

2013 C L D 108

Lahore

Before Mrs. Ayesha A. Malik, J

ICI POLYESTER EMPLOYEES UNION (CBA) REGISTERED--Petitioner

versus

TRUSTEES UNION and 2 others--Respondents

C.O. No.31 of 2009, decided on 19th December, 2012.

Haris Azmat for Petitioner

Shahzad Ata. Elahi for Respondents Nos. 1 to 5.

Umair Mansoor, Assistant Director, Law, SECP for Respondent No.6 (SECP)

Date of hearing: 28th November, 2012.

JUDGMENT

Petition dismissed

(a) Companies Ordinance (XLVII of 1984)---Second 7, 227, 229, & 476---Securities and Exchange Commission of Pakistan Act (XLII of 1997), S. 20...Employee's provident fund and securities---Petitioner (Employee's Union) under S.227 of the Companies Ordinance, 1984 sought direction for payment of loss and for furnishing all receipts of money deposited in the provident fund by the respondent company---Contention of the petitioner was that under S.7 of the Companies Ordinance, 1984 High Court could exercise jurisdiction in all civil matters under Companies Ordinance, 1984-- Validity---Section 7 of the Companies Ordinance, 1984, no doubt, vested original civil jurisdiction with the High Court, however, context or meaning of original civil jurisdiction was that jurisdiction conferred by statute, and which was in contradiction to criminal jurisdiction---Companies Ordinance, 1984 specifically mentioned "the court" (High Court) where it empowered "the court" (High, Court) to exercise jurisdiction Expression "having jurisdiction" meant that the High Court was the authorized legal authority to hear and determine issues under the Companies Ordinance, 1984, but S.7 of the Companies Ordinance, 1984 did not necessitate the High Court to adjudicate upon all disputes which arose under the Companies Ordinance, 1984---Wherever it was required under the Companies Ordinance, 1984, specific sections provided that the High Court shall adjudicate upon a matter---Argument that High Court while exercising jurisdiction under S.7 of the Companies Ordinance, 1984 must adjudicate upon the present case was flawed as this interpretation went against spirit of the Companies Ordinance, 1984 and against the rationale for S.7 of the Companies Ordinance, 1984---Petitioner should have filed its grievance before the Securities and Exchange Commission of Pakistan which was the competent authority to adjudicate upon irregularities and management of a provident fund under S.227 of the, Companies Ordinance, 1984--High Court under S.7 of the Companies Ordinance, 1984 could not direct the Securities and Exchange Commission of Pakistan to carry out an investigation under S. 227 of the Ordinance---Petition under S.227 of the Companies Ordinance, 1984 being not maintainable, was dismissed in circumstances.

Gulzar Ahmed v. The State 2003 CLD 981 and Lahore Race Club through Secretary and others v. Raja Khushbakht ur Rehman 2008 CLD 1 117 ref.

Brother Steel Mills Ltd. and others v. Mian Ilyas Mira] and 14 others PLD 1996 SC 543 and Messrs Sunrise Textiles Ltd. and others v. Mashreq Bank PSC and others PLD 1996 Lab. 1 rel.

(b) Companies Ordinance (XLVII of 1984)-- 7A--, Interpretation of S.7, Companies Ordinance, 1984->Jurisdiction of High Court---Adjudication of dispute---Scope---Section 7 of the Companies Ordinance, 1984 no doubt vested original civil jurisdiction with the High Court, however, context or meaning of "original civil jurisdiction" was that jurisdiction as conferred by statute, and in

contradiction to criminal jurisdiction--- Companies Ordinance, 1984 specifically mentioned "the court" where it empowered "the court" to exercise jurisdiction---Expression "having jurisdiction" meant that the High Court was the authorized legal authority to hear and determine issues under the Companies Ordinance, 1984, but S.7 of the Companies Ordinance, 1984 did not necessitate the High Court to adjudicate upon all disputes which arose under the Companies Ordinance, 1984- Wherever it was required under the Companies Ordinance, 1984, specific sections provided that the High Court shall adjudicate upon a matter.

Brother Steel Mills Ltd. and others v. Mian Ilyas Miraj and 14 others PLD 1996 SC 543 and Messrs Sunrise Textiles Ltd. and others v. Mashreq Bank PSC and others PLD 1996 Lah. 1 rel.

(c) Companies Ordinance (XLVII of 1984---Section 227, 228 & 229--Securities and Exchange Commission of Pakistan Act (XLII of 1997), Preamble & S. 20--Employee's provident fund and securities---Power to impose fine/penalty and conduct investigation into irregularities and mismanagement- Jurisdiction-a Jurisdiction under S.227 of the Companies Ordinance, 1984 vested with the Securities and Exchange Commission of Pakistan.

MRS. AYESHA A. MALIK, J.....Through this C.O. instituted under section 227 of the Companies Ordinance, 1984 (the Ordinance), the petitioner has prayed that respondents Nos. 1 and 2 be directed to pay the loss of money amounting to more than Rs. 100 million in the Provident Fund to the members of the petitioner and furnish all receipts of money deposited in the Provident Fund in accordance with section 228 of the Ordinance. The petitioner has also prayed that respondent No.3 be directed-to carry out a detailed investigation of the matter, especially regarding the careless and negligent conduct of respondent No.1 and take strict action against them in accordance with law and be granted costs of the case.

2. Two preliminary objections with respect to the maintainability of this petition were taken up by the counsel for respondents Nos. 1 to 5. The first objection was that this Court does not have jurisdiction to decide this Petition. In this regard, he argued that an application under section 227 of the Ordinance lies before respondent No.6. The jurisdiction conferred upon this Court under the Ordinance does not empower this Court to look into, investigate or adjudicate upon affairs of a company with regard to any alleged violation of section 227 of the Ordinance nor can this Court impose any fine or issue any direction under section 229 of the Ordinance. The second objection is that the petitioner has no locus standi to file the instant petition as any application referencing' violation of section 227 of the Ordinance can only be made by a 'person' depositing money or making contributions to a provident fund in terms of section 227. In the instant case, the petitioner is not making any contribution to the ICI Pakistan Non-Management Staff Provident Fund (the Provident Fund) established by respondent No.5 pursuant to the deed of trust dated February 26, 1954. Hence the petitioner has no locus standi and is not entitled to claim any loss.

3. Learned counsel for respondent No.6 also raised objections on the maintainability of this Petition. He stated that in terms of sections 227 to 229 of the Ordinance read with section 476(I), no such petition' can be filed before this Court and the remedy, if any, lies with the respondent No.6, who can take up such matters and impose penalty under the law. He argued that the petitioner has not filed any petition before respondent No.6 for redressal of their grievance and as such, cannot seek a direction from the Court to conduct a detailed investigation against the respondent No.6.

4. In rebuttal to the preliminary objections, learned counsel. for the petitioner argued that the High Court is vested with jurisdiction by virtue of section 7 of the Ordinance. He placed reliance on

the law laid down in case 2003 CLD 981 (Gulzar Ahmed v. The State) to argue the point that the jurisdiction exercised by the Company Judge under section 7 of the Ordinance is a jurisdiction of civil nature. He argued that this means that the High Court as a Company Court exercises jurisdiction in all civil matters. Since the dispute is of a civil nature, hence it can be decided by this Court. He has also placed reliance on the law laid down in ease 2008 CLD 1117 (Lahore Race Club through Secretary and others v. Raja Khushbakht ur Rehman) to advance his arguments that the High Court under the Ordinance has original civil jurisdiction. Meaning that this Court is the Court of first instance for the disputes in relation to and under the Ordinance. The thrust of his argument was that since the dispute of the petitioner is a civil dispute, hence this Court being the competent court has jurisdiction under section 7 of the Ordinance to grant the relief claimed by the petitioners.

5. Arguments heard. Record perused.

6. A petition under section 227 of the Ordinance is filed for ensuring deposits into the Provident Fund, and for safeguarding the said deposits. Any irregularities or failure by any company in this regard can be challenged or questioned under the said section. The question that arises in this petition is that who is to decide upon a petition filed under section 227, i.e. is it the Company Court or is it the respondent No.6 Section 7 of the Ordinance' provides for the jurisdiction of Courts. Section 7(1) provides that:-

“7(1) The Court having jurisdiction under this Ordinance shall be the High Court having jurisdiction in the place at which the registered office of the company is situate:

Provided that the Federal Government may, by notification in the Official Gazette and subject to such restrictions and conditions as it thinks fit. empower any civil court to exercise all or any of the jurisdiction by this Ordinance conferred upon the Court, and in the case such court shall, as regards the jurisdiction so conferred, be the Court in respect of companies having their registered office within the territorial jurisdiction of such court.

The section, no doubt, vests original civil jurisdiction with the High Court as was held in case PLD 1996 SC 543 (Brother Steel Mills Ltd. and others v. Milan Ilyas Miraj and 14 others). However, the context or meaning of original civil jurisdiction as decided in the case PLD 1996 Lahore 1 (Messrs Sunrise Textiles Ltd. and others v. Mashreq Bank PSC and others) is that jurisdiction is conferred by statute and is in contradiction to criminal jurisdiction.

7. A further review of the Ordinance shows that the Ordinance specifically mentions "the court" where it empowers "the court" to exercise jurisdiction, For example, section 152 of the Ordinance is the power of the court to rectify the register of members. Section 179 of the Ordinance is the power of the court to declare the election of directors as invalid, or section 305 is the Section where the court has the powers of winding up etc. The expression "having jurisdiction" means that the High Court is the authorized legal authority to hear and determine issues under the Ordinance, but section 7 does not necessitate the High Court to adjudicate upon all disputes which arise under the Ordinance. Where it is required under the Ordinance. Specific Sections of the Ordinance, provide that the Court shall adjudicate upon the matter.

8. The argument of the counsel for the petitioner that the high Court, while exercising jurisdiction under section 7, must adjudicate upon the instant Petition under section 227, being an original civil dispute is flawed as this interpretation goes against the spirit of the Ordinance and the rationale of section 7. I am of the opinion that the petitioner should have filed its grievance before respondent No.6, being the competent authority to adjudicate upon irregularities and

management of a Provident Fund under section 227. A review of the petitioner's prayer will also testify to this fact as the petitioner itself seeks a direction to respondent No.6 to carry out a detailed investigation of the matter, and take strict action against respondents Nos. 1 to 5. As such the Court. under section 7 of the Ordinance cannot direct the respondent No.6 to carry out an investigation under section 227 of the Ordinance.

9. In the case at hand, the petitioner has not moved any application or complaint before respondent No. 6, yet they seek a direction from this Court that respondent No. 6 conduct a detailed investigation in the matters. Without approaching the respondent No.6 for adjudication on the dispute, there is no justification for seeking a direction from this Court in the manlier sought by the petitioner.

10. Even otherwise, a review of the prayer clause shows that the petitioner is not entitled to the prayer sought as this Court, vested with jurisdiction under section 7 of the Companies Ordinance, cannot direct respondents Nos. 1 to 5 to pay the loss of more than Rs. 100 million as claimed by the petitioner. In order to claim loss, evidence has to be led, and the petitioner would have to establish their relationship with respondents Nos. 1 to 5, the terms of their relationship, the breach and the loss suffered. This Court cannot determine the loss suffered by the petitioner, if any, under a Petition under section 227 of the Ordinance.

11. Therefore, in view of ,the aforesaid, I find that the Petition is not maintainable.

12. The second objection was with reference to the locus standi of the petitioner. The petitioner is a registered union of respondent No.5. Since jurisdiction under section 227 of the Companies Ordinance vests with respondent No. 6, I leave it for them to decide upon this issue, in the event that the petitioner files any petition before them.

13. In view of the aforesaid: this C.O, has no merit; hence dismissed.