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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on 24th September, 2018*
Judgment Pronounced on 16th October, 2018

\+ **LPA 529/2018**

MANAGMENT OF HINDUSTAN TIMES LTD

..... Appellant

Through : Dr.Abhishek Manu Singhvi, Mr.Sandeep Sethi and Mr.Raj Birbal, Senior Advocates with Mr.Raavi Birbal, Ms.Meghna Mishra, Mr.Ankit Rajgahiya, Mr.Naman Joshi, Ms.Riya & Mr.Raghuveer Kapur, Advocates

versus

AITA RAM & ORS. ..... Respondents

Through : Mr.Ramesh Kumar Mishra and Mr.Rajnish Kumar Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. Challenge in this appeal is to the judgment dated 27.08.2018 passed by learned Single Judge of this Court in W.P. (C) 5607/2016 whereby the petition of the appellant herein has been dismissed and the appellant has been directed to implement the award dated 23.01.2012.

2. The matter was first listed on 12.09.2018, a preliminary objection was raised by counsel for the respondents that the proceedings were apparently challenging an order passed by a Single Judge of this Court under Article 227 of the Constitution and thus, the present appeal would not been maintainable. Accordingly, counsel for both the parties were heard and the matter was reserved only on the issue of the

maintainability of the present petition.

3. The facts leading to the present appeal, in a nutshell, are that the appellant had filed the writ petition labelled as one under Article 227 before the learned Single Judge impugning the order dated 14.05.2016 passed by the Court of Additional District Judge-03, Patiala House Courts, New Delhi (in short '*the Executing Court*') in Execution Petition 23/2016. The execution petition has been filed to execute the award dated 23.01.2012 passed by the learned Presiding Officer, Industrial Tribunal. By the said award, the Industrial Tribunal had held the action of M/s Hindustan Times Limited (HTL) in transferring the ownership of its printing undertaking to its subsidiary M/s Hindustan Times Media Limited (HTML) from 02.10.2004 and terminating the services of the workmen under Section 25FF of the Industrial Disputes Act, 1947 (in short the '*Act*') as illegal and unjustified and HTL was directed to reinstate 272 workmen treating them in "continuity of service" under the terms and conditions of service as before their alleged termination. Notional letters of appointment dated 19.04.2013 were issued to the workmen pursuant to the consensus arrived at between the parties on 17.04.2013 in CM (M) 368/2013 in this Court without prejudice to their rights and contentions. Thereafter, on 09.12.2013, HTL invoked Section 25FFF of the Act on the ground that after having sold the printing undertaking to HTML, the printing undertaking of HTL was closed in the year 2005 and permanently removed from the list of registered factories by the Inspector of the factories from 04.07.2008.

4. By the order dated 14.05.2016, the Executing Court held that the award dated 23.01.2012 had not been complied with in letter and spirit and the

purported reinstatement letters issued to the workmen on 19.04.2013 were an eyewash and moonshine and did not fulfil compliance with the award. Accordingly, the execution petition was held to be maintainable and HTL was granted four weeks time to reinstate all the eligible workmen. The Executing Court further held that the fresh orders under Section 25FFF of the Act will not come in the way of reinstatement being without cause of action and *non-est*.

5. This order was impugned before the learned Single Judge, which was dismissed by the order dated 27.08.2018. By the said order, the learned Single Judge further directed the appellant to deposit the arrears of wages of workmen, who had not superannuated, with the executing court, which was to be disbursed to the workmen. The appellant was also directed to implement the order of the award of the Industrial Tribunal. This order has been impugned in the present letters patent appeal.

6. Mr. Sethi, learned senior counsel for the appellant, has submitted that even though the petition invoked Article 227 of the Constitution, the grounds of challenge, relief sought and the tenor of the judgment of the learned Single Judge would show that it was infact, a petition under Articles 226 and 227 both and not under Article 227 alone. The challenge was only to the order of the Executing Court and nothing more. It did not invoke the supervisory jurisdiction of this Court. The grounds thereof were limited to (1) the executing court not having jurisdiction to pass the said order; (2) the order being beyond the scope of reference and the award dated 23.01.2012 of the Industrial Tribunal; (3) the order ran awry of the orders of this Court in CM (M) 368/2013 and LPA 6/2015. Even the impugned order of the learned Single Judge

did not issue any guidelines for further proceedings by the executing court and the directions to deposit salary are without jurisdiction and did not fall under the scope of Article 227. It was contended that mere nomenclature of the petition, as being once under Article 227, was not decisive and the nature of controversy and relief sought would be determinative of the jurisdiction exercised by the learned Single Judge. Mr. Sethi had relied upon the judgments in ***MMTC Ltd.* v. *CCT*, (2009) 1 SCC 8** (paragraphs 7 and 17); ***State of Madhya Pradesh* v. *Visan Kumar Shiv Charan Lal*, (2008) 15 SCC 233** (paragraphs 3, 5, 12 and 14); ***Savitri Sharma* v. *State of Bihar*, (2012) 1 PLJR 534** (paragraphs 23-27, 29 and 30); and ***Advani Oerlikon Ltd.* v. *Machindra Govind Makasare*, (2011) 2 Mah LJ 916 (FB)** (paragraphs 2, 16-17 and 21).

7. Learned senior counsel further submitted that a case being executed by a civil court under Sub-Sections (9) and (10) of Section 11 of the Act is at par with steps for challenge under any other provision under the Act including Section 33C (1) and (2), which has been in the statute book since 1947. It was contended that the introduction of Sub-Sections (9) and (10) of Section 11 did not dilute any of the steps of challenging the award or order under the Act, which remained filing a writ petition and thereafter, letter patent appeal and special leave petition. The introduction of the sub-sections under Section 11 had only been provided for convenience of forum and the mode of challenge of the order remained the same. Reliance was placed on the judgment of the Andhra High Court in ***Nalgonda Co-Op. Marketing* v. *Labour Court*, 1993 (2) ALT 661** (paragraphs 17 and 21) to submit that a Labour Court only had the trappings of a civil court and could not be considered as a civil court. It was also submitted that against an order

dated 12.10.2012 of the executing court in proceedings arising out of the same award, the respondents had themselves preferred a challenge before a Single Judge of this Hon'ble Court, which was carried in LPA by the appellant and thereafter, the Supreme Court by the respondents. The said petition had not been dismissed on the ground of maintainability. Mr. Sethi concluded that merely because a civil court was executing the award, the remedies open to the parties would not stand excluded and thus, the present appeal was maintainable.

8. *Per contra*, Mr.Mishra contended that the present appeal is not maintainable. He contended that the proceedings before the learned Single Judge laid a challenge to the order of the Executing Court, which was a judicial order passed by a civil court exercising jurisdiction under Sub-Sections (9) and (10) of Section 11 of the Act. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Radhey Shyam* v. *Chhabi Nath*, (2015) 5 SCC 423** (paragraphs 1, 26, 27 and 29) to submit that judicial orders of the civil courts are not amenable to writ jurisdiction under Article 226. Accordingly, the said order of the executing court was exclusively assailable under Article 227 of the Constitution and not under Article 226. In all circumstances, the challenge had to be one under Article 227 as that under Article 226 could not be entertained. For similar submissions, Mr.Mishra also relied upon the decisions in ***Jogendrasinhji Vijaysinghji* v. *State of Gujarat*, (2015) 9 SCC 1** [paragraphs 18, 19 and 45(2)]; and ***Ram Kishan Fauji* v. *State of Haryana*, (2017) 5 SCC 533** (paragraph 41).

9. Mr.Mishra further submitted that the appellant had filed the writ petition under Article 227 as is evident from the title of the petition and even the learned Single Judge has recorded it as being one under Article

227. It was contended that the respondents herein had even alleged before the learned Single Judge in its written submissions that a writ petition assailing judicial order was not maintainable. The appellant had never pursued their petition as one being under Article 226 and had deliberately invoked Article 227 of the Constitution and are now trying to resile therefrom. It was contended that the judgments relied upon by the appellant are prior to the judgment of the Full Bench of the Supreme Court in ***Radhey Shyam*** **(Supra)**.

10. In response to the contention of the appellants that the petition was in its form one under Article 226, Mr.Mishra submitted that the petition as being one under Article 227 could be inferred from the fact (1) the petition was filed against a private party; (2) the appellant had alleged that the executing court had exceeded its authority; (3) the prayer did not seek any writ; and (4) the learned Single Judge had given further directions in the impugned judgment for compliance of the award. It was also contended that the difference sought to be created between cases under labour law and civil law was artificial.

11. During rejoinder arguments, Mr. Sethi submitted that the authorities relied upon by the respondents did not detract from the principle that mere nomenclature of the petition was not a decisive factor. It was further contended that the judgments in ***Radhey Shyam*** **(Supra)** and ***Jogendrasinhji Vijaysinghji*** **(Supra)** arose out of proceedings purely of a civil nature, which was not the case in the present matter. It was also submitted that the judgment in ***Ram Kishan Fauji*** **(Supra)** pertained to the maintainability of letter patent appeal in a criminal matter.

12. We have heard the learned counsel for the parties and gone through the

record and the judgment passed by the learned Single Judge.

13. Clause 10 of the Letters Patent constituting the High Court of Judicature at Lahore dated 21.03.1919, which is applicable to this Court, reads as under:

> "***10. Appeals to the High court from Judges of the Court.-*** *And We do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgement (not being a judgement passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgement of one Judge of the High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgement declares that the case is a fit one for appeal, but that the right of appeal from other judgements of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.*"
>
> (Emphasis Supplied)

14. The aforequoted clause of the Letters Patent expressly excludes orders passed in exercise of power of superintendence and on this aspect, there is no dispute between the parties [See ***Umaji Keshao Meshram* v. *Radhikabai*, 1986 Supp SCC 401** (paragraph 104) and ***South Delhi***

***Municipal Corporation* v. *Bharat Bhushan Jain*, 236 (2017) DLT 452** (paragraphs 12-15)]. The only question arising for our consideration is whether the proceedings before the learned Single Judge were in exercise of supervisory jurisdiction under Article 227 of the Constitution or writ jurisdiction under Article 226?

15. There is no quarrel with the proposition that when the facts justify a party to approach this Court under Article 226 or 227 of the Constitution, then the Court should not limit itself merely by the caption used by the party or such a reference being made in the order of the single judge. The Court must ascertain from the pleadings, reliefs sought and the order passed by the Single Judge, whether it was under Article 226 or 227 of the Constitution. The judgments cited by both the parties before us, consistently hold them same and we do not deem it necessary to reproduce them to avoid prolixity. However, it is an entirely different thing to say that though only proceedings under Article 227 were entertainable, even then the Single Judge exercised writ jurisdiction under Article 226.

16. Accordingly, before an enquiry in the nature of the proceedings before the learned Single Judge can be undertaken, it is a *sine qua non* that the facts justify invocation of both Article 226 and 227. In this regard, the following observations of the Supreme Court in ***Umaji Keshao Meshram* (Supra)** (paragraph 107) may be noticed:

> " 107. …*In our opinion, <u>where the facts justify</u> a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final*

order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. ..."

(Emphasis Supplied)

17. The Full Bench of the Bombay High Court in ***Advani Oerlikon Ltd.*** **(Supra)** has also observed as under:

18. The principles which emerge can be elucidated as follows: (i) The fundamental principle which must be applied in determining the maintainability of an appeal under Clause 15 of the Letters Patent, is whether the facts justify a party in filing an application either under Article 226 or Article 227 of the Constitution. Where in such a case, a party chooses to file an application under both the Articles, it should not be deprived of a right of appeal. The Court must treat the application as one under Article 226 of the Constitution. If the Single Judge in the course of the final order has issued an ancillary direction which pertains to Article 227, this would not deprive a party of a right of appeal under Clause 15 of the Letters Patent;... (iv) Where the contention that is raised, the grounds taken and the reliefs sought in the petition justify the invocation of both Articles 226 and 227 of the Constitution, an appeal under Clause 15 of the Letters Patent against a judgment of the Single Judge would be maintainable;..."

(Emphasis Supplied)

18. We may also fruitfully refer to the judgment of the Supreme Court in ***Ram Kishan Fauji*** **(Supra)**. In the said case, though the Supreme Court was dealing with a case wherein the letters patent appeal arose out of orders passed by the Single Judge in criminal jurisdiction, however, the Supreme Court after considering the maintainability of writ petition from judicial orders of civil courts, observed as under:

"*40. As the controversy in Jogendrasinhji Vijaysinghji case*

related to further two aspects, namely, whether the nomenclature of the article is sufficient enough and further, whether a tribunal is a necessary party to the litigation, the two-Judge Bench proceeded to answer the same. In that context, the Court referred to the authorities in Lokmat Newspapers (P) Ltd. v. Shankarprasad, Kishorilal, Ashok K. Jha and Ramesh Chandra Sankla and opined that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. It further observed that barring the civil court, from which order as held by the three-Judge Bench in Radhey Shyam that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, would depend upon various aspects. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. It was reiterated that it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The two-Judge Bench further clarified that the Division Bench would also be required to scrutinise whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. The delineation with regard to necessary party not being relevant in the present case, the said aspect need not be adverted to.

41. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of the civil court can only be challenged under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in other cases, it will depend upon the other

factors as have been enumerated therein.

42. At this stage, it is extremely necessary to cull out the conclusions which are deducible from the aforesaid pronouncements. They are:

42.1. An appeal shall lie from the judgment of a Single Judge to a Division Bench of the High Court if it is so permitted within the ambit and sweep of the Letters Patent.

42.2. The power conferred on the High Court by the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation.

42.3. A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be a challenge under Article 227 of the Constitution and determination by the High Court under the said article and, hence, no intra-court appeal is entertainable.

42.4. The tenability of intra-court appeal will depend upon the Bench adjudicating the lis as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be a straitjacket formula for the same.

(Emphasis Supplied)

19. Both ***MMTC Ltd.*** **(Supra)** and ***Visan Kumar Shiv Charan Lal*** **(Supra)** arose out of proceedings before quasi-judicial bodies and thus, proceedings both under Article 226 and 227 were justified.

20. In respect of judicial orders passed by Civil Courts, the Full Bench of the Supreme Court in ***Radhey Shyam*** **(Supra)** has categorically held that judicial orders of civil courts are not amenable to writ jurisdiction under Article 226 of the Constitution and had overruled the contrary view in ***Surya Dev Rai*** **v.** ***Ram Chander Rai,*** **(2003) 6 SCC 675**. The said view has been repeated in ***Jogendrasinhji Vijaysinghji*** **(Supra)** and ***Ram Kishan Fauji*** **(Supra)**.

21. Coming to the case at hand, the petition arose out of the order dated 14.05.2016 passed by the Executing Court in execution proceedings under Sub-Section (9) and (10) of Section 11 of the Act, which read as

under:

> "*(9) Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order 21 of the Code of Civil Procedure, 1908.*
> *(10) The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.*"
>
> (Emphasis Supplied)

22. It is clear that after the introduction of the aforegoing sub-sections, the award passed by the Industrial Tribunal shall be executed by a Civil Court under Order XXI of the Code of Civil Procedure treating it to be a decree passed by such Civil Court. There is no doubt in our minds that any order passed by the executing court under the said provisions would be a judicial order passed by a civil court and thus, unamenable to challenge in writ proceedings.

23. Mr. Sethi has tried to persuade us was that as the proceedings before the executing court arise out of an award of the Industrial Tribunal, such court would also stand equated to the Tribunal. We are unable to agree with such a proposition. Once the award is passed by the Industrial Tribunal, it is to be executed by the Civil Court as if it were a decree passed by it. The Civil Court remains a civil court and does not become the Industrial Tribunal. The fact that it is executing an award from an Industrial Tribunal is inconsequential and the civil court executes the award treating the same as a decree passed by it. To this end, the second limb of Sub-Section (10), underlined above, is clear. For the same reason, the judgment of the Full Bench of the Andhra High Court

in ***Nalgonda Co-Op. Marketing*** **(Supra)** also does not assist the case of the appellant. In the said judgment, the issue pertained to the applicability of Limitation Act to Labour Courts and not an executing court under Section 11.

24. The analogy drawn with Section 33C of the Act also does not impress upon us. The procedure prescribed under Section 33C is completely different from the one under Section 11. Under Section 33C, it is for the Government to certify the dues and then the same is enforced by the Collector. Sub-Section (2) provides for adjudication of disputes in respect of computation to be decided by the Labour Court. Neither of the provisions contemplate any proceedings before a Civil Court.

25. Learned senior counsel of the appellant has also drawn our attention to the fact that in the previous round of litigation emanating from execution proceedings out of the same award, the order of the executing court was challenged before a Single Judge of this Court and then carried in a Letters Patent Appeal by the appellant herein. It was contended that the said LPA was not dismissed on the ground of maintainability and was even assailed before the Supreme Court.

26. The issue in that round of litigation pertained to the entitlement of the workmen to the back wages. The claim of the workmen was rejected by the executing court on 12.10.2012. The said order was impugned before this Court in W.P. (C) 1000/2013, which was allowed and the learned Single Judge held that the reinstatement directed in the award was to be read as reinstatement with full back wages. HTL preferred an appeal being LPA 6/2015, which was allowed by a coordinate bench of this Court and the writ petition of the workmen was dismissed. The workmen approached the Supreme Court in SLP (C) 10578/2015,

which was dismissed on 01.06.2016. After going through the orders passed by the coordinate bench of this Court and the Supreme Court, it is clear that the maintainability of the proceedings was never questioned and thus, cannot come to the aid of the appellant.

27. From the aforegoing discussion, it is clear that though the Court should not be influenced by nomenclature or provision invoked while ascertaining whether the proceedings before the Single Judge were under Article 226 or 227 and should look into the controversy involved and the reliefs sought, however, such an enquiry is not permissible in cases arising out of an order of a civil court as the same must be understood as one under Article 227.

28. Accordingly, the writ petition before the learned Single Judge must be held as one under Article 227 being a challenge to the judicial order of the executing court, which we have already held to be a civil court. Hence, the order of the learned Single Judge cannot be challenged by way of a Letters Patent Appeal in view of the express prohibition under Clause 10 of the Letters Patent applicable to this Court.

29. We are fortified in our view by the fact that the question of maintainability of a writ petition against a judicial order was raised in the written submissions dated 29.01.2018 before the learned Single Judge and the judgment in ***Radhey Shyam*** **(Supra)** was cited. Incase, the proceedings were held to be under Article 226 of the Constitution, the same would not have been maintainable as being against an order of the Civil Court.

30. Hence, the present appeal is dismissed as not maintainable.

31. In view of the aforegoing, CM 37157/2018 seeking stay of the operation of the impugned judgment is rendered infructuous and

therefore, dismissed.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

OCTOBER 16th, 2018
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