Union of India and Others

Vs

Ramachandra Sambhaji Kandekar and Others

Civil Appeals Nos. 1285-1296 of 1970

(E. S. Venkataramiah, P. N. Bhagwati, A. P. Sen JJ)

26.08.1980

JUDGMENT

P. N. BHAGWATI, J. –

1. These appeals by special leave are directed against the judgment of the Karnataka High Court allowing 12 writ petitions filed by different respondents. Each of the respondents owned at the material time not more than 4 power looms and carried on business of manufacturing cotton fabrics on those power looms. The case of the respondents was that each of them acquired his power looms from persons who were or had been licensees and started manufacturing cotton fabrics on those power looms prior to April 1, 1961. The respondents claimed that since each of them had not more than 4 power looms in his factory, no excise duty was payable on the cotton fabrics manufactured by him and this claim for exemption was based on a notification dated January 5, 1957 issued by the Government of India in exercise of the powers conferred upon it by Rule 8(1) of the Central Excise Rules, 1944. The Superintendent of Central Excise, however, rejected the claim for exemption on the ground that though the power looms owned by each of the respondents were not more than 4, manufacture of cotton fabrics on them had started after April 1, 1961 and none of the respondents was, therefore, entitled to exemption from payment of excise duty on the cotton fabrics manufactured by him. The excise duty was accordingly levied on each of the respondents by the Superintendent of Central Excise and this levy was confirmed in appeal by the Assistant Collector and in further appeal by the Collector of Central Excise. Each of the respondents thereupon preferred a writ petition in the Karnataka High Court challenging the levy of excise duty and praying that a writ of mandamus may be issued against the excise authorities directing them not to enforce he notice demanding excise duty. The writ petitions were allowed by the High Court and hence the Union of India preferred the present appeals after obtaining special leave from this Court.

2. Before we proceed to examine the rival contentions of the parties in regard to the controversy arising in these appeals, it is necessary to set out briefly the relevant provisions of law having a bearing on this controversy. The Central Excises and Salt Act, 1944 by Section 3 read with Item 19 provided for levy of excise duty on all varieties of cotton fabrics including cotton fabrics manufactured on power looms. Section 37, sub-section (2) of the Act conferred power on the Central Government to make Rules providing for a number of matters including inter alia clause (xvii) which was in the following terms : "Exempt any goods from the whole or any part of duty imposed by this Act". The Central Government in exercise of this rule-making power made the Central Excise Rules, 1944 of which Rule 8, clause (1) provided that -

> the Central Government may from time to time by notification in the official Gazette exempt, subject to such conditions as may be specified in the notification, any excisable goods from the whole or any part of the duty leviable on such goods.

In exercise of this power of exemption conferred under Rule 8, clause (1), the Central Government issued a notification dated January 5, 1957 exempting certain varieties of cotton fabrics from the whole of the excise duty leviable thereon and one of such varieties set out in Item 7 was as under :

> Cotton fabrics produced in factories commonly known as power looms (without spinning plants) provided that the number of power looms producing cotton fabrics in such factories does not exceed four.

This item was later submitted by another item by a notification of the Central Government dated January 19, 1957 and the substituted item was as follows :

> Cotton fabrics manufactured by or on behalf of the same person in one or more factories commonly known as power looms (without spinning plants), in which less than 5 power looms in all are installed.

The scope of the exemption granted under this item was restricted by the addition of the following proviso by a Central Government notification dated November 26, 1960 :

> Provided that this exemption shall not be applicable to a manufacturer who commences production of the said fabrics for the first time on or after December 1, 1960 by acquiring power looms from any other person who is, or has been a licensee of power loom factory.

There was a further change made by a notification issued by the Central Government on March 1, 1961 and the existing Item 7 was substituted by the following item :

> Cotton fabrics manufactured by or on behalf of the same person in one or more factories commonly known as power looms (without spinning plants) in which less than 3 power looms in all but not roller locker machine are installed.

The result was that the exemption granted under Item 7 was considerably narrowed down and the proviso taking away the exemption in certain cases was deleted. But again, by a notification dated April 1, 1961, the Central Government introduced the following proviso under Item 7 :

> Provided that this exemption shall not be applicable to a manufacturer who commences production of the said fabrics for the first time on or after April 1, 1961 by acquiring power looms from any other person who is or has been licensee of power loom factory.

Thus from March 1, 1961 the benefit of the exemption from excise duty was available only to those manufacturers who had not more than 2 power looms in all in their factories and from and after April 1, 1961 even this limited exemption was withdrawn from manufacturers who commenced production of cotton fabrics for the first time on or after April 1, 1961 by acquiring power looms from any person who was or had been a licensee of power loom factory.

3. Now in the present appeals each of the respondents owned admittedly not more than 4 power

looms, but it does not appear from the record before us as to whether any of them owned more than 2 power looms. If it is found that any of the respondents owned more than 2 power looms, he would not be within the exemption granted under Item 7 of the amended Notification dated January 5, 1957 and excise duty would be payable on the cotton fabrics manufactured by him. But even if any of the respondents owned not more than 2 power looms and was, therefore, within the exemption granted under Item 7 of the amended notification dated January 5, 1957, the question would still arise whether he forfeited the exemption by reason of the proviso to Item 7 introduced by the notification dated April 1, 1961. The answer to this question would depend upon the true construction of the proviso and we shall presently consider the question, but before we do so, it is necessary to refer to some other notifications issued by the Central Government under the Central Excise Rules, 1944.

4. On March 1, 1961, the Central Government in exercise of the power conferred upon it under Rule 96-J of the Central Excise Rules, 1944 issued a notification providing for a compounded levy scheme for payment of excise duty on cotton fabrics. By this notification, the Central Government fixed different rates "per shift, per month, per power loom employed by or on behalf of the same person in the manufacture of cotton fabrics" depending upon the number of power looms employed by such person. The rates prescribed for a case where more than 2 but no more than 24 power looms were employed were Rs. 20 where medium and/or coarse fabrics were manufactured and Rs. 25 where the power looms were employed in the manufacture of superfine and/or fine fabrics. There was a proviso at the foot of the notification (hereinafter referred to as the first proviso) which laid down as to how the computation should be made where roller locker machines were employed. The rates prescribed for a case where more than 2 but not more than 24 power looms were employed, were partially modified with retrospective effect by a subsequent notification issued by the Central Government on March 18, 1961 and the new rates were Rs. 10 and Rs. 12.50 in respect of the first 4 power looms and Rs. 20 and Rs. 25 in respect of the balance. The first proviso dealing with the case where roller locker machines were employed however, remained unchanged. Then came another notification of the Central Government dated April 1, 1961 by which the notification dated March 18, 1961 was amended by substituting the words "where more than 2 but not more the 24 power looms are employed" by the words "where not more than 24 power looms are employed" and adding a further proviso (hereinafter referred to as the third proviso) after the existing first proviso :

> Provided also that where a person commences manufacture of the said fabrics for the first time, on or after April 1, 1961, by acquiring power looms from any other person who is, or has been, a licensee of power loom factory, the rate per shift, per months, per power loom shall be the next higher rate, if any.

This was followed by a notification dated April 20, 1961 issued by the Central Government by which after the first proviso, the following proviso (hereinafter referred to as the second proviso) was inserted the notification dated March 18, 1961 :

> Provided further that where a person employs not more than four power looms and the said power looms are worked in not more than one shift, no duty shall be payable in respect thereof.

The result was that from March 18, 1961 up to April 1, 1961, a manufacturer having more than two but not more than 24 power looms was liable to pay excise duty at the rates set out in the amended notification dated March 18, 1961 and from April 1, 1961 to April 21, 1961, the position was that if such a manufacturer was found to have commenced manufacture of cotton fabrics for the first time

on or after April 1, 1961 by acquiring power looms from another person who was or had been a licensee of power loom factory, the rate at which excise duty would be payable by him would be the next higher rate specified in the amended notification dated March 18, 1961. So far as a manufacturer having two or less power looms was concerned, he was during the period from March 18, 1961 up to April 1, 1961 exempt from excise duty by reason of the notification dated January 5, 1957, but from April 1, 1961 to April 21, 1961 this exemption stood withdrawn if it was found that the manufacturer had commenced manufacture of cotton fabrics for the first time on or after April 1, 1961 by acquiring power looms from another person who was or had been a licensee of power loom factory and in such a case a manufacture would be liable to pay excise duty at the next higher rate prescribed in the amended notification dated March 18, 1961. This was the position which obtained up to April 20, 1961, when the second proviso was introduced exempting a manufacturer employing not more than 4 power looms and working even in not more than one shift from payment of excise duty. Each of the respondents had admittedly not more than 4 power looms and it was the case of the respondents that these power looms were worked in not more than one shift and hence the respondents claimed that they were exempted from liability for payment of excise duty by virtue of the second proviso. But the answer made on behalf of the Revenue was that the third proviso carved out an exception from the second proviso and since each of the respondents commenced manufacture of cotton fabrics for the first time after April 1, 1961, he was not exempt from payment of excise duty, but was liable to pay the same at the next higher rate provided in the amended notification dated March 18, 1961.

5. Now going back to the proviso under Item 7 of the notification dated January 5, 1957, we find that the language of this proviso is clear and explicit and does not admit of any doubt or equivocation. It says in so many terms that the exemption under Item 7 shall not be applicable to a manufacturer who has commenced his production of cotton fabrics for the first time on or after April 1, 1961 by acquiring power looms from another person who is or has been a licensee of power loom factory. There are two conditions which must exist before the mischief of the proviso is attracted. One is that the manufacturer must have commenced production of cotton fabrics for the first time on or after April 1, 1961 and the other is that the power looms on which he manufactures cotton fabrics must have been acquired by him from a person who is or has been a licensee of power loom factory. It is clear on a plain grammatical construction that the prescription of the date, April 1, 1961, has reference only to commencement of production of the cotton fabrics and not to the acquisition of the power looms. What is required is that the production of cotton fabrics must have been commenced by the manufacturer for the first time on or after April 1, 1961 and not that the power looms also must have been acquired by him on or after that date. It is immaterial as to when the manufacturer acquired the power looms; he may have acquired them prior to April 1, 1961 : that is totally irrelevant. The only attribute that the power looms must satisfy is that they must have been acquired from a person who is or has been a licensee of power loom factory and if this attribute is present, then it is of no consequence as to when the power looms were acquired by the manufacturer. The event which then attracts the applicability of the proviso is that the manufacturer should have commenced production of cotton fabrics on these power looms for the first time on or after April 1, 1961. If this condition is satisfied, the provision comes into play and withdraws the exemption which would otherwise have been available to the manufacturer under the main Item 7. If the intention of the Central Government in framing the proviso was that not only the production of cotton fabrics on the power looms should have commenced on or after April 1, 1961, but that the power looms also should have been acquired by the manufacturer on or after that date, the Central Government could have easily expressed such intention by using appropriate language in the proviso. The Central Government could have transposed the words "on or after April 1, 1961" and

put them at the end of the proviso. That would have clearly conveyed the intention of the Central Government that the power looms must be acquired by the manufacturer on or after April 1, 1961 and if the power looms are acquired on or after April 1, 1961, it must follow a fortiorari that the production of cotton fabrics on the power looms by the manufacturer would necessarily commence on or after that date. But the Central Government advisedly placed the words "on or after April 1, 1961" after the clause referring to commencement of production and before the clause relating to acquisition of power looms. It is a well settled rule of interpretation applicable alike to the rule-making authority as to the legislature that where there are two expressions which could have been used convey a certain intention, but one of these expressions conveys that intention less clearly than the other, it is proper to conclude that if the draftsman used that one of the two expressions which would convey the intention less clearly, he does not intend to convey that intention at all. Moreover, here the dictates of grammar as well as language compel us to take the view that the date April 1, 1961 has reference only to commencement of production and not to acquisition of the power looms. It is no our mind clear that if a manufacturer is found to have commenced production of cotton fabrics on power looms for the first time on or after April 1, 1961, he would fall within the mischief of the proviso and it would be entirely immaterial as to when he acquired the power looms, whether before or after April 1, 1961, so long as the power looms are acquired from a person who is or has been a licensee of power loom factory. The High Court was, therefore, clearly in error in construing the language of this proviso to mean that the power looms also must have been acquired by the manufacturer on or after April 1, 1961 in order to attract the applicability of the proviso.

6. The same construction must obviously be placed on the third proviso introduced in the notification dated March 18, 1961 by the notification of April 1, 1961. The language and structure of the third proviso are identical with the language and structure of the proviso under Item 7 of the notification dated January 5, 1957 and the same view must, therefore, govern the interpretation of the third proviso. It is necessary to repeat what we have said in the foregoing paragraph, because what we have said there applies fully and completely in regard to the interpretation of the third proviso and, therefore, in order to determine whether this proviso is applicable to any of the respondents, we have to consider whether the respondent concerned commenced manufacture of cotton fabrics on the power looms for the first time on or after April 1, 1961, irrespective whether he acquired the power looms before or after that date. The only relevant inquiry necessary to be made is as to when the manufacturer of cotton fabrics on the power looms was commenced for the first time by the respondent. If it was on or after April 1, 1961, the mischief of the third proviso would be attracted and the respondent would be liable to pay excise duty at the next higher rate. Of course, the second proviso introduced in the notification dated March 18, 1961 with effect from April 20, 1961 provided that where a person employs not more than 4 power looms and these power looms are worked in not more than one shift, no excise duty shall be payable in respect thereof, but the third proviso on its proper interpretation, enacts a substantive provision for payment of excise duty at the next higher rate in the cases therein specified and this substantive provision overrides the second proviso. The second proviso exempts a manufacturer employing not more than 4 power looms and working not more than one shift from payment of excise duty in those cases which do not fall within the third proviso and where a case is covered by the third proviso, the second proviso would be inapplicable and the manufacturer would be liable to pay excise duty at the next higher rate. This is the only way in which the two provisos can be harmoniously construed in a manner which would give effect to both.

7. We are, therefore, of the view that even though each of the respondents in the present case owned not more than four power looms, he would be liable to pay excise duty at the next higher rate under the third proviso to the notification dated March 18, 1961, if he started manufacture of cotton

fabrics on his power looms for the first time on or after April 1, 1961, irrespective whether he acquired the power looms from the licensee before or after the date. We must, therefore, set aside the judgment of the High Court and send the matter back to the High Court so that the High Court may decide the writ petitions of the respondents in accordance with law and in the light of the observations contained in this judgment.

8. We accordingly allow the appeals, set aside the judgment of the High Court and remand the writ petitions to the High Court for disposal in accordance with law. Though the appellants have succeeded, they will pay the costs of the respondents as provided in the order granting special leave.

D. L. F. United Private Ltd.

Vs

Pt. Prem Raj and Others

Civil Appeal No. 214 of 1974

12.08.1980

JUDGMENT

O. CHINNAPPA REDDY, J. –

The respondent, Pt. Prem Raj who is the plaintiff in suit No. 340 of 1968 in Delhi High Court, undaunted by four previous unsuccessful attempt to amend his plaint filed yet another application for amendment of the plaint and was finally successful. The first defendant has appealed to this Court under Article 136 of the Constitution. It is unnecessary to state the facts of the case in any detail, as the necessary facts may be gleaned from a decision of this Court in Prem Raj v. D.L. F. Housing & Construction Pvt. Ltd. ((1968) 3 SCR 648 : AIR 198 SC 1355), on an earlier occasion when the parties travelled up to this Court in connection with a preliminary objection raised by the first defendant to the original frame of the suit in which the plaintiff asked for two inconsistent reliefs namely a declaration that a certain contract dated June 11, 1958 was void and inoperative against him having been obtained by undue influence, and in the alternative a decree for specific performance of certain arms in the same contract. This Court held that the plaintiff could not, in the alternative, seek specific performance of a contract which he wanted to be declared void. Taking up the story from where the parties were left after the decision of this Court in (1968) 3 SCR 648, it is only necessary to mention that thereafter the plaintiff made four unsuccessful attempts and finally the present successful attempt to amend his plaint so as to enable him to obtain the relief of allotment of 22 plots of land at the rate of Rs. nine per square yard. The contract, the specific performance of which the plaintiff had initially sought was for the conveyance of there twenty-two plots. The earlier four applications were rejected on the ground that the plaintiff could not, by a mere trick of pleading, be permitted to seek he relief which this Court had already held he was not entitled to seek as he was seeking a declaration that the contract was void. In the fifth application for amendment the plaintiff, very cleverly, thanks to the ingenuity of the counsel, adopted the stand that he was disaffirming the contract dated June 11, 1958 and was now seeking to have restore to him those advantages which had been gained by the first defendant under the contract. He was not seeking specific performance of the contract but on the other hand he was standing by his claim that the contract was void but seeking to have restored to him such benefits as he was entitled to as a result of the contract being void. The High Court noticed that the plaintiff was, in effect, seeking, by

the amendment, what he had earlier sought in his previous attempts. The High Court observed :

> By the proposed amendment, therefore, the plaintiff in effect has claimed the relief which would be analogous to the relief for the specific performance of the contract or to put it differently, if the relief sought by the plaintiff in the proposed amended plaint were to be allowed to the plaintiff, the effect would be as though the plaintiff had been granted a decree for specific performance of the agreement.

Despite noticing so much the High Court allowed the amendment on the ground that the relief sought by the amendment could be claimed as a consequence of the contract being void. We have been taken through the several agreements between the parties, the original plaint, the earlier amendments sought and the amendment now sought. We are unable to agree with the High Court that the amended relief would flow from the contract being declared void. In the proposed new paragraphs 10-A, 10-B, 10-C and 10-D the plaintiff has not explained how the allotment of twenty-two plots of land to him would be a consequence of the contract being void. While no exception can be taken to the proposition the mutual advantages gained have to be restituted on a contact being or becoming void, we have been unable to see how the proposition can be woven into the texture of the facts and allegations in the present case. We are afraid that the present attempt is no more that what all the previous attempts were - juggling with words towards the same end - and must meet the same end. The appeal is, therefore, allowed and application for amendment of plaint is dismissed with costs throughout. Civil Miscellaneous Petition No. 9038 of 1980 is allowed.

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