ALLAHABAD HIGH COURT

Emperor

Vs

Ram Lal

(Piggottk, J.)

18.02.1919

JUDGMENT

Piggott, J.

1. This is an application for revision of an order of the Sessions Judge of Jhansi, declining to interfere with an order by a first class Magistrate of the same district passed under Section 2 of the Workmen's Breach of Contract Act (No. XIII of 1859). As the application raises one question of law on which it is supported by the authority of the Punjab Chief Court, I think it advisable to state the essential facts of the case and my reasons for rejecting the application. The applicants are eight workmen who entered into an agreement by which they incurred certain joint and several liabilities towards a contractor named Murli Dhar. The applicants were to furnish Murli Dhar with stone road-metal at certain specified rates. They were to receive advances from the said contractor and they were to continue working for him and for no one else, so long as any sum remained due to Murli Dhar in respect of the said advances. There was a special provision to the effect that the contract might at any moment be terminated on the workmen's repaying to Murli Dhar double the amount of the balance due in respect of advances received. In the month of November, 1917, the workmen left Murli Dhar's service and entered that of certain rival contractors. At that moment a very considerable sum was due to Murli Dhar on account of the advances which he had made. The sum to his credit in the hands of the applicants is found to have exceeded, at the moment when they left his service, Rs. 1,100.

2. Murli Dhar did not immediately apply for the remedy which he now claims as open to him under Act No. XIII of 1859, nor did he immediately institute a civil suit for the relief which he might have claimed under the penalty clause, that is to say, to recover double the amount of the pending balance of the advances from the defaulting workmen. He entered into negotiations with the rival contractors into whose service the applicants had passed, and also with the applicants themselves. It is proved that negotiations took place in the course of which Murli Dhar male what seems to me on the materials available a fair, and even generous, offer. He said that would be satisfied with the re-payment of the pending balance of Rs. 1,100 and odd, without any penalty,

provided that two recruits for military service were provided in his name. Presumably he desired to render a public service, and to obtain due credit for having done so, as a condition precedent to his accepting the settlement of the dispute between himself and the defaulting workmen on terms apparently most favourable to the latter. In consequence of this offer made by Murli Dhar, which I presume was ostensibly accepted by the workmen and by the rival contractors, Murli Dhar was repaid a sum of about Rs. 1,050. The finding is that a cash balance of Rs. 69 on account of the advances made to the applicants remained due from them, and this finding I am bound to accept. It appears also that Murli Dhar's stipulation as to the furnishing of two recruits for the public service was never complied with. When matters had reached this stage Murli Dhar finally demanded that the workmen should return to his service and work off the balance of Rs. 69 due from them according to the terms of the contract, that is, by the supply of road-metal at certain rates. The latter refused to do this, and thereupon proceedings were taken resulting in the present application. An order has been passed by the Magistrate which complies in substance with the provisions of Sections 2 and 3 of Act No. XIII of 1859. I should perhaps note that, in the course of these proceedings the applicants admittedly tendered the balance of Rs. 69 due to Murli Dhar, but the latter insisted upon the option given him by Section 2 of the Act to claim, not an order for the repayment of the money advanced, but one for the performance of the work according to the terms of the contract.

3. With reference to this point, one of the pleas taken before me is that the order for performance of the work should not have been passed in view of the tender made by the applicants of the balance due. It seems sufficient to say that, if the provisions of Act No. XIII of 1859 are applicable at all to the circumstances of the case, the complainant, that is to say Murli Dhar, had an option to refuse to accept the mere repayment of the balance due as adequate compensation. Moreover, it can scarcely be contended that the mere repayment of this small balance of the advances could on the face of it be regarded as affording adequate compensation to Murli Dhar for the conduct of the workmen in abandoning his service. In the same connection the point is taken that the contract of service was too vague and indefinite to be specifically enforced. I can only say that, after due consideration of the terms of the contract, I am not of this opinion. The order is that the applicants shall supply stone road-metal at certain specified rates, until the value of the material supplied at the said rates comes to Rs. 69. This is a clear and easily enforceable order, and it is in accordance with the terms of the original contract between the parties.

4. There remain two points for consideration. It is said that, inasmuch as the original contract of service provided for a penalty in the event of breach of the same, there was no remedy left to the employer under the provisions of Act No. XIII of 1859, and that he must be regarded as having virtually bound himself by contract to be content with the enforcement of the aforesaid penalty, that is to say, with the recovery through the Civil Courts of double the amount of the balance of the advances due from his workmen on the date on which they deserted his service. There is authority for this proposition in the case of *Emperor v. Muhammad Din*[1] which has been followed by the Punjab Chief Court in a later case reported in *Emperor v. Khuda Bakhsh*[2] The

opinion expressed by the learned Judges of the Punjab Chief Court is not supported by any detailed argument, unless a reference to the preamble of Act No. XIII of 1859, is to be implied in the remarks of Mr. Justice Kensington in the earlier of the two cases. It was pointed out by a learned Judge of this Court in the case of Queen-Empress v. Indarjit (1) that it is the specific provisions of the Act which require to be interpreted and enforced and that these ought not to be read subject to the general language used in the preamble. I note more particularly that in the contract of service which was before the Court in that case there was a specific penalty provided, but it was not suggested that the presence of this stipulation took the contract out of the operation of Act No. XIII of 1859. My own opinion is that the presence of such stipulation in a contract of service may make it impossible for the employer to invoke the provisions of Act No. XIII of 1859, but that it will only do so in the event of the workmen or labourers who entered into the contract paying, or tendering in full, the penalty provided by the contract itself. I may illustrate my meaning by the facts of the reported case of *Queen-Empress v. [3]Indarjit* It was there provided that, if Indarjit committed a breach of the contract of service which he had entered into with the Elgin Mills Company at Cawnpore, he should pay a sum of Rs. 99, or in the alternative the Company might proceed against him under the provisions of Act No. XIII of 1859. In my opinion, if it had been found that Indarjit had, prior to the institution of any proceedings under the said Act, and indeed prior to any breach on his part of the conditions of the contrast of service, paid or tendered to the Company the full stipulated penalty of Rs. 99, it would not have been reasonable or lawful to enforce against him the provisions of Act No. XIII of 1859. Referring to the terms of the Act itself, I would say that a workman who had paid up in full the penalty which his master or employer had agreed beforehand to accept as compensation for any breach of the contract of service on the part of the workman, had thereby provided himself with a lawful and reasonable excuse for refusing to continue to perform his work according to the terms of his contract. In the present case it is not suggested that the applicants, before they left Murli Dhar's service, or indeed at any time since then, offered to pay the full penalty stipulated under the terms of the contract, that is to say, to repay to Murli Dhar double the balance of Rs. 1,100 and odd which was due to him on the date on which the contract of service was wilfully broken. I think, therefore, and it seems to me that I am supported in this view by the case of *Queen-Empress v. Indarjit*[4] that an employer of labour is not precluded from availing himself of the provisions of Act No. XIII of 1859 merely because, in the contract of service between himself and his workmen, there is a stipulated penalty capable of enforcement by a civil suit, in the event of breach of the contract on the part of the workmen, which penalty has admittedly not been enforced nor payment of the same tendered, on the part of the workmen.

5. The other point taken before me is that the negotiations which took place between Murli Dhar and the defaulting workmen, and also with the rival contractors into whose service the latter had entered, amounted to a novation of the contract of service between Murli Dhar and the applicants, so as to render the latter incapable of enforcement either by way of application under Act No. XIII of 1859 or in any other manner, but I think the simplest answer to this contention is that, on the facts found, there was no complete novation of contract. Murli Dhar offered to be

satisfied with a certain payment, far less than the penalty to which he was entitled under his contract, provided a certain condition which he chose to attach to his offer were fulfilled. That condition was never fulfilled, and Murli Dhar's offer consequently lapsed.

6. For these reasons I think that the decision of the courts below in this matter was correct and I dismiss this application.

Cases Referred.

1(1913) 22 Indian Cases, 742
2(1914) 27 Indian Cases, 901
3(1889) I.L.R., 11 All., 262
4(1889) I.L.R. 11 All., 262