

# BOMBAY HIGH COURT

Devappa Ramappa Naik

Vs

Emperor

(Heaton, C.J. Pratt, J.)

19.12.1918

## JUDGMENT

### **Pratt, J.**

1. This is an application for a revision of an order made by the Second Class Magistrate under Section 2 of the Workman's Breach of Contract Act (XIII of 1859) directing the refund of money advanced. The order of the Second Class Magistrate was made on the 9th April 1918 and it was confirmed on appeal by the District Magistrate on 1st August 1918.

2. A preliminary objection is taken that revision by this Court is incompetent and that the application for revision is time-barred.

3. Now Section 2 of the Workman's Breach of Contract Act is explained in the case of *Emperor v. Balu Saluji* as divisible into two parts. The first part is an inquiry into the fact whether a breach of contract has occurred and in the event of the breach of contract being proved, that inquiry concludes with an order directing either return of the advance, or specific performance of the contract. The second part is an independent proceeding' ensuing on disobedience of the order made on the first part. It is this second proceeding that is penal. For there is no offence unless and until the order made under the first part has been disobeyed. It is on this construction of the section that the preliminary objection is raised that whereas the order made in this case by the Magistrate is an order under part I, the proceeding is not of a criminal, but of a civil, nature and, therefore, not subject to revision by this Court. In my opinion there is no substance in this objection. The power of revision of this Court under Sections 435 and 439 of the Criminal Procedure Code refers to any proceeding before any inferior Court situate in the local limits of our jurisdiction. The test is not the nature of the proceeding held by the Court, but the nature of the Court in which that proceeding is held. Proceedings of a civil nature may be held in a Criminal Court, as for instance, applications for maintenance under Section 488 of the Criminal Procedure Code, and these are subject to revision under section 435. The Legislature evidently

considered that proceedings of reference to easements and possession of moveable property, though of a civil nature, may be subject to revision by the High Court, for they have been made the subject of the special exemption enacted in sub-Section 3 of Section 439. Further the case of Chinto Vinayah Kulkarni, In re 2 Bom. L.R. 801, is a case in which this Court revised an order made under part I of Section 2 of the Workman's Breach of Contract Act.

4. As to limitation it is true that the appeal to the District Magistrate was incompetent. An appeal lies to the District Magistrate under Section 407 of the Criminal Procedure Code only in the case of a conviction. But as the proceeding under Section 2 of the Workman's Breach of Contract Act had not reached the stage of part II of that Section, there had been no offence and, therefore, no conviction. The period of limitation will, therefore, run from the date of the order made by the Second Class Magistrate, i.e., 9th April 1918. But the rule of sixty days for revisional applications is not inflexible and, in the circumstances, I think it fair that allowance should be made for the time occupied in the proceeding before the District Magistrate. I would, therefore, disallow the objections as to limitation and entertain the application on the merits.

5. To come to the merits, the contract was a contract of cartage under which the applicant engaged to remove 100 logs of wood from a forest to a forest depot, a distance of 22 miles, at a fixed rate of Re. 1-14-0 for every Khanday of 13 cubit feet of wood carted. Now the cases show that a contract of this sort is not a contract of an artificer, a workman or a labourer: see *Queen-Empress v. Hanma*<sup>2</sup> and *Caluram v. Chengappa*<sup>3</sup> Those cases refer to contracts of cartage and proceed on the ground that the contracts did not show that the person contracting to have the work done bound himself to render personal labour. It is sought to distinguish this contract, on the ground that it does include a covenant that the applicant shall do the work on his own personal responsibility and with his personal labour." But it is admitted even by the complainant that this part of the contract was not to be acted upon. There was no probability or even possibility of the applicant doing personal labour and it was not expected that he should do so. This clause, therefore, does not operate to confer upon the applicant the status of artificer, workman or labourer.

6. There is a further covenant in the contract that in case of breach it shall be enforced according to the provisions of the Workman's Breach of contract Act. But an agreement of parties cannot confer jurisdiction, for "when the Judge has no inherent jurisdiction over the subject-matter of a suit the parties cannot by their mutual consent convert it into a proper judicial process": *Ledgard v. Bull*<sup>4</sup>

7. I would, therefore, allow the application and reverse the order made by the Second Class Magistrate.

**Heaton, J.**

8. I agree. Apart altogether from authority, I have no doubt whatever that the applicant does not in consequence of the contract between him and the complainant become an artificer, a workman or a labourer. The work which he undertook to do was the work of a contractor and not the work of an artificer, or of a workman, or of a labourer.

**Cases Referred.**

11 Ind. Cas. 387 : 33 B. 25 : 10 Bom. L.R. 1126 : 8 Cr.L.J. 409

2(1891) Rat. Unrep. Cr.C. 537 : Cr. Rg. 9 Of 1891

313 M. 351 : 1 Weir 691 : 4 Ind. Dec. (N.S.) 957

413 I.A. 134 at p. 145 : 9 A. 191 : 4 Sar. P.C.J. 741 : 5 Ind. Dec. (N.S.) 561