

Ram Parshad Rastogi v. Jagdish Narain (Grover, J.)

REVISIONAL CIVIL

Before A. N. Grover, J.

RAM PARSHAD RESTOGI,—*Petitioner*

versus

JAGDISH NARAIN,—*Respondent*

C. R. 553-D of 1965

July 26, 1966

Delhi Rent Control Act (LIX of 1958)—S. 36(2)—Code of Criminal Procedure (V of 1898)—S. 476—Rent Controller—Whether a Civil Court within the meaning of S. 476.

Held, that section 36(2) of the Delhi Rent Control Act, 1958, specifically provides that the Rent Controller shall be deemed to be a Civil Court and since section 476 is not mentioned along with sections 480 and 482, it would be legitimate to conclude that the omission of section 476 was intentional and deliberate. Section 476 is the first section appearing in Chapter XXXV of the Code of Criminal Procedure in which sections 480 and 482 also appear. It will be neither proper nor permissible to read, insert or add section 476 into subsection (2) of section 36 of the Delhi Rent Control Act. The Rent Controller, therefore, cannot be deemed to be a Civil Court within the meaning of section 476 of the Code of Criminal Procedure.

Petition under section 115 of the Code of Civil Procedure, 1908, read with Article 227 of the Constitution of India, for revision of the order of Shri P. K. Bahri, 1st Additional Rent Controller, Delhi, dated 13th September, 1965, holding that the Controller has power of a court to file complaint for the offence committed under section 193, I.P.C. and to hold the enquiry under section 476 Criminal Procedure Code and repelling the preliminary objection of the respondent.

GYAN DASS JAIN, ADVOCATE, for the Petitioner.

P. N. JOSHI, ADVOCATE, for the Respondent.

JUDGMENT

GROVER, J.—The point which has been raised in this petition is interesting and one of importance. There was an eviction case pending before Rent Controller, Delhi, which had been filed by

Sri Kishan Jaitley against Ram Parshad, the present petitioner. An application was made before the Rent Controller by one Jagdish Narain under section 476, Criminal Procedure Code, saying that Ram Parshad had committed an offence under section 193, Indian Penal Code, and praying that a complaint be made against him. It was alleged that the applicant had been summoned as a witness by Ram Parshad for the 8th of October, 1963, in the eviction petition and later on Ram Parshad did not wish to produce him as a witness and he got a wrong report made on the summons that the witness had refused to accept service. It was further alleged that Ram Parshad got another summons issued for the attendance of the aforesaid witness on the 28th of November, 1963, and on that occasion he forged his signatures on the summons and also noted that Rs. 3 had been received by the witness as diet money, According to the applicant he had never been served in that case and he had never received any diet money. The applicant thus sought prosecution of Ram Parshad under section 193, Indian Penal Code, for fabricating false evidence for the purpose of being used in judicial proceedings.

A preliminary objection was raised by Ram Parshad that such an application was not maintainable before the Rent Controller, who was not competent to make a complaint under section 476, Criminal Procedure Code, being not a 'Court'. It has been held by Shri P. K. Bahri, the 1st Additional Rent Controller, Delhi, repelling the preliminary objection, that the Controller has the power of a Court to file a complaint for an offence committed under section 193, Indian Penal Code, and to hold an inquiry under section 476, Criminal Procedure Code. It is against that order that Ram Parshad has come up to this Court under section 115, Civil Procedure Code, and Article 227 of the Constitution.

The contention which has been raised on behalf of the petitioner is that by now it is well settled that 'Rent Controller' is not a 'Court' and, therefore, the Rent Controller would have no jurisdiction to take action under section 476, Criminal Procedure Code. The material part of that section is as follows:—

"476. (1) When any Civil, Revenue or Criminal Court, is whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred

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to in section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, * * * * *

Section 195, sub-section (1), clauses (b) and (c), Criminal Procedure Code, may next be reproduced—

“195. (1) No Court shall take cognizance—

(a) * * * * *

(b) of any offence punishable under any of the following sections of the same Code (Indian Penal Code), namely, sections 193, 194, 195, 196, 199; 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate.”

Section 36, sub-section (2) of the Delhi Rent Control Act, 1958, provides that the Controller shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, when trying suits in respect of the matters set out in clauses (a) to (d), and any proceeding before the Controller shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, and further that the Controller shall

be deemed to be a Civil Court within the meaning of section 480 and section 482 of the Code of Criminal Procedure.

Now, clauses (a) to (d) in sub-section (1) of section 37 of the Indian Income-tax Act, 1922, are similar to clauses (a) to (d) in sub-section (2) of section 36 of the Delhi Rent Control Act. Section 37(4) of the Income-tax Act, however, reads as follows:—

“Any proceeding before any authority referred to in this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (XLV of 1860).”

In *Lalji Haridas v. The State of Maharashtra* (1), the question was whether the proceedings before the Income-tax Officer which had been made judicial proceedings for the purposes of section 193, Indian Penal Code, must be treated as proceedings in any Court for the purpose of section 193(1)(b), Criminal Procedure Code. It was held in the majority judgment delivered by Gajendragadkar, C.J., that where an offence under section 193, Indian Penal Code, had been committed in respect of the proceedings before the Income-tax Officer, the complaint by that Officer was a condition precedent prescribed under section 195(1)(b), Criminal Procedure Code, and the Magistrate could not take cognisance of it without such a complaint. According to the minority view of Das Gupta, J., and Sarkar, J. (as he then was), the Income-tax Officer was not a Court within the meaning of section 195. Even the learned Chief Justice felt that the arguments on both sides were fairly balanced which showed the difficult nature of the point involved. The learned Additional Solicitor-General, who had addressed the argument that the Income-tax Officer could not be regarded as a Court, referred to a number of statutes mentioned in paragraph 11 of the judgment of Gajendragadkar, C.J., which showed that where the Legislature wanted to make any Tribunal or authority a Court, it used express and appropriate languages in that behalf and it was submitted by him that in the absence of any such language in section 57 of the Income-tax Act the safeguard provided by section 195(1)(b) of the Criminal Procedure Code could not be extended in respect of the proceedings before the Income-tax Officer. While realising the force of this submission it was observed by the learned Chief Justice in paragraph 15—

“It is plain that if the argument of the Additional Solicitor-General is accepted, the result would be that a complaint

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like the present can be made by any person and if the offence alleged is proved; the accused would be liable to receive higher penalty awardable under the first paragraph of section 193, Indian Penal Code, without the safeguard correspondingly provided by section 195(1)(b), Criminal Procedure Code. Could it have been the intention of the legislature in making the offence committed during the course of a proceeding before an Income-tax Officer more serious without affording a corresponding safeguard in respect of the complaints which can be made in that behalf? We are inclined to hold that the answer to this question must be in the negative. That is why after careful consideration, we have come to the conclusion that the view taken by the Bombay High Court should be upheld though for different reasons. Section 37(4) of the Act makes the proceedings before the Income-tax Officer judicial proceedings under section 193, Indian Penal Code, and these judicial proceedings must be treated as proceedings in any Court for the purpose of section 195(1)(b), Criminal Procedure Code. That, we think, would really carry out the intention of the legislature in enacting section 37(4) of the Act."

On a parity of reasoning the learned Additional Rent Controller has held that because the proceedings before a Rent Controller are to be treated as judicial proceedings within the meaning of section 193 of the Indian Penal Code, the Controller would be Civil Court for the purpose of holding an inquiry, etc., and filing a complaint for an offence under section 193 under the provisions of section 476 of the Criminal Procedure Code. It would have been difficult to have made any distinction between the majority judgment in the aforesaid decision of the Supreme Court and the present case but there are certain matters which require serious consideration. Nothing was stated in section 37(4) of the Income-tax Act about the Income-tax authorities being treated as Courts for the purposes of any section of the Indian Penal Code. In section 36(2) of the Delhi Rent Control Act the language employed is similar to section 37(4) of the Income-tax Act only up to the words "Judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code." but in the Delhi Rent Control Act there is a further provision which is not to be found in section 37(4) of the Income-tax Act that the Controller shall be deemed to be a Civil Court within the meaning

of sections 480 and 482 of the Criminal Procedure Code. The Legislature, has, therefore, specified when the Rent Controller is to be deemed to be a Civil Court and since section 476 is not mentioned along with sections 480 and 482, it would be legitimate to conclude that the omission of section 476 was intentional and deliberate. Section 476 is the first section appearing in Chapter XXXV of the Criminal Procedure Code. Sections 480 and 482 also appear in the same Chapter. Section 480 relates to procedure and certain cases of contempt and section 482 deals with procedure where the Court considers that the case should not be dealt with under section 480. It has been expressly provided that the Controller shall be deemed to be a Civil Court within the meaning of these two sections. It will be neither proper nor permissible according to the well-settled rules of interpretation, to read, insert or add section 476 into the aforesaid provision. I, therefore, venture to think that the Controller cannot be deemed to be a Civil Court within the meaning of section 476 of the Criminal Procedure Code.

My attention has been invited by the learned counsel for the petitioner to *Tara Chand v. The State* (2), wherein it was held by Falshaw, J. (as he then was), that neither the Rent Controller nor the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949, was a Court and, therefore, he could not be held to be a Civil Court within the meaning of section 476, Criminal Procedure Code. The result was that the witnesses in proceedings under the Act were immune from proceedings for perjury under section 476. The language of the provisions of the Punjab Act is altogether different and with respect it is not possible to derive any assistance from this decision.

The learned counsel for the respondent made a half-hearted attempt to oppose the grant of any relief in the present petition on the ground that it was open to the petitioner to prefer an appeal under section 476-B of the Criminal Procedure Code and he should have resorted to that remedy. That section confers, *inter alia*, a right of appeal on a person against whom a complaint has been made under section 476. No such complaint has been made so far in the present case and the Additional Rent Controller merely disposed of the preliminary objection raised before him. That order, however, is not appealable and since the question is one of lack or absence of jurisdiction, I can see no objection to the grant of a relief in the present petition which is hereby allowed, with the result that

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the inquiry under section 476 of the Criminal Procedure Code will not be competent before the Rent Controller. There will be no order as to costs.

B.R.T.

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Before S. K. Kapur, J.
AMAR NATH,—Petitioner

versus

BHAGWAN DAS AND OTHERS,—Respondents
Civil Revision No. 333-D of 1965

July 27, 1966

Arbitration Act (X of 1940)—Ss. 2(a) and 33—Question regarding legality of contract containing arbitration clause—Whether to be determined by Court—By-law providing for arbitration—Legality of contracts—Whether determinable by arbitrators.

Held, that if a party contends that the contract, which contains the arbitration clause, was never entered into, the proper forum for decision of that issue would be the Court, for denial by a party of having entered into a contract is also denial of the fact that he ever joined in the submission. Similarly, if a party to such an alleged contract challenges the legality thereof and alleges that it is void *ab initio*, the arbitration clause cannot operate, for on this view the arbitration clause itself is also void. On the other hand, there is no fetter on the competence of the parties to agree to refer to arbitration disputes as to legality of certain contracts and if they do so by an independent agreement, the legality or illegality of the contract will not destroy the arbitration agreement. Of course, a question may arise about the scope of the arbitration agreement, that is, whether or not the dispute as to the legality is covered. A particular by-law of the Stock Exchange providing arbitration will operate as a separate arbitration agreement not linked with the contracts the legality whereof is challenged. The legality of those contracts will then fall to be determined by the arbitrators.

Petition for revision under section 115 of the Code of Civil Procedure (Act V of 1908) of the order of Shri Dalip Singh, Sub-Judge, 1st Class, Delhi, dated 11th June, 1965, dismissing the application of Shri Amar Nath, under sections 33 and 11 of the Arbitration Act and leaving the parties to bear their own costs.

R. S. TANDON, ADVOCATE, for the Petitioner.

J. R. GOEL, ADVOCATE, for the Respondent.

JUDGMENT

KAPUR, J.—Amar Nath petitioner is alleged to have purchased and sold certain shares through Bhagwan Dass, respondent No. 1. at Delhi Stock Exchange Association Limited. New Delhi. The petitioner is a non-member while the respondent is a member of the said Stock Exchange. Contract notes were prepared with respect to the purchase and sale of the said shares and.