(1993) 04 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1220 of 1993

Andhra Cements Ltd. APPELLANT

Vs

Nagarjuna Investment Trust Ltd. RESPONDENT

Date of Decision : 07-04-1993

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(1), 22(3)

Citation : (1993) 1 ALT 680 : (1993) 1 APLJ 300

Hon'ble Judges : Immaneni Panduranga Rao, J

Bench : Single Bench

Advocate : V.L.N.G.K. Murhty and Ashok Kumar Agarwal, for the Appellant; A.T.M. Rangaramanujam and T.C. Krishnan, for the Respondent

Final Decision : Allowed

Judgement

Immaneni Panduranga Rao, J.—This revision petition is filed by the defendant against the order of the learned IV Additional Judge, City Civil Court, Hyderabad, in I.A.No. 2125 of 1992 in O.S.No. 1236 of 1992 appointing a Commissioner for the purpose of seizing the machinery of the defendant with the police assistance, bringing the same to Hyderabad and keeping it in the custody of the plaintiff.

2. The suit is filed for recovery of of Rs. 8,49,999-59 ps. alleged to be the balance due in respect of the Financing Lease Agreement and also for recovery of the machinery supplied to the defendant. The defence taken in the lower court was that the defendant supplied cement worth Rs. 15,00,000/- and odd to a sister concern of plaintiff-company which was agreed to be adjusted towards instalments payable by the defendant. During the pendency of the civil revision petition, the learned counsel for the petitioner contended that in terms of Ex. A-1 agreement the plaintiff has claimed rebate from the Income Tax Department" which is liable to be adjusted. It is not necessary to go into the details of the respective contentions of both the parties and the merits of those contentions can be decided only in the suit.

3. The only limited question that falls for consideration at this stage is:-

Whether by virtue of Section 22(1) of the Sick Industrial Companies (Special Provisions (Act, 1985 (in short ''the Act) there is bar for the appointment of the Commissioner for the purpose of seizing the machinery of the defendant-company, bringing the same to Hyderabad and keeping the same in the custody of the plaintiff-company?

4. The learned counsel for the revision petitioner, relying upon Section 22(1) of the Act, argued that inasmuch as the Board for Industrial and Financing Reconstruction (in short ''B.I.F.R.'') registered a case against the defendant in Case No. 33 of 1990 and declared the defendant as a sick industry on 27-7-90 and appointed I.D.B.I.as an operating agency for the purpose of preparing a scheme for revival/rehabilitation of the defendant, Sec .22 operates as a bar against the civil court from interfering with or passing any order in the nature of distress against the properties of the defendant-company.

5. The learned counsel for the respondent, on the other hand, placing reliance upon a Division Bench decision of our High Court in C.M.A. No. 676 of 1991 and C.R.P. No. 1362 of 1991, argued that in the absence of an order u/s 22(3) of the Act the legal proceedings against the sick industry will not remain suspended since the lease period came to an end even by 19-6-91 and there is no justification for the defendant-company to retain the possession of the machinery. The learned counsel for the respondent argued that the revision petitioner herein being a party to the Division Bench decision referred to above is bound by the said decision. But, as rightly submitted by the learned counsel for the revision petitioner (the defendant in the suit), the learned Judges of the Division Bench only considered the effect of Sub-section (3) of Section 22 of the Act, but, not the import of Section 22(1) of the Act. In that case the learned Judges held that no order was passed by B.I.F.R. u/s 22(3) of the Act; that passing of an order by B.I.F.R. under the said provision is a necessary statutorily ordained precondition for the purpose of keeping in suspension the agreements, settlements, contracts etc., specified thereunder and for freezing the rights, privileges and obligations accruing or arising therefrom and that it cannot be presumed that the B.I.F.R. will anyhow pass an order u/s 22(3) of the Act. The effect of Section 22(1) does not seem to have been urged before their Lordships nor considered by them.

6. Section 22(1) of the Act reads as follows:-

" Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation, or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the widnihg up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

7. The provisions of Section 22(1) of the Act came up for consideration before a Division Bench of our High Court in The Andhra Cement Company Ltd., Secunderabad Vs. A.P. State Electricity Board and others, . The learned Judges while holding that Section 22 of the Act contemplates that no proceedings either for winding up or for execution, distress or the like against any of the properties of the company or for appointment of a receiver in respect thereof shall ''lie or be proceeded with'', however, held that non-supply of further goods under a contract cannot be equated with the kind of proceeding contemplated by Section 22(1) of the Act. It is in the light of that interpretation that the learned Judges held that the non- supply of electricity in future by the Andhra Pradesh State Electricity Board to the revision petitioner herein cannot be brought within the prohibition contained in Section 16 of the Act. The said provision came up for consideration before the Supreme Court in The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others, . , wherein a Gram Panchayat initiated proceedings to recover the property tax from a sick industry. After referring to Section 22(1) of the Act, the learned Judges of the Supreme Court held that the nature of the proceedings which are automatically suspended are: (1) Winding up of the industrial company; (2) Proceedings for execution, distress or the like against the properties of sick industrial company and (3) Proceedings for the appointment of Reciever. The learned Judges clarified that the proceedings in respect of the above matters could however, be continued against the sick industrial company with the consent or approval of the Board or of the appellate authority as the case may be and that in the light of the steps taken by the Board u/s 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any of the properties of the company shall lie or be proceeded further except with the consent of the Board. In the words of their Lordships, there would be automatic suspension of such proceedings against the company''s properties, and as soon as the inquiry u/s 16 of the Act is ordered by the Board, the various proceedings set out under Sub-section (l) of Section 22 of the Act would be deemed to have been suspended. The learned Judges further held that the creditors may approach the board for permission to proceed against the company for the recovery of their dues/ outstandings / overdues or arrears and that the Board at its discretion may accord its approval for proceeding against the company.

8. The interpretation given by the Supreme Court about the provisions of Section 22(1) of the Act clearly points out that Section 22(1) of the Act imposes a conditional bar for any proceeding initiated against the sick industry either for winding up or proceedings for execution, distress or the like against the properties of a sick industrial company. The word "distress" which is the same as "distraint" means seizure of goods. The order of the IV Additional Judge

appointing the Commissioner for the purpose of seizure of the machinery of the revision petitioner herein, to bring the same to Hyderabad and to keep it in the custody of the plaintiff-respondent during the pendency of the suit thus comes within the conditional bar laid down u/s 22(1) of the Act. As laid down by the Supreme Court in Gram Panchayat v. Shree Vallabh Glass Works Ltd., (2 supra), it is open to the plaintiff-respondent to approach the B.I.F.R. for permission to proceed with the suit and after obtaining the approval of the Board, to proceed against the defendant-company and its property. In the absence of the plaintiff (respondent) taking such approval from B.I.F.R., the entire proceedings contemplated in I.A.No. 2125 of 1992 are deemed to have been suspended by virtue of the provisions of Section 22(1) of the Act and, as such, the order passed by the learned IV Additional Judge, City Civil Court, Hyderabad, in appointing the Commissioner is without jurisdiction.

9. The declaration given u/s 22(3) of the Act operates as an absolute bar for implementation of any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force to which the sick industrial company is a party, whereas Section 22(1) only suspends any proceeding for the winding up or execution or distress or the like against any of the properties of the industrial company. This distinction between the effect of Section 22(3) and 22(1) of the Act was not argued before the learned Judges of the Division Bench of our High Court and the learned Judges had no occasion to consider this aspect.

10. The revision petition is accordingly allowed, at the stage of admission, setting aside the order of the learned IV Additional Judge, City Civil Court, Hyderabad in LA. No. 2125 of 1992 in O.S.No. 1236 of 1992.

11. But, in order to safeguard the interests of the plaintiff-respondent during the pendency of the suit, I feel that it is just and necessary that the defendant-company (revision petitioner herein) should be restrained from dismantling the machinery or removing or secreting the same during the pendency of the suit. In order to ensure that, the Commissioner who was appointed in I.A.No. 2125 of 1992 by the learned IV Additional Judge, City Civil Court, Hyderabad shall prepare an inventory of all the parts of the machinery which is the subject-matter of the suit and visible to the naked eye and also get photographs taken of the existing machinery from different angles to ensure that the revision petitioner does not dismantle, remove or secrete any of the parts of the machinery during the pendency of the suit.

