(2019) 08 CAL CK 0292

In the Calcutta High Court

Case No : Appeal From Decree (APD) No. 375 Of 2018 In Civil Suits (CS) No. 43 Of 2007

Bakelite Hylam Limited APPELLANT

Vs

Narottam Investments & Trading Co Ltd RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 17, 18, 22(1)
Indian Contract Act, 1872 — Section 25

Citation : (2019) 08 CAL CK 0292

Hon'ble Judges : Sanjib Banerjee, J;Suvra Ghosh, J

Bench : Division Bench

Advocate : Supriyo Bose, Chayan Gupta, S. Sen, Supratim Laha, Abhijit Sarkar

Final Decision : Disposed Of

Judgement

The Court : The appeal is against a decree of August 28, 2018 passed on an application under Chapter-XIIIA of the rules on the Original Side of this Court. Several grounds are taken by the defendant-appellant, not the least of them being that a previous application for rejection of the plaint on the ground of limitation was dismissed by the trial Court with the observation that the issue had to be decided at the time of trial, but the relevant issue was not gone into while deciding the application for summary judgment under Chapter-XIIIA of the said rules.

It also appears that a part of the reasoning in the impugned judgment is based on a judgment reported at AIR 1977 SC 577 (Mechalec) which is no longer good law. The recent Supreme Court judgment finding Mechalec to not be good law is reported at (2017) 1 SCC 568. The Supreme Court judgment was reported prior to the order impugned being passed.

The appellant company was referred to the Board for Industrial and Financial Reconstruction under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. By virtue of the said Act of 1985, once a reference pertaining to a sick industrial company was made, no suit or claim against the company could be instituted or further proceeded with in view of the express statutory prohibition under Section 22(1) of such Act. The Act of 1985, introduced initially to ensure that employment was protected and manufacturing companies did not get liquidated at the behest of creditors, is no longer in fashion. Long years of abuse of the provisions of such Act by unscrupulous promoters of fraudulent companies led to the Act being repealed.

The scheme of the Act of 1985, inter alia, under Sections 17 and 18 thereof, envisaged a rehabilitation package being formulated by the BIFR in consultation with the operating agency upon notice to all creditors and others interested in the concerned sick industrial company. Once such a scheme of rehabilitation received the imprimatur of the BIFR, subject to any order of the appellate authority or other appropriate forum, the scheme became binding on the concerned sick industrial company and its creditors.

In respect of the appellant company, the scheme of rehabilitation as sanctioned by the BIFR provided for payment to the secured creditors of the appellant to be completed by or about August, 2012. The unsecured creditors of the appellant company were to get half of their dues and, that too, by instalments spread over 24 months beginning September, 2012. There is no dispute in such regard. Thus, the respondent in this case was entitled to receive 24 monthly instalments towards half of its principal dues, since the balance half stood waived by virtue of the sanctioned scheme and the operation of law and the sanctioned scheme provided for no interest to the unsecured creditors.

The present suit was instituted in March, 2017. The ground of limitation that was taken in the application filed by the appellant herein pertained to the instalments that were more than three years old at the time the suit was instituted. Indeed, the appellant was gracious enough to issue a writing on August 21, 2018 which was forwarded by Advocate for the defendant to Advocate for the plaintiff under cover of a letter dated August 23, 2018. The e-mail of August 21, 2018 clearly held out a promise, within the meaning of Section 25 of the Contract Act, 1872, on behalf of the appellant herein to make payment of a sum of Rs.10,79,750/- to the respondent herein in respect of the previous dues of the respondent.

Though the relevant offer of the appellant to pay Rs.10,79,750/- was noticed in the order impugned, the suit was decreed for the principal sum claimed together with interest at the rate of 10% per annum without there really being a basis thereto.

If the claim was accepted de hors the objection as to limitation that was raised by the appellant, the decree has to be set aside for the mere asking. Clearly, about 20 of the 24 instalments that were payable since September, 2012 were barred by limitation by the time the suit was instituted in March, 2017.

The judgment and decree do not seem to be based on the writing of August 21, 2018. However, it is possible to hold the appellant to its promise as evident from such writing of August 21, 2018. Since such writing gives a greater benefit to the plaintiff in the suit than any adjudication on the question of limitation as to the payment due under the instalments may bring to the plaintiff, the judgment and decree impugned herein are set aside and a decree is passed in the sum of Rs. 10,79,750/- together with interest on such amount at the rate of 6 per cent per annum from August 23, 2018 till payment. The plaintiff will also be entitled to the costs of the suit and incidental proceedings amounting to another Rs.1.25 lakh.

Since a deposit of Rs.14 lakh has already been made by the appellant in Court, the plaintiff will be entitled to receive first the costs of Rs.1.25 lakh from such deposit and the accretion to the deposit. Out of the remaining sum, the plaintiff will first receive the principal sum awarded of Rs.10,79,750/-. The interest claim of the plaintiff from August 23, 2018 till the receipt of payment (which ought to be within four weeks from date) will be calculated and made over thereafter. If there is any residue, the same will be returned to the appellant, subject to the Registrar retaining his usual commission and charges.

Any acceptance by the plaintiff of any money in terms of this order will amount to the acceptance of the decree.

APD 375 of 2018 is disposed of.

There will be no order as to costs.

