and 20.11.2003. The lessee, Mr.K.M.Ramasamy, proprietor of Kamatchi Textiles died on 11.09.1999. The business however, was continued by legal heirs and the statutory dues were remitted by the lessee. The lease was to continue til 29.11.2023. The entire administration and supervisory control of the workmen remained with the lessee and the lessor namely, the Management did not have anything to do with the



workmen. Complaints and counter complaints were lodged by the Management as well as the lessee.

WEB COPY

9. While the Management claimed that the lessee had removed the machineries and had unauthorizedly locked the premises without the knowledge of the lessee, the lessee lodged a separate complaint claiming that the lessor has prevented it from operating the factory with effect from 01.05.2003. Even during the currency of the license agreement, certain meetings were conducted before the Revenue Divisional Officer, in view of the unrest that was created by the workmen and the lessee agreed to make payment upto a particular date i.e., 03.04.2003. The lessee claimed that since it was prevented from running Mill and it is liable to pay only for the month of April 2003, the Union raised the dispute. Evidence was let in before Labour Court and the Labour Court held in favour of the workmen, by its award dated 23.07.2008.

10. Before the Writ Court, it was the primary contention of the Management that the entire work was entrusted with the lessee and the issue was governed by the terms of the agreement. Therefore, the Tribunal ought



not to have fasten the liability on the Management. The earlier order passed in I.D.No.77 of 1987 where, the Industrial Tribunal declined to grant relief against the Management, since it had not recruited the employees was also relied upon. The Writ Court, after referring to the material that was placed before it including the earlier orders of this Court concluded that the transfer is fictitious and the Labour Court cannot be faulted for having fixed the liability on the lessor. On the said conclusions, the Writ Court confirmed the awards passed by the Labour Court, leading to these two appeals.

11. We have heard Mr.N.Manokaran, learned counsel appearing for the appellant, Mr.V.Prakash, learned Senior Counsel appearing for the workmen and Mr.P.Valliappan, learned Senior Counsel appearing for the lessee.

12. Mr.N.Manokaran, learned Senior Counsel appearing for the appellant would vehemently contend that the conclusion of the learned single Judge that the transfer is fictitious is unsustainable. He would also point out that if at all the Management would be made liable, it should be only towards the workmen who had been engaged by it and not in respect of



the workmen engaged by the lessee. It is also his further submission that

Clause "g" of the lease deed has been wrongly understood by the Tribunal

as well as the writ Court. It is his further contention that the undertaking by

the Company in the earlier proceedings namely, in W.P.No.24560 of 2004 is

only restricted to the workers appointed by the Management and not the

workers appointed by the lessee.

13. The learned counsel for the appellant would also invite our attention to Clause "g" of the agreement dated 18.11.1998, which reads as follows:-

"g) If the operation of the Mills should be wholly/ partly suspended for any reason, being a reason attributable to fault or default on the part of the lessor or the Labourers, for such period the lessor agrees to bear 100% of the expenditure on lay off wages P.F. E.S.I, Bonus gratuity and minimum Electricity Bill and it is further agreed that there shall be a corresponding extension of the terms License equal to the that the Mill had ceased working. If the operation of the Mills ceases due to the fault of the lessee then the lessee shall pay 100% expenditure on Lay off, Wages, P.F. E.S.I Bonus, Gratuity and minimum E.B. etc for such period ."

to buttress his contention that both the Tribunal and the learned single Judge



have not adverted to the second half of the said clause which provides that if the closure is due to the fault of the lessee then, it is for the lessee to pay the entire dues. Reliance is also placed by the learned counsel on the judgment of a learned single Judge of this Court in ***Workmen of Bharathi Skin Corporation Vs. the Presiding Officer*** reported in 2000 1 LLN 876 wherein, the issue relating to the nature of the lease agreement was gone into.

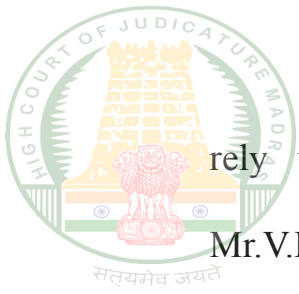
14. The learned counsel would rely upon the observations of the learned single Judge that even assuming that the partners are the same, that will not lead to the presumption that the lease is a fictitious one. Reliance is also placed on the judgment of a Division Bench in ***Management of Premier Mills Ltd. Vs. Presiding Officer, Labour Court & Others*** reported in 2010 (2) LLJ 757 wherein, the issue of adding the Management as a party to the industrial dispute was decided. Relying upon the observations of the Division Bench in the judgment cited supra, the learned counsel would contend that unless there is a reference regarding the nature of the lease, the Tribunal or the learned single Judge ought not to have gone into that question.



WEB COPY

15. Contending contra, Mr.V.Prakash, learned Senior Counsel appearing for the workmen would vehemently contend that the lease is an internal arrangement by the Management with third party and there is also a finding that the lessee is in possession of the Mill and it was the lessee who runs the Mill. Our attention is also drawn to the order of the Division Bench of this Court dated 02.11.2018 while considering the claim for 17B wages made by the workmen. Our attention is also drawn to the fact that an Advocate Commissioner was appointed and he, after giving notice and after verification of the records had submitted that there were only 32 workmen who were appointed by the Management and others were appointed by the lessee. Therefore, according to Mr.V.Prakash, either Management or the lessee should pay the amount to the workers which will be decided in the computation petitions that are pending.

16. Mr.P.Valliappan, learned Senior Counsel appearing for the lessee would however, contend that since the closure was due to the fault of the lessor as per Clause 8(g) of the lease deed, the lessor alone is liable to pay and the lessee is not liable to pay any amount. He would also attempt to



rely upon the undertaking given to this Court referred to supra.

Mr.V.Prakash, learned counsel for the workmen would also very seriously dispute the correctness of the Commissioner's report, which according to him, was made relying upon extraneous material. We have considered the rival submissions.

17. The matter lies in a very narrow campus. It only relates to the liability of either the Management or the lessee to compensate the workers for the illegal closure. The fact that there was an illegal closure and the factory was not functioning from 01.05.2003 is admitted by all concerned. While the Management / appellant would vehemently contend that the lessee would be liable, the lessee would take a stand that since it was illegally dispossessed, it cannot be made liable to pay in terms of Clause "g" of the lease deed and it is for the Management to pay the dues to the workers.

18. The learned Senior Counsel for the workers would submit that either one of them namely, lessee or the Management must pay the workers. Both of them cannot escape from the liability by pointing finger at the other.



We have already extracted Clause 8(g). The fact that the Mill was being run by a lessee right from the year 1993 is admitted. The fact that the lessee who was operating the Mill on the date of its closure entered into possession in 1998 was also admitted. The question as to whether the lessee was illegally dispossessed by the lessor has not been decided and the same cannot be decided in these proceedings.

19. While the learned counsel for the appellant would rely upon certain proceedings before the Revenue Divisional Officer where according to him, the lessee had given an undertaking that he would make payment to the workers, the learned counsel for the lessee would vehemently contend that the said assurance related to payment to be made only till April, 2003 i.e., the date till which lessee was operating the Mill and that undertaking cannot be extended to the subsequent period. Therefore, the question that remains is as to who will be liable to pay the dues to the workers as the closure is definitely illegal. From the conduct of both the parties namely, the lessor and the lessee, it is clear to our mind that both are not coming with the true version.

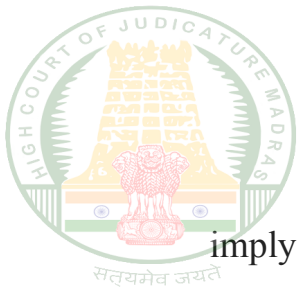


WEB COPY

20. While the lessor claims to have lodged a complaint on 30.04.2003 with the Inspector of Police, Chithode Police Station, complaining that the lessee attempted to take away machineries and account books in the Maruti Van at about 8 a.m. on the said date, the lessee for its part had given a complaint on 02.05.2003 complaining that the lessor had illegally dispossessed the lessee. Thereafter, certain mediation effort has been made by the Authorities and certain tripartite agreement has been entered into.

21. At one point of time, the lessee had agreed to pay the dues till April, 2003. It is thereafter, the industrial dispute came to be raised. The lease deed not only obliges the lessee to engage the present workmen, it also permits the lessee to make fresh appointments. Sub-clause "e" of Clause 8 of the lease deed which relates to continuity of the employment of the workmen reads as follows:-

"e) The lessee shall continue in employment maximum 4 office staff (salary mutually agreed upon) and labour on the roll of the Mills as on the date of this agreement on the terms and conditions of service as now applicable to them. Fresh appointment may be made by the lessee, subject to the condition that lessee shall be liable for their withdrawal and settlement of account on termination of the Licence."



WEB COPY

22. A combined reading of Clause "e" & "g" would only mean and imply that it will be the responsibility of the person who had engaged the services of the workmen to pay them. If it is shown that the workmen were engaged by the lessor namely, the Management which is the appellant before us, the dues payable to such workmen consequent upon such illegal closure shall be paid by the appellant before us. At the same time, the appellant before us cannot be mulcted that the liability to pay the dues that would be payable to the workmen who were engaged by the lessee after the lease. This is essentially a question of fact, which will have to be decided by the Labour Court in the pending computation petitions in the light of the provisions contained in the lease deed,.

23. We find that neither the Tribunal nor the learned single Judge had adverted to Sub-Clause "e" of Clause 8 of the lease deed which very clearly mandates that it will be the responsibility of the lessee to pay persons, who were appointed by it on account of termination of the lease. Though the lease deed provides for an arbitration clause, neither lessee nor the lessor had challenged the termination and moved the Arbitrator. Therefore, we are at the cross roads where, there is no finding regarding the culpability of



either the lessor or the lessee for the closure of the mill. In the absence of such finding by a competent judicial authority, we cannot decide as to who would be actually liable.

24. If we are go by the Clauses in the lease deed, a combined reading of Sub-clause "e" & "g" of Clause 8 of the lease deed would necessarily mean that while the lessor would be liable to pay the employee who was on the role when the lease commenced, the lessee would be liable to pay the employees who were admitted by it subsequently. The identification of such employees will have to be necessarily carried out by the Labour court based on evidence that can be placed before it in the pending computation petitions. We are therefore, unable to uphold the award as well as the order of the learned single Judge to the extent they fasten the entire liability on the lessor independent of the question as to whether the workmen were engaged by the lessee or the lessor.

25. Though an attempt was made by V.Prakash learned Senior Counsel for the lessee that the undertaking given in W.P.No.24560 of 2004 will bind the lessor. We are unable to stretch the undertaking to the extent



W.A.No. 286 & 287 of 2

suggested by the learned Senior Counsel. That was with respect to retrenchment. Consequent upon the same and by that time the undertaking was given, the Company was closed. Therefore, we do not think that the undertaking would be read in such a manner that it would make the lessor liability for all the employees irrespective of their engagement.

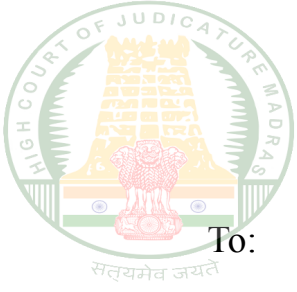
26. These Writ Appeals will stand **allowed**, the order of the writ Court will stand modified to the effect the closure is illegal but, the liability to settle the employees would be governed by the contract of employment and the person who appointed the employee would be liable to compensate the employee on the closure. The question as to whether a particular employee was engaged by the Management or by the lessee will be decided by the Labour Court in the pending computation petitions. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) (G.A.M., J.)
08.04.2025

kkn

Index: Yes
Speaking order
Neutral Citation : Yes

18/20



W.A.No. 286 & 287 of 2



To:

WEB COPY

1. The Presiding Officer,
Industrial Tribunal,
Chennai - 600 104.

2. The Workmen represented by Kovai
Periyar Maavatta Dravida Panchalai
Thozhilalar Munnettra Sangam,
Coimbatore - 641 012.



WEB COPY

W.A.No. 286 & 287 of 2



R.SUBRAMANIAN, J.
and
G. ARUL MURUGAN, J.

KKN

W.A.Nos. 286 & 287 of 2013
and
C.M.P.No. 7166 & 7167 of 2017

08.04.2025