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LEGAL WORLD

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Corporate Laws

Landmark Judgement

LMJ 03:03:2026

RAM CHAND & SONS SUGAR MILLS PVT. LTD. v. KANHAYA LAL BHARGAVA & ORS [SC]

Civil Appeal No. 166 of 1966

K. Subba Rao & V. Ramaswami, JJ. [Decided on 10/03/1966]

Equivalent citations: AIR 1966 SC 1899; 1967 ALL. L. J. 102; 1967 BLJR 59; 1967 37 Comp Cas 42; 1966 3 SCR 856.

Civil Procedure Code, 1908 - suit against company-director fails to appear before the court despite many opportunities - defence struck down - whether correct-Held, No.

Brief facts:

The Respondents filed a civil suit against the appellant company. The Trial Court issued summon to the director of the appellant company to appear before it. The director did not appear and the defence of the appellant company was struck down on an application made by the Respondent. The High court also confirmed the order. Hence the present appeal.

Decision: Allowed.

Reason:

Having regard to the said decisions, the scope of the inherent power of a court under s. 151 of the Code may be defined thus: The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of s.151 of the Code, they do not control the undoubted power of the court conferred under s. 151 of the Code to make a suitable order to prevent the abuse of the process of the court.

The contention of the learned counsel for the appellant is that the director mentioned in r. 3 is the director mentioned in r. 1 thereof. To put it in other words, the director who signs and verifies the pleadings can only be required to appear personally to answer material questions relating to the suit. Though this contention appears to be plausible, it is not sound, Rules 1, 2 and 3, of O.XXIX of the Code use the words "any director". Under r. 1 thereof a director who is able to depose to the facts of the case may sign and verify the pleadings; under r. 2, a summons may be served upon any director; and under r. 3, any director who may be able to answer material questions relating to the suit may be required to appear personally before the court. The adjective "any" indicates that any one of the directors with the requisite qualifications, prescribed by rr. 1, 2 and 3 can perform the functions laid down in each of the rules respectively. One can visualize a situation where a director who signed and verified the pleadings may not be in a position to answer certain material questions relating to the suit.

If so, there is no reason why the director who may be able to answer such material questions is excluded from the scope of r. 3. Such an interpretation will defeat the purpose of the said rule. Therefore, "any director" in r. 3 need not be the same director who has signed and verified a pleading or on whom summons has been served. He can be any one of the directors who will be in a position to answer material questions relating to the suit.

Even so, learned counsel for the appellant contended that O.XXIX, r. 3 of the Code did not provide for any penalty in case the director required to appear in court failed to do so. By drawing an analogy from other provisions where a particular default carried a definite penalty, it was argued that in the absence of any such provision it must be held that the Legislature intentionally had not provided for any penalty for the said default. In this context the learned counsel had taken us through O.IX, r. 12, O.X, r. 4, O.XI, 21, O.XVI, r. 20, and O.XVIII, rr. 2 and 3 of the Code. No doubt under these provisions particular penalties have been provided for specific defaults. For certain defaults, the relevant Orders provide for making an ex parte decree or for striking out the defence. But it does not follow from these provisions that because no such consequential provision is found in O.XXIX, the court is helpless against a recalcitrant plaintiff or defendant who happens to be a company. There is nothing in O.XXIX of the Code. which, expressly or by necessary implication, precludes the exercise of the inherent power of the court under s. 151 of the Code. We are, therefore, of the opinion that in a case of default made by a director who failed to appear in court when he was so required under O.XXIX, r. 3 of the Code, the court can make a suitable consequential order under s. 151 of the Code as may be necessary for the ends of justice or to prevent abuse of the process of the court.

The next question is whether the court can, as it did in the present case, strike off the defence of the appellant for the default made by its director to appear in court. It cannot be disputed that a company and the directors of the company are different legal personalities. The company derives its powers from the memorandum of association. Some of the powers are delegated to the directors. For

certain purposes they are said to be trustees and for some others to be the agents or managers of the company. It is not necessary in this case to define the exact relationship of a director qua the company. The acts of the directors within the powers conferred on them may be binding on the company. But their acts outside the said powers will not bind the company. It is not possible to hold that the director in refusing to respond to the notice given by the court was acting within the scope of the powers conferred on him. He is only liable for his acts and not the company. If it was established that the company was guilty of abuse of the process of the court by preventing the director from attending the court, the court would have been justified in striking off the defence. But no such finding was given by the courts below.

The orders of the courts below are not correct. We set aside the said orders and direct the Subordinate Judge to proceed with the suit in accordance with law. The appeal is allowed, but, in the circumstances of the case, without costs.

LW 17:03:2026

ANUJ GOYAL v. ATUL KUMAR KINRA [NCLAT]

Company Appeal (AT) (Insolvency) No. 29 of 2026

Ashok Bhushan & Barun Mitra. [Decided on 09/01/2026]

Insolvency and Bankruptcy Act, 2016- replacement of RP by CoC- objection by homebuyer having 0.25% in CoC- whether tenable-Held, No.

Brief facts:

This appeal has been filed by the Appellant challenging the order dated 14.11.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench by which I.A. No. 1438 (CH) 2025 filed on behalf of the CoC has been allowed and earlier Resolution Professional has been replaced. The Appellant, a homebuyer having 0.25% share in the CoC has come up in this appeal challenging the impugned order.

Decision: **Dismissed.**

Reason:

We have heard the learned counsel for the parties and perused the record. The Writ Petition which was filed by the Appellant before the Delhi High Court and order passed therein, as noted above, in no manner preclude the Adjudicating Authority from proceeding to take decision regarding replacement of the Resolution Professional. Admittedly, the IBBI has already suspended the earlier Resolution Professional - Mr. Arvind Kumar, which was taken note in the 26th CoC meeting, where it was decided, that the CoC shall not continue with the existing Resolution Professional, therefore, CoC meeting was convened for considering the appointment of new Resolution Professional and CoC passed resolution for appointment of new Resolution Professional, which was accepted by the impugned order. We are of the view that the Adjudicating Authority did not commit any error in allowing the application by accepting the Resolution Professional as recommended by the CoC. Under the I&C Code, as per Section 27, it is the CoC who has to take decision with regard to replacement of Resolution Professional. When the CoC by a requisite vote has decided to appoint a new Resolution Professional, Appellant who is a homebuyer having 0.25% vote share cannot be allowed to question the appointment of new Resolution Professional by means of this Appeal. We are of the view that no error has been committed in the order of the Adjudicating Authority. Appeal is dismissed.

Competition Laws

LW 18:03:2026

KARTIKEYA RAWAL v. INTER GLOBE AVIATION LTD. [CCI]

Case No. 44 of 2025

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag [Decided on 04/02/2026]

Competition Act, 2002- Section 4 – abuse of dominance - airlines - cancellation of confirmed tickets and offering seats in another flight at higher price- whether abuse of dominance-Held, Yes.

Brief facts:

The Informant has stated that IndiGo is India's largest airline carrier by fleet and market share. In the first week of December 2025, the airline cancelled hundreds of flights, causing an unprecedented disruption in the aviation industry, leaving lakhs of passengers stranded across the country with no means to return to their homes or make important business travels. Eyeing the opportunity, almost all other available airlines substantially increased the prices for seats across sectors.

The return flights were cancelled by IndiGo a few hours before the scheduled departure time, and no alternate travel arrangement was provided by them. Thus, the Informant had to make his own arrangements. Upon trying to book alternate flights, the informant observed that apart from the seats offered by the other airlines, the seats being offered by IndiGo were being offered at a much higher fare than the usual fare on the same sectors.

This conduct of IndiGo of cancelling its own flights on its own accord and then overcharging the customers is an abuse of dominance and prohibited under the provisions of the Act.

Decision: **Allowed. Investigation by DG ordered.**

Reason:

While adverting to the alleged abuse of dominance perpetrated by the OP, it is averred in the Information that on 04.12.2025, the Informant travelled to Delhi from Bangalore and had booked return flight on IndiGo for a sum of INR 7,173. It is alleged that the said return flights were cancelled by the OP a few hours prior to the scheduled departure, without providing any alternate travel arrangements. Consequently, the Informant was compelled to make alternative arrangements on his own. Upon attempting to book alternative flights, the Informant noticed that, apart from limited seats available on other airlines, the fares offered by the OP on the same sectors were significantly higher than the usual fares. Owing to the non-availability of reasonably priced alternatives, the Informant had to wait for two days and eventually travelled back to Bengaluru on another flight operated by the OP at a substantially higher fare of INR 17,000.

It has been further alleged by the Informant that in the month of December, IndiGo cancelled hundreds of flights, causing heavy surge in prices of seats across sectors as well as huge inconvenience to passengers. The Commission notes that the case of the Informant is not a standalone instance. This issue has also been widely reported in the public domain. The aforesaid brings out widespread inconvenience caused to travellers at large due to sudden and massive cancellation of flights with little or no alternatives available. The passengers were left stranded with severely limited options, while fares escalated sharply following the cancellation of 2,507 flights and delays in 1,852 flights, thereby affecting more than three lakh passengers across various airports. As per the press release dated 17.01.2026 issued by the MoCA, a fine of 22.20 crore rupees was imposed on IndiGo for the large-scale delays and cancellations reported during the period from 3rd to 5th December 2025.

It is observed that passengers who had booked tickets were left with no real choice but to accept last-minute cancellations. Further, passengers were left to seek alternatives, on their own, at significantly higher prices. Given IndiGo's dominant position, consumers were effectively locked in and lacked viable alternatives which appears to be in violation of the provisions of Section 4(2)(a)(i) of the Act.

Additionally, by cancelling thousands of flights constituting a significant portion of the scheduled capacity, IndiGo effectively withheld its service from the market, creating an artificial scarcity, limiting consumer access to air travel during peak demand. Such conduct by a dominant enterprise may be viewed as restricting the provision of services under Section 4(2)(b)(i) of the Act.

The afore-detailed conduct of the OP seems to be prima facie causing an appreciable adverse effect on competition in India. Thus, the Commission is of the opinion that a prima facie case of contravention of the provisions of Sections 4(2)(a)(i) and 4(2)(b)(i) of the Act by the OP is made out in the present matter.

Accordingly, in terms of the provisions contained in Section 26(1) of the Act, the Commission directs the Director General (DG) to cause an investigation to be made into the matter and submit an investigation report within a period of 90 days from the date of receipt of this order.

LW 19:03:2026

MATRIX INFO SYSTEMS PVT. LTD. v. INTEL CORPORATION [CCI]

Case No. 05 of 2019

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag. [Decided on 12/02/2026]

Competition Act, 2002- abuse of dominance- parallel imports of boxed microprocessors into India- warranty policy applicable to India did not cover these imported microprocessors- whether abuse of dominance-Held, Yes.

Brief facts:

The Informant stated itself to be a parallel importer of Intel microprocessors in India, which is legally permissible. As per the Informant, parallel imports are beneficial for the consumers as import of goods from a country with lower prices force sellers in the country of destination to reduce prices. The Informant stated that it imports Intel Micro-processors from OP's authorised distributors in other countries and sells the same to consumers in India at competitive prices.

As per the Informant, prior to 2016, Intel used to provide manufacturer's warranty within India on its Boxed Micro-Processors ('BMPs') that may have been purchased from any country in the world. However, w.e.f. 25.04.2016, Intel amended its warranty policy for India. As per this new policy, Intel would entertain warranty requests for Intel BMPs in India only when the same are purchased from an authorised Indian distributor of Intel ('India Specific Warranty Policy'). As a result of this India Specific Warranty Policy, OP does not acknowledge warranty requests on its BMPs that are purchased from its authorised distributors in the rest of the world and instead redirects them to country of purchase to avail the warranty.

The Informant stated that such change in warranty policy has been made by OP without any legitimate justification and by doing so, OP has been behaving in a differential manner within the Indian market. As per the Informant, such separate warranty terms of Intel for India vis-à-vis the rest of the world, is arbitrary and unfair towards the Indian market and consumers.

As per the Informant, by way of imposing unfair disadvantage on the independent resellers for selling Intel BMPs at lower prices in comparison to Intel's authorised distributors, Intel is causing Appreciable Adverse Effect on Competition ('AAEC') in terms of Section 19 of the Act.

Based on the above submissions and contentions, the Informant alleged that Intel abused its dominant position by acting in contravention of provisions of Sections 3 and 4 of the Act.

Decision: **Allowed.**

Reason:

Having noted that the 2016 India Specific Warranty Policy of Intel was abusive in nature, the Commission deems it appropriate to deal with the averment of Intel that the DG failed to demonstrate causality between 2016 policy and its purported effects on sale of BMPs given low warranty claims and redirection rates and that there is no AAEC in India on account of change in the warranty policy.

At the outset, the Commission notes the argument of OP that warranty and warranty service are different concepts and OP has not denied warranty on BMPs not purchased from authorised distributors in India rather only redirected to the place of purchase for availing the warranty service. The Commission does not find substance in this argument as sending the product to the place of purchase i.e. outside India for claiming warranty service on a defective product, entails significant costs and time involved in transporting the product. In such a situation, the only alternative available to a consumer/buyer of a defective boxed microprocessor is to get it repaired from a third party in India. However, it must be noted that this alternative is not comparable with a warranty service which ensures replacement with genuine parts unlike dealing with third party parts, which could be less reliable and increase the risk of repeated failures.

With respect to the Informant's allegation of denial of warranty service, OP stated that out of 34 claims raised by the Informant, only 2 were redirected to the country of purchase. Intel asserted that total warranty claims to total BMP sales is less than 2% and redirected warranty claims to total BMP sales is less than 0.1%. It relied on the Report of the Economic Expert to state that India Specific Warranty Policy has affected a tiny fraction of total warranty claims and that the 2016 policy was not a factor in purchase decisions for BMPs as the Informant has also stated in its Information that warranty is not an essential service.

The Commission is of the view that a warranty is one of the relevant factors in purchase of a boxed microprocessor as it protects against manufacturing defects, minimises costs associated with premature failure and also offers peace of mind to the consumer. It also reduces financial risk in case of high-end microprocessors, such as intel i5-11600KF or i9-11900K, which cost approximately INR 33,000 and INR 65,934, respectively.

On the basis of investigation and examination of the matter and considering all other material available on record, the Commission finds that OP has abused its dominant position by imposing unfair and discriminatory India Specific Warranty Policy in respect of boxed microprocessors imported into India from its authorised distributors outside India in contravention of Sections 4(2)(a)(i), 4(2)(b)(i) and 4(2)(c) of the Act causing AAEC in the Indian market, preventing the Indian consumer from availing after sale warranty service on authentic Intel boxed microprocessors in India from 25.04.2016 till 01.04.2024.

With respect to imposition of penalty and submissions regarding mitigating factors, OP put forth its oral arguments at the time of final hearing. OP requested to consider relevant turnover of Intel in India in light of principles laid down by the Hon›ble Supreme Court in Excel Crop Care, impact of its conduct on the market and consumers, and various mitigating factors, including (a) it has already discontinued the 2016 India Specific Warranty Policy w.e.f. 01.04.2024 which is the subject matter of the instant case, (b) significant business turbulence faced by it in recent times, nature of technological market which is susceptible to disruptions, and (c) cooperation extended by it throughout the proceedings.

With regard to quantum of penalty, the Commission takes into account the contention of OP of considering turnover of boxed microprocessors and also finds the same in line with the Turnover Regulations, 2024. Accordingly, the Commission imposes a penalty of INR 27.38 crore (INR twenty-seven crore and thirty-eight lakh only), upon OP for violating Section 4 of the Act. OP is directed to deposit the penalty amount within sixty (60) days of the receipt of this order.

The Commission, having considered that OP has withdrawn its India Specific Warranty Policy with effect from 01.04.2024, further directs OP, in terms of Section 27(g) of the Act, to widely publicise this change in order to spread awareness about withdrawal of the impugned India Specific Warranty Policy, and submit a compliance report within a period of sixty (60) days from the date of receipt of this order.

General Laws

LW 20:03:2026

DALMIA CEMENT (BHARAT) LTD. v. ESS ESS TECHNOFABS PRIVATE LTD. [DEL]

Arbitration Petition No. 1723 & 1725 of 2024

Jasmeet Singh, J. [Decided on 07/02/2026]

Arbitration and Conciliation Act, 1996 read with MSMED Act- arbitration before MSFC at Mohali on the application of respondent under MSMED Act- petitioner invoking arbitration under the A & C Act- Whether tenable-Held, No.

Brief facts:

The Petitioner engaged the respondent, which is a MSME, for providing material and services for mechanical fabrication and erection job of two projects. Disputes arose as to payment between them and the Respondent approached the MSEFC Mohali, which referred the matter to arbitration. In the proceedings the petitioner raised objections as to the jurisdiction of the arbitrator. Meanwhile, the Petitioner approached the Dehi High Court for the appointment of arbitrator to adjudicate the disputes.

Decision: **Dismissed.**

Reason:

In the instant petition, the respondent, located in Mohali (Punjab), invoked the statutory mechanism under Section

18 of the MSMED Act at Mohali, Punjab by filing a claim dated 04.08.2023 against the petitioner. Although the agreement between the parties designates Delhi as the seat of arbitration, the arbitration proceedings are being conducted in Mohali only as per the provisions of the MSMED Act.

The Hon'ble Supreme Court in *Harcharan Dass Gupta (Supra)* established that the seat of arbitration in MSME cases is statutorily determined by the supplier's location, not by contractual designation. Since, the respondent prima facie is a MSME located at Mohali, Punjab, the jurisdiction of the facilitation Council located at Mohali was correctly invoked.

From a conspectus of the above discussion, it is clear that the statutory remedy contained in the MSMED Act prevails over any other private arbitration agreement between the parties. A deeming fiction operates to treat this statutory remedy as an arbitration agreement in itself having its own force.

In the arbitration proceeding being conducted at Mohali, the petitioner filed an application under Section 16 before the Facilitation Council challenging its jurisdiction and since the same was not being adjudicated upon, the petitioner herein also filed writ petitions before the Hon'ble Punjab and Haryana High Court, which has directed the MSME to consider Section 16 application and conclude the proceedings expeditiously.

The issues raised by the petitioner in the present petitions are to be seen from the prism of the law contained in Arbitration and Conciliation Act, 1996, while the issues raised by the petitioner in its Section 16 application filed before the Facilitation Council are to be seen from the prism of the MSMED Act. A perusal of the judgment quoted hereinabove shows that once a party to a dispute is a duly registered Micro, Medium or a Small scale Enterprise, the provisions of the MSMED Act, being a special and a later legislation, would prevail. Hence, the present petition cannot be entertained on this ground alone.

The major contention raised by the petitioner in the present petition is that the contracts in question are works contract i.e. composite contract, not covered by the jurisdiction of the MSMED Act, and hence the Facilitation Council lack jurisdiction to adjudicate the disputes herein concerned. The said issue has already been raised by the petitioner in its Section 16 applications concerning both the subject contracts in paragraph No. 3 (I) to 3 (VII) of the respective applications. It is imperative to mention that as a rule of prudence, since the issue has already been directed to be adjudicated by the Facilitation Council by the Hon'ble Punjab and Haryana High Court, it will not be proper for this Court to adjudicate the same once the issue is already pending before the authority which is competent to rule on its own jurisdiction.

In light of the above discussion, I am of the view that the respondent was a registered MSME on the date of execution of agreement between the parties and has rightly invoked the statutory mechanism laid down under the MSMED Act. The same prevails over any private arbitration agreement between the parties as the deeming fiction operates in favour of the statutory remedy.

Additionally, the same contention is pending under Section 16 application before the Facilitation Council and it has already been directed to decide the issues expeditiously. Further, it is no longer res integra that the arbitral tribunal i.e. the Facilitation Council is empowered to rule on its own jurisdiction.

Be as it may, it will not be prudent to decide the same contentions which are already pending before the Facilitation Council. The petitioner may approach this Court in accordance with law once the relevant application is decided by the Facilitation Council. In view of the above it is reiterated that the respondent availed its statutory remedy rightly before the Facilitation Council and jurisdiction of the same has already been challenged on the same grounds as raised in this petition. The Facilitation Council is duly empowered to rule on its own jurisdiction.

Industrial & Labour Laws

LW 21:03:2026

RAJ KUMAR RASTOGI v. DELHI PRESS LTD. [DEL]

LPA No. 353 of 2022

Subramonium Prasad & Vimal Kumar Yadav, JJ. [Decided on 06/02/2026]

Industrial Disputes Act, 1947- appellant as employed as trainee and was paid stipend- upon termination he raised an industrial dispute- Labour Court as well as single judge of the High Court held him to be not a workman- whether correct-Held, Yes.

Brief facts:

By way of the Impugned Judgment, the learned Single Judge dismissed the writ petition filed by the Appellant, to uphold the Award dated 23.04.2001 passed by the Labour Court. The Labour Court as well as the learned Single Judge were of the opinion that the Appellant is not a workman within the meaning of Section 2(s) of Industrial Disputes Act, ['ID Act'].

Decision: Dismissed.

Reason:

On going through the entire material on record, this Court observes that the Labour Court as well as the learned Single Judge, after meticulously scanning the entire evidence, arrived at a conclusion that the Appellant has not been able to establish that he is not a Trainee, but a workman within the scope of the ID Act.

The Appellant's case in his Writ Petition was that he was appointed as a full-time grainer by the Respondent-Management and the Appellant has stated so in his examination-in-chief as well. Per contra, the Respondent's stand was that the Appellant was only a trainee, whose training was extended from time to time. It was, therefore, the Appellant who had to prove the material and present witnesses to show that he was not a trainee or that he was not under the supervision or guidance of any person, but was working as a full-time grainer. In fact, the learned Single Judge noted this aspect and observed that the Appellant herein has not even put a suggestion to the Respondent's witness before the Labour Court to prove that he was working as a full-time grainer and not as a trainee.

When two Courts have appreciated the evidence placed before them and arrived to the conclusion that the Appellant is not a workman, this Court, which is the third court, under an LPA, cannot come to a different conclusion simply because it may be a plausible one. It cannot be said that the appreciation of evidence by the learned Single Judge or by the Labour Court is so perverse that no court would have come to that conclusion.

What is more interesting is that in his cross-examination, the Appellant has himself admitted that he did not return to work after 09.06.1986. The Courts below have, therefore, rightly accepted the contention of the Respondent, that it is a case of abandonment of training, which is a ground for termination as per the Appointment Letter.

There is nothing on record to show that the Appellant completed his training and was subsequently employed as a full-time grainer. Without there being any material on record to show that the Appellant performed any skilled, unskilled, manual, technical or operational duties and was working as a full-time grainer, this Court cannot accept the case as put forth by the learned Counsel for the Appellant. In fact, no suggestion was put to the witness to prove that the Appellant was working as a full-time grainer and not as a trainee.

Another contention raised by the learned Counsel for the Appellant is that the Appellant is an apprentice and, therefore, he would be included in the definition of a workman under Section 2(s) of the ID Act. A perusal of the Appointment Letter shows that the Appellant was appointed as a Trainee, and the word 'apprentice' is mentioned only in the last paragraph therein, which by itself would not make the Appellant an apprentice. In any event, Section 18 of the Apprentices Act, 1961 states that apprentices are trainees and not workman, and the provisions of any law in respect of labour shall not apply in relation to the apprentices.

From a perusal of the award dated 28-5-1996 of the Tribunal, it does not appear that the Appellant herein had adduced any evidence whatsoever as regards the nature of his duties so as to establish that he had performed any skilled, unskilled, manual, technical or operational duties. The offer of appointment dated 16-7-1987 read with the Scheme clearly proved that he was appointed as an apprentice and not to do any skilled, unskilled, manual, technical or operational job. The onus was on the Appellant to prove that he is a workman. He failed to prove the same. Furthermore, the duties and obligations of a Development Officer of the Corporation by no stretch of imagination can be held to be performed by an Apprentice.

In light of the foregoing discussion, we find no legal infirmity in the Impugned Judgment passed by the learned Single Judge. The present Appeal is therefore dismissed.

LW 22:03:2026

GREEVAS JOB PANAKKAL v. TRACO CABLE COMPANY LTD. [KER]

WP(C) NO. 5132 of 2025

N. Nagaresh, J. [Decided on 13/02/2026]

Industrial Disputes Act, 1947- respondent was employed as company secretary- salary was not paid for long time- he resigned- company initiated disciplinary proceedings- refused to accept the resignation – whether correct-Held, No.

Brief facts:

The Petitioner was the Company Secretary of the 1st respondent - Company which is a State Public Sector Undertaking. The petitioner resigned on 18.03.2024 as he was not paid his salary since October 2022. The Respondent-1 company refused to accept the resignation and instead initiated disciplinary proceedings against him. The petitioner challenged both these actions of the Respondent Company in these petitions.

Decision: Allowed.

Reason:

The petitioner is working as Company Secretary of the 1st respondent-Company since 07.05.2012. The petitioner has an unblemished service of more than 13 years. The petitioner has been discharging his duties to the satisfaction of respondents 1 and 2. From October, 2022 onwards, there was default in payment of salary to the petitioner.

The petitioner's father died on 06.06.2020 and his mother has suffered a stroke and is undergoing treatment for neuro and psychiatric treatment for the past many years. The petitioner therefore had no other option than to search for another job. Company Secretaryship is a statutory position under the Companies Act. They are responsible for ensuring compliance with the Companies Act, 2013 by the Companies. As a Key Managerial Personnel, they play a crucial role in corporate governance and are liable for any non-compliance or defaults.

The petitioner will not be able to join any other organisation as his Company Secretaryship is tied up with the 1st respondent-Company and the same is registered as such with the Registrar of Companies under the Ministry of Corporate Affairs. Unless and until the Company forwards necessary form DIR-12 to the Registrar of Companies, the petitioner's Company Secretary membership will be tied up with the 1st respondent.

Due to the personal and family pressure and since the petitioner lives without prompt receipt of monthly salary, the petitioner has submitted resignation. The Board of the 1st respondent-Company refused to accept the resignation submitted by the petitioner and instead has threatened the petitioner with coercive disciplinary action.

When an employee submits his resignation, the employer has a duty to accept the same and relieve the employee from his duties. This duty of the employer is subject only to any conditions that may be stipulated in the contract of employment, including any stipulation as regards notice period. A resignation can be rejected if resignation does not follow procedure if any, outlined in the employment contract. In case of "Heat of the moment" resignations, the employer may be justified in delaying its acceptance, giving the employee a chance to rescind it.

In the absence of violation of any notice conditions or conditions in the contract of employment, an employer cannot desist from accepting a resignation. Another instance where the employer can refuse to accept resignation, is when disciplinary proceedings are contemplated against the employee for grave misconduct or for causing monetary loss to the establishment.

In any other event, if the employer refuses to accept resignation of an employee, it will amount to bonded labour prohibited under Article 23 of the Constitution of India. Due to the

provisions of the Companies Act, if any Company Secretary is attached to any corporate body, the Company has to register the engagement with the Registrar of Companies. Unless the employer sends statutory request, the name of a Company Secretary will always remain linked to the employer-Company which may cause difficulty for a Company Secretary from seeking appointment elsewhere as Company Secretary.

Financial issues or financial emergency cannot be a reason to force a Company Secretary to work for an incorporated Company against his will and without his consent. The disciplinary proceedings contemplated against the petitioner in the circumstances can only be seen as an attempt by the respondents to violate the right of the petitioner to resign from service.

The writ petitions are therefore allowed. Respondents 1 and 2 are directed to accept resignation letter submitted by the petitioner and relieve him from his services as expeditiously as possible and at any rate within a period of two months. The petitioner shall also be paid arrears of salary, leave surrender benefits and terminal benefits, to which he is legally entitled to as expeditiously as possible subject to the financial position of the Company.

LW 23:03:2026

HEINEN & HOPMAN ENGINEERING (I) PVT. LTD. v. STATE OF WEST BENGAL & ORS [CAL-DB]

MAT No. 682-685 of 2025

Lanusungkum Jamir & Rai Chattopadhyay, JJ. [Decided on 16/02/2026]

Industrial Disputes Act, 1947 read with Shops & Establishments Act, 1964 - employer maintaining a pension fund trust for superannuated employees-respondents resigned from the service and payments released - pension was refused - whether correct Held, No.

Brief facts:

The four appeals as mentioned above, deal with the similar issue. The private respondents in the appeals have been working in the appellant company, submitted resignation and were ultimately released on 02.9.2022. All terminal benefits including gratuity were paid to them and accepted by them without any protest and unto the full and final settlement of their dues with the Appellant company.

The Appellant company was maintaining a pension fund trust for superannuated employees. After about six months of their tendering resignation as well as acceptance of terminal benefits including gratuity, the respondents filed statutory Form-N under Rule 31 of the Shops and Establishments Rules 1964, before the Joint Labour Commissioner, Barrackpore, for determination and payment of pension, under the non-contributory pension fund maintained by the present Appellant company. The objections raised by the Appellant were rejected by the Authority and the Single Judge of the High Court as well on appeal. Hence the present appeal.

Decision: Dismissed.

Reason:

The other issue which has arisen in this appeal is with regard to whether the pension accumulated in the trust fund under the Scheme of the company amounts to 'wages' as per Payment of Wages Act, 1936 and the West Bengal Shops and Establishments Act, 1963 or not. The appellant's specific reliance has been on Section 2(vi)(3) of the Act of 1963 that, if not the contribution paid by the employer to a pension fund is 'wages' in terms of the said statutory provision, then how can the accumulation of such contribution in that event be termed as wages - as has been allegedly erroneously held by the Hon'ble Single Judge. The answer is not very difficult to find in the settled legal provisions as existent on date particularly, through the judgments referred to by the respondents. The law is absolutely unambiguous and clear that, there should be some amount payable to the recipient/employees upon their fulfilling the expressed or implied terms of contract of employment. The Courts have even extended the scope of the meaning of the word 'wages' to the remuneration which may not have been spelt out in the contract of employment itself but payable to a person upon fulfilling the terms of contract of employment.

This Court concedes to the submission made on behalf of the respondents that, the employee's contribution to the pension fund and actual remittance of pension to the beneficiary employees, are two separate and distinct phenomena. The Court finds that, while providing resources to the fund an employer may not be held statutorily accountable though he is so liable in case of disbursement accumulated pension to an employee who is eligible as per provision made under the governing Rules, like the amended trust deed in the instant case.

The Court finds the proposition of law as above, to be apt and proper. In view of the statute itself, having created a special jurisdiction within the purview of the Act itself and the dispute having been found to be with regard to a subject matter, which is also within the purview of the same statute, the specified and prescribed authority under the statute and not any Civil Court shall exercise power in the said dispute. The authority under the West Bengal Shops and Establishments Act, 1963, should be the appropriate authority, to adjudicate claim as regards 'pension', if and when such 'pension' amounts to 'wages', in accordance with the said statute.

The definition of 'Wages' is enriched with the appropriate interpretation made by the Courts as discussed above. It is the settled law that what would be considered as 'wages' for an employee, as per law, is not dependent only on the terms and conditions incorporated in his service contract, but it may travel beyond. Necessary is that the employee should fulfil his part of duty or obligation under the service contract. Whatever is payable to him by the employer upon satisfaction of this condition by the employee, tantamount to 'wages', as per law. It has no relevance with whether a particular category of pay was expressly included in the service conditions in contract, or not. It is also irrelevant if termination of employment has been due to retirement on attaining the superannuation age or by way of tender of resignation by an employee. These settled legal principles when read with clause (8A) of the amended trust deed of the Appellant company, clearly shows that upon expiry of a specified tenure of completed service, the employees would be entitled for grant of pension irrespective of the fact that they have tendered resignation prematurely, before reaching to the age of superannuation.

Since the respondent's rights arise from the trust deed itself, earned benefits cannot therefore be arbitrarily denied. Pension

vested on completion of service slabs and resignation occurred after completion of qualifying service period. Therefore, in absence of any forfeiture clause being existent in the trust deed, such a resignation does not legally interrupt eligibility of the respondents to the pension, provided under the trust deed.

A non-contributory pension fund vide the trust deed, is maintained by the company as part of its corporate social responsibility (CSR), specifically grounded on ethical, philanthropic and economic concerns being brought into its operations bearing positive impact towards the society at large. It should go beyond profit maximization, focusing on sustainability and ethical practices. It is a well-established doctrine of employment and administrative law that even where a pension scheme is non-contributory (fully funded by the employer), once created, it cannot be administered arbitrarily or whimsically. It becomes a legally enforceable obligation for the employer, not a discretionary favour. Even if the scheme grants any amount of discretion to the employer, that discretion must comply with the fundamental legal principles. Where the pension fund is set up as a trust, as it is in the instant case, the employer cannot treat the fund as its own property or else that would amount to the employer's unjust enrichment, which is prohibited under the law. It is a binding obligation voluntarily created by the employer upon itself. Non-contribution only affects funding mechanism - not the legal enforceability of the fund. Once the employees (the respondents herein) feel eligibility conditions as per law, that pension thereafter becomes a legal right governed by the principles of law and fairness - not by any discretion or whim of the employer. Pension, the employee earns by rendering service, is protected by law. The appellant/ company that establishes the non-contributory pension fund assumes a legal obligation to administer the same fairly, lawfully and in accordance with the established legal doctrines.

This Court is unable to find any palpable illegality or gross miscarriage of justice in the judgment and order of the Hon'ble Single Judge and for the said reason no justifiable ground is found to interfere with the same. The amount of pension for which the respondents have found to be eligible in terms of the trust deed, duly falls within the definition of 'wages' as per statute and the employees' application in terms of Rule 31 of the West Bengal Shops and Establishments Rules, 1964 in statutory Form-N is therefore, maintainable before the appropriate authority under the said statute. Hence, no illegality or impropriety is found in the impugned judgment and the appeals, therefore, should be dismissed.

LW 24:03:2026

SRI SWAMY v. KUMARA [KANT]

MFA No. 3011 of 2018

Tara Vitasta Ganju, J. [Decided on 04/02/2026]

Employees Compensation Act, 1923 - appellant worker was assaulted by the respondent employer and later died - criminal complaints were filed against the employer - claim for compensation was refused by the Trial Court on the ground that the death was due to assault and not due to employment injury-whether correct-Held, Yes.

Brief facts:

The deceased Swamy (original petitioner) was working in a stone quarry belonging to the respondent as a daily wager. He absented himself from work on two days, and thereafter, when he went to work the respondent abused him and assaulted him with a piece of firewood which led to suffering injuries and permanent disability. The claim petition in addition sets out that a police complaint has been lodged against the Employer bearing Crime No. 334/2010, wherein the police have registered a case under Sections 323 and 324 of IPC.

During the course of proceedings before the Trial Court, the deceased was murdered and another complaint was filed against the respondent and his associates and criminal proceedings bearing S.C.No. 38/2011 have been initiated against the respondent. Thus, the claim petition was filed by the petitioners seeking compensation as a result of the injuries which were previously sustained by the original petitioner due to which he was unable to carry out his work.

The learned Trial Court after examining the facts found that although the petitioner was injured, this injury could not be said to be in terms of Section 3 of the Employees' Compensation Act, since it was not arising out of an accident at the workplace. The learned Trial Court held that the injury was an assault and other related offences under Sections 363, 302, 201 read with 149 of IPC. The learned Trial Court also found that the incident complained of can only be termed as an assault and not an accident under Section 3(1) of the E.C. Act.

Decision: Dismissed.

Reason:

The only ground for challenge that has been raised by the learned counsel for the appellants is that the incident was not an assault. However, this contention is not borne out from the record. The claim petition filed before the Learned Trial Court sets out that there was no accident, but in fact the respondent/ employer who assaulted the deceased.

In *Daivshala & Ors v. Oriental Insurance Company Ltd. and Another* 2025 SCC OnLine SC 1534, the Supreme Court, while interpreting the meaning of "*arising out of and in the course of his employment*" has held that, a restrictive meaning has been given to this phrase. Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim. The accident is to have arisen out of his employment and with a causal connection to the employment.

In view of the aforegoing, this Court is unable to find any infirmity with the detailed, reasoned Impugned Judgment passed by the Learned Trial Court, which has held that an assault cannot be termed as 'accident' within the meaning of Section 3 of the E.C. Act. The death subsequent to injury is essentially as a result of assault etc., and the criminal proceedings have already been initiated against the respondent. Thus, it cannot be said that the accident is caused during the course of employment. The appeal is accordingly dismissed.

However, dismissal of this appeal will not preclude the appellants from taking appropriate remedies in accordance with law in relation to the criminal proceedings which are pending *inter se* between the parties.