

Before A. D. Koshal, C.J.

ANAND KUMAR—*Petitioner.*

*versus*

M/S DHANI RAM AND OTHERS—*Respondents.*

Civil Revision No, 357 of 1978

April 18, 1978.

*Sick Textile Undertakings (Nationalisation) Act (57 of 1974)—Sections 5, 22(2) and 29—Section 29 read with the scheme of the Act—Whether ousts the jurisdiction of Civil Courts.*

Held that the ouster of the jurisdiction of the Civil courts is not to be readily inferred. On the other hand law is well settled that the provisions from which ouster may be inferred need not be expressed in terms and may bar the jurisdiction of the civil courts by necessary implication. Such implication has been read into the various Acts, if they are exhaustive in nature and deal with practically all situations in which a claimant may seek a remedy. The conferment of the right of appeal on a claimant dissatisfied with the decision of the Tribunal created under such an Act is a very relevant consideration. The scheme of Sick Textile Undertakings (Nationalisation) Act 1974 no doubt envisages the examination and admission or rejection of claims made by various claimants and also provides for a right of appeal. However, the provisions of sub-section (2) of section 22 read with those of section 5 of the Act make it clear that no ouster of the jurisdiction of the Civil Courts is intended. Under section 5 the liabilities of the owner of a sick textile undertaking are declared to remain his liabilities even after the commencement of the Act and it is specifically stated that those liabilities shall be enforceable against him. If the Act provided a machinery for the enforcement of all such liabilities against the owner, the ouster of the jurisdiction of the Civil Courts could have been inferred but the position is that if the money placed at the disposal of the Commissioner be sufficient to meet all liabilities, he will determine them and pay them off. If the amount is not sufficient, he would not touch those of the liabilities with a pair of tongs as he has not the wherewithal to pay off. In the latter situation the claimants must have of necessity to go to the Civil Courts, the ouster of whose jurisdiction in their case cannot only not to be inferred but must be held not to have been intended. And if that be so, section 29 read with the scheme of the Act cannot be interpreted so as to oust the jurisdiction of the Civil Courts in respect of any matters whatsoever.

(Para 5)

*Petition under Section 115 of Act V of 1908 Code of Civil Procedure for revision of the order of the Court of Shri Gurdial*

*Singh, Senior Sub Judge, Bhatinda, dated 22nd December, 1977* rejecting the application of the defendants.

Hari Chand Garg, Advocate, *for the Petitioner.*

Suraj Parkash Gupta, Advocate, *for the Respondent.*

### JUDGMENT

*A. D. Koshal, C.J. (oral).*

(1) This petition under section 115 of the Code of Civil Procedure has been filed by Seth Anand Kumar, defendant No. 3, who seeks a revision of the order dated 22nd of December, 1977, passed by the trial Court holding that the suit for the recovery of Rs. 1,68,539.22 instituted by the plaintiff-firm named Messrs Dhani Ram Suresh Kumar and Company, which carries on business at Bhatinda, is maintainable and that the jurisdiction of the civil Courts to entertain it is not barred by the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974 (hereinafter referred to as the Act). The amount claimed consists, according to the allegations made in the plaint, of dues in respect of transactions of purchase of cotton entered into by the plaintiff-firm for and on behalf of Lord Krishna Textile Mills, Saharanpur, defendant No. 1, which is one of the mills covered by the Act (and is hereinafter referred to as the sick mill). Those transactions are alleged to have taken place between the 3rd of December, 1971, and 1st of February, 1972.

(2) The plaintiff's suit was instituted on the 16th of March, 1973, that is, more than a year before the Act came into force.

(3) The petitioner before me objected to the suit being proceeded with on the ground that the jurisdiction of the civil Courts in relation to it was barred by section 29 of the Act which runs thus :

“The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court, tribunal or authority.”

The learned trial Judge observed that the section did not bar the jurisdiction of the civil Courts to entertain suits involving determination

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of questions covered by the Act, either expressly or impliedly. In this connection he also analysed the scheme of the Act. By the impugned order he overruled the objection put forward by the petitioner and directed that the suit be proceeded with.

3. (4) It is not disputed before me that the language of section 29 of the Act does not expressly bar the jurisdiction of Civil Courts in relation to matters falling within the ambit of the Act. It has been vehemently argued by Mr. Hari Chand Garg, however, that when the section is read in the light of the scheme of the Act, the irresistible conclusion to be arrived at is that the entertainment by the Civil Courts of suits embracing matters covered by the Act is barred. Reference in this connection has been made to sections 5, 17, 18, 20, 21, 22, 23, 27 and 29 of the Act. The relevant part of section 5 declares that every liability of the owner of a sick textile undertaking (other than a liability specified in sub-section (2) with which we are here not concerned) shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation. Section 17 gives to the Central Government the power to appoint such number of persons as it may think fit to be Commissioners of payments. Under section 18 the Central Government is charged with the duty of paying within thirty days from the 1st of April, 1974, cash to the Commissioner for payment to an owner of a sick textile mill in the First Schedule to the Act. That amount is Rs. 69,92,000 in the case of the sick mill. Section 20 states that every person having a claim against a sick textile mill shall prefer such claim before the Commissioner within 30 days from the 1st of April, 1974. Section 21 refers to the Second Schedule which may be reproduced here for facility of reference :

“THE SECOND SCHEDULE

“(See sections 21, 22, 23 and 27)..

“Order of priorities for the discharge of liabilities in respect of a sick textile undertaking.

“PART A

“Post-take-over management period.

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“Category I—

- (a) Loans advanced by a bank.
- (b) Loans advanced by an institution other than a bank.
- (c) Any other loan.
- (d) Any credit availed of for purpose of trade or manufacturing operations.

Category II—

- (a) Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.
- (b) Any other dues.

\* “PART B

“Pre-take-over management period.

“Category III—

Arrears in relation to provident fund, salaries and wages, and other amounts, due to an employee.

“Category IV—

Secured loans.

“Category V.—

Revenue, taxes, cesses, rates or any other dues to the Central Government, a State Government, a local authority or a State Electricity Board.

“Category VI.—

- (a) Any credit availed of for purpose of trade manufacturing operations.
- (b) Any other dues.”

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According to the provisions of section 21, the claims are assigned priorities in accordance with the principles set out. Then follows section 22 which is in the following terms:—

“22(1) On receipt of the claims under section 20, the Commissioner shall arrange the claims in the order of priority specified in the Second Schedule and examine the same in accordance with the said order.

“(2) If on examination of the claims the Commissioner is of the opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the liabilities in respect of such lower category.”

\*Section 23 relates to the admission or rejection of claims priority-wise. Sub-section (7) of section 23 deals with appeals by claimants dissatisfied with the decisions of the Commissioner. According to it, such appeals are to be preferred to the concerned principal civil Court of original jurisdiction and in case the Commissioner happens to be a Judge of the High Court, such appeals lie to the High Court for the State in which the sick textile undertaking is situated. Section 27 makes the Central Government liable for all items specified in category I of the Second Schedule. And then comes section 29 which has already been extracted above.

4. (5) One basic principle has to be borne in mind in deciding the matter in controversy and that is that the ouster of the jurisdiction of the Civil Courts is not to be readily inferred. On the other hand, the law is well settled that the provisions from which such an ouster may be inferred need not be express in terms but may bar the jurisdiction of the Civil Courts by necessary implication. Such implication has been read into various Acts, if they are exhaustive in nature and deal with practically all situations in which a claimant may seek a remedy. The conferment of the right of appeal on a claimant dissatisfied with the decision of the Tribunal created under such an Act has been held to be a very relevant consideration (see *Firm of Illuri Subbayya Chetty and Sons v. State of Andhra Pradesh* (1)). Now the scheme of the Act which the petitioner invokes no doubt envisages the examination and admission or rejection of claims made

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(1) A.I.R. 1964 S.C. 322.

by various claimants and also provides for a right of appeal. However, the provisions of sub-section (2) of section 22 read with those of section 5 of the Act impel me to come to the conclusion that no ouster of the jurisdiction of the Civil Courts is intended. Under section 5 the liabilities of the owner of a sick textile undertaking are declared to remain his liabilities even after the commencement of the Act and it is specifically stated that those liabilities shall be enforceable against him. Now if the Act provided a machinery for the enforcement of all such liabilities against the owner, the case of the petitioner might be unexceptionable. As it is, the only liabilities of which the enforcement is completely provided for under the Act are those falling under category I specified in the second Schedule. The payment of other liabilities is contingent on the amount of Rs. 69,92,000, being sufficient to meet them. If it is not so sufficient, the Commissioner will just not go into them. That is what sub-section (2) of section 22 states. The situation thus boils down to this. If the money placed at the disposal of the Commissioner be sufficient to meet all liabilities, he will determine them and pay them off. If the amount is not so sufficient, he would not touch those of the liabilities with a pair of tongs as he has not the wherewithal to pay off. In the latter situation the claimants must have of necessity to go to the Civil Courts, the ouster of whose jurisdiction in their case cannot only not be inferred but must be held not to have been intended. And if that be so, section 29 read with the scheme of the Act cannot be interpreted so as to oust the jurisdiction of the Civil Courts in respect of any matters whatsoever, no distinction having been drawn by that section in the case of the two types of liabilities, i.e., those falling under category I and those coming under other categories.

(6) I may here also refer to the fact that the plaintiff-firm instituted its suit more than a year before the Act came into force. No retrospective operation could be given to the Act even if it had expressly ousted the jurisdiction of the Civil Courts unless it so declared in express terms, that for this reason also the objection raised by the petitioner must be held to have been properly overruled.

(7) In the result the petition fails and is dismissed but with no order as to costs. The parties are directed to appear before the trial Court on the 8th of May, 1978

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N.K.S.