Reddy (1) and of Calcutta High Court in *Nakul Chandra Dutta* v. *Ajit Kumar Chakarbarty and others*. The lower Appellate Court referred to the decision of this Court in *Baksho* v. *Pakhar Singh and another* (3), wherein it was held that objections to set aside the sale under O. 21 R. 90 of the Code could not be filed after confirmation and any such order would not be an order appellable under O. 43, R. 1(j). The ratio of this decision is not applicable to the case in hand as there was no plea of fraud raised and determined in that case.

(5) Fraud vitiates every act or action and plea of fraud can only be raised when it comes to the knowledge of person defrauded. Such a plea which is to be determined on evidence could not be considered or dealt with summarily without affording opportunity to the parties to prove the same. In such a case the bank was well within it's rights to file objections to set aside the sale on the ground of fraud. In that situation the order of the trial Court in substance amounted to refusal to set aside the sale and was thus appellable. Be that as it may, since the matter has been considered in this Revision Petition, and the Executing Court had not afforded opportunity to the objector to prove the plea of fraud, the Revision Petition is accepted with no order as to costs. Orders of both the Courts below are set-aside. The case is sent back to the Executing Court for decision of the objections according to law. Parties through their counsel are directed to ppear in the Executing Court on March 11, 1991.

J.S.T.

Before A. L. Bahri, J.

SAMPURAN SINGH,—*Appellant.*

versus

MUKHTIAR SINGH,—*Respondent.*

First Appeal from Order No. 95 of 1979.

22nd February, 1991.

Workman's Compensation Act, 1923—S. 10—Workman's Compensation (Amendment) Act, 1976—Workman's application for compensation filed under the old Act—Act amended in the meantime with retrospective effect—Amended Act providing for enhanced compensation—Claim for enhanced compensation—Accident occurring during period of retrospective operation of the Amending Act—Workman entitled to enhanced compensation.

(1) AIR 1973 Madras 107.

(2) AIR 1982, Calcutta 564.

(3) AIR 1985 P. & H. 322.

Held, that it is the wisdom of the Legislature to amend statutes even with retrospective effect. When specific provision is made making any provision enforceable with retrospective effect, the intention of the Legislature has to be kept in view and the effect to the legislation has to be given with such retrospective effect. The contention, that with retrospective effect fiscal liabilities of the parties could not be effected like any taxation statute, cannot be accepted in respect of other statutes and the one like the workmen's Compensation Act, 1976. Amendment in the Schedule was made enforceable with effect from October 1, 1975 though this Act was amended on May 21, 1976. Since the accident had taken place on May 2, 1976, it is the amended law which would apply to the case in hand.

(Para 11)

First Appeal from the order of the Court of Shri Pawan Kumar Garg, P.C.S. Commissioner, under the Workmen's Compensation Act, Ludhiana, dated 13th December, 1978, granting the application of the applicant for the recovery of Rs. 12,600 as compensation with costs.

Claim:—*Application under section* 10 *of the Workmen's Compensation Act.*

Claim in appeal :—*For reversal of the order of lower court.*

J. C. Verma Sr. Advocate with Dinesh Kumar Advocate, *for the Petitioner.*

Subhash Aggrawal, Advocate, *for the Respondent.*

JUDGMENT

A. L. Bahri, J.

(1) This first appeal has been filed by the employer-Sampuran Singh against order dated December 13, 1978, passed by the Commissioner Ludhiana, under the Workmen's Compensation Act, granting compensation of Rs. 12,600 to Mukhtiar Singh, the workman, for the injuries suffered by him in the course of employment while working on a thrasher.

(2) The workman claimed compensation on an application filed under section 10 of the Workmen's compensation Act (hereinafter called 'the act'). He was employed with Sampuran Singh and getting Rs. 160 per mensem as wages plus meals worth Rs. 50. On May 2, 1976 at about 9.30 a.m. when he was engaged for thrashing the wheat of the employer, his right hand was involved in the thrasher resulting in chopping of all the four fingers and the thumb. He

was admitted to the hospital and the injuries suffered were to the extent of 50 per cent disability. After notice was served the claim was filed. Though initially lesser amount was claimed, however, he got the claim application amended and claimed Rs. 12,600. The employer contested the claim, *inter alia*, alleging that the Workmen's compensation (Amendment) Act, 1976, was not applicable to the case in hand as it was enacted on May 21, 1976; whereas the alleged accident had taken place earlier. The workman was only entitled to Rs. 5,600 under the old Act, if at all entitled to. It was denied that the workman was employed with him. Payment of wages was also denied. The accident took place due to the negligence of the workman himself while he was thrashing his own wheat by means of a thrasher belonging to one Kashmira Singh.

(3) On these pleadings the following issues were framed:—

(1) Whether the applicant was employed by the respondent ? OPA.

(2) Whether the accident took place in course of employment of the applicant by the respondent ? OPA.

(3) To what amount of compensation, if any, is the applicant entitled and from whom ? OPA.

(4) Relief.

The Commissioner decided issues Nos. 1 and 2 together and came to the conclusion that the workman was employed with the employer and that the accident took place in the course of employment. Under issue No. 3 it was held that the amended Act was applicable as it was retrospective in operation being in force with effect from October 1 1975 and thus the workman was entitled to a sum of Rs. 12,600. Thus the impugned order was passed allowing the aforesaid amount as compensation.

(4) It has been argued by learned counsel for the appellant-employer that Mukhtiar Singh was not working as employee but was working on thrasher for thrashing his own wheat and that too on a thrasher of Kashmira Singh. The Commissioner was wrong in holding to the contrary that the workman was employee of Sampuran Singh. I do not find any merit in this contention. AW-2 Sajjan Singh stated that Mukhtiar Singh was employed as workman by Sampuran Singh for doing the work in his farm. The wages fixed

were Rs. 160 per month with meals. On May 2, 1976 at about 9.30 a.m. when Mukhtiar Singh was thrashing the wheat his right hand fingers were cut. He was present on the spot at that time. Sampuran Singh was also present there. Mukhtiar Singh workman also appeared as AW-1 and deposed that he was employed by Sampuran Singh at Rs. 160 per month with meals. The expenditure on meals was assessed at Rs. 50 per month. On the day of accident he was thrashing wheat on the thrasher being run by the tractor of Sampuran Singh. He was putting the wheat stacks into the thrasher. When he was giving the rugg into the thrasher it stopped, then he tried to press the rugg into the thrasher as a result of which his right hand got entangled. His fingers and thumb were chopped off. General cross-examination was conducted that practice in the village was that agricultural labour used to be employed and labour was paid in kind and thereafter those labourers used to thrash their own wheat of their share. Such cross-examination is not helpful to the employer. The witness could not give the names of other labourers who were helping him in thrashing the wheat. From such cross-examination it cannot be said that the employer had succeeded in establishing that the workman was not employed with him. AW-2 Sajjan Singh deposed that Mukhtiar Singh was working with Sampuran Singh in the field on the thrasher when the accident took place. He was grazing his buffaloes in the nearby field. Sampuran Singh who was present there stopped the thrasher after the accident. During cross-examination it was brought out that he and Mukhtiar Singh belonged to one community. But on that ground alone his statement cannot be brushed aside. His presence on the spot cannot be doubted. He has during cross-examination stated about the presence of other workers who were helping in the thrashing of the wheat of Sampuran Singh. On the other hand Sampuran Singh appeared as RW-1 and denied having employed Mukhtiar Singh. According to him Mukhtiar Singh was working on daily-wages and was not on annual basis. He admitted that fingers of the workman were chopped off when he was thrashing wheat. However, he stated that the wheat belonged to the workman and the tractor was owned by Kashmira Singh of village Jalanpur. During cross-examination he admitted that he took the injured workman to the Civil Hospital, Khanna. He also admitted that the fingers of the workman were chopped off in the accident aforesaid. He further admitted that notice was served upon him. Village Jalanpur was stated to be 9 or 10 miles from village Rohno Khurd where the accident took place. Kashmira Singh RW-2 was produced to support him. He stated having gone to village Rohno Khurd with his tractor for

thrashing the wheat of one Hari Singh. The tractor was given by him on hire basis. However, according to him the workman was thrashing his own wheat with his tractor. He is an ex-serviceman like the employer. He did not issue any receipt for hire charges of his tractor. During cross-examination he could not give the exact date on which he had given his tractor to Mukhtiar Singh on hire. RW-3 is Hari Singh, who stated that Mukhtiar Singh was working on daily wages. He never worked with anybody on monthly or annual basis. Evidence of Kashmira Singh and Hari Singh has not inspired confidence, to be relied upon. The negative evidence of Hari Singh is not at all helpful to the employer. Kashmira Singh, who is an ex-serviceman and whose village is far away-about 10 miles, was not expected to lend his tractor to a casual workman in village Rohno Khurd. The workman's evidence was rightly accepted by the Commissioner in coming to the conclusion that he was working with the employer Sampuran Singh at the relevant time and thrashing his wheat with the working of the tractor and that the wheat belonged to Sampuran Singh.

(5) Learned counsel for the appellant has argued that Mukhtiar Singh was not a workman as defined under the Act. No evidence was produced by the workman that on any day of the preceding 12 months there were more than 25 persons employed by the appellant in cultivation of the land. Section 2(1) (h) of the Act defines workman as under :—

> "(n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is:
>
> (i) a railway servant as defined in section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or
>
> (ii) employed on monthly wages not exceeding (one thousand rupees), in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of (the Armed Forces of the Union)

and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them."

(6) The present case would be covered under clause (ii) as reproduced above, as Mukhtiar Singh was employed on monthly wages in one of the capacities specified in Schedule II, which is as under:—

Schedule II.

(7) The following persons are workmen within the meaning of Section 2(1)(n) and subject to the provisions of that Section that is to say, any person who is:

"(xxix) employed in farming by tractor or other contrivances driven by steam or other mechanical power or by electricity; or"

(8) Learned counsel for the appellant referred to amendment made by the State of Punjab while inserting a sub-clause to clause (xxix) as referred to above. Reliance has been placed on sub-clause (xxix-b) which is as under:—

"employed in the cultivation of land or rearing and maintenance of livestock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or"

If sub-clauses (xxix) and (xxix-b) are read together it would show that they are quite separate covering different categories of workmen. While sub-clause (xxix) refers to a workman employed in farming by tractors (or other machinery driven by mechanical power or electricity); whereas clause (xxix-b) deals with workmen engaged in cultivation of land which need not be by tractors or other machines run by power. It is in the latter category that the person would be workman as defined, if on any day during the last twelve months there were 25 persons employed. However, as far as clause (xxix) is concerned there need not be 25 persons employed on any day during the last 12 months. Even one person employed in the process of farming with the tractor or other machine worked by power or electricity, would be covered under the definition of workman. In the present case, as already stated above, Mukhtiar Singh was working

on a thrasher which was being run with the tractor. Thrashing of wheat is a process of farming and Mukhtiar Singh would be a workman as defined under Clause (xxix) of Schedule II read with Section 2 (l) (n) (ii) of the Act. In *Mahmood* v. *Balwant Singh and another* (1), a person who was thrashing the wheat with the tractor was held to be a workman by the Allahabad High Court.

(9) Learned counsel for the appellant has further argued that even if Mukhtiar Singh was employed to do the job of thrashing, it was not expected of Mukhtiar Singh to put his own hand into the thrasher when the thrasher had stopped, to suffer the injuries. Thus, he suffered the injuries due to his own negligence and is not entitled to any compensation on the principle of 'added peril'. In support of this contention reliance has been placed on the following decisions: (1) *Gouri Kinkar Bhakat* v. *Messrs Radha Kissen Cotton Mills*, A.I.R. 1933 Calcutta 220; (2) *Devidayal Ralyaram* v. *Secretary of State*, *A.I.R.* 1937 Sind 288; and (3) *Bhuranqua Coal Co. Ltd.* v. *Sahebjan Mian and another*, A.I.R. 1956 Patna 299. It is not necessary to deal with these judgments as the principle enunciated therein is not applicable to the case in hand. What Mukhtiar Singh had deposed while appearing as AW 1 is that when he put stacks in the thrasher, it stopped. Then he pushed the rugg and it started working and his fingers and thumb were entangled and chopped off. Learned counsel for the appellant wanted this statement to be interpreted that when the thrasher had stopped, Mukhtiar Singh had put his own hand therein which got entangled and suffered the injuries. In the facts of the present case the principle of added peril, as enunciated in the authorities above, is not applicable. It was duty of Mukhtiar Singh to give a push to the rugg which was being put into the thrasher even if the thrasher had stopped on that account. It was accidental that while giving push to the rugg his hand was involved in the thrasher causing injuries. The contention of the counsel for the appellant is, therefore, repelled.

(10) It has been argued by the learned counsel for the appellant that the cost of the meals which were provided free to the workman could not be included in the wages while assessing the compensation.

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(1) 1980 LAB.I.C. 300.

Further it has been argued that there was no sufficient material to come to the conclusion that the free meals served to the workman were worth Rs. 50 as was claimed by the workman. This contention cannot be accepted. Firstly, only a rough estimate in such circumstances was expected to be made by the workman. Mukhtiar Singh while appearing as AW 1 categorically stated that the meals supplied to him were worth Rs. 50. On the other hand Sampuran Singh, the employer, did not lead any evidence on this subject. There was no reason to disbelieve the statement of Mukhtiar Singh in this respect. Since supply of free meals was also part of the terms and conditions of the service, it was legitimate to include the same towards the monthly wages. The Commissioner was thus right in coming to the conclusion that the total wages of the workman were Rs. 210.

(11) Finally it has been argued by the learned counsel for the employer that the law prevalent on the day of the accident was to be applied in assessing the amount of compensation i.e. at the rate of Rs. 210 per mensem wages and on account on 50 per cent permanent disability of the hand as per Schedule the compensation should have been fixed at Rs. 5,600. The Commissioner wrongly applied the amended law and fixed the compensation at Rs. 12,600. This contention, though appearing to be attractive, is not acceptable. Workmen's Compensation Act is a social legislation enacted with the sole object of compensating the employees, the workmen. It is the wisdom of the Legislature to amend statutes even with retrospective effect. When specific provision is made making any provision enforceable with retrospective effect, the intention of the Legislature has to be kept in view and the effect to the legislation has to be given with such retrospective effect. The contention, that with retrospective effect fiscal liabilities of the parties could not be effected like any taxation statute, cannot be accepted in respect of other statutes and the one like the Workmen's Compensation Act, 1976. Amendment in the Schedule was made enforceable with effect from October 1, 1975 though this Act was amended on May 21, 1976. Since the accident had taken place on May 2, 1976, it is the amended law which would apply to the case in hand. The Commissioner was, thus, well within law to award a sum of Rs. 12,600 as compensation to the respondent.

(12) For the reasons stated above, this appeal fails and is dismissed with costs.

R.N.R.