

(2001) 10 BOM CK 0050

In the Bombay High Court

Case No : Appeal No"s. 837, 838 and 864 of 2001 in Chamber Summons No"s. 146, 361 and 365 of 2001 in Suit No. 194 of 2001

Baroda Rayon Corporation Ltd.

APPELLANT

Vs

ICICI Ltd. (Debenture Trustees) and Others

RESPONDENT

Date of Decision : 22-10-2001

Acts Referred:

Bombay Relief Undertakings (Special Provisions) Act, 1958 — Section 3, 4(1)

Citation : (2002) 2 BomCR 608 : (2002) 2 BOMLR 915 : (2003) 113 CompCas 466 : (2002) 2 MhLj 322

Hon'ble Judges : S.A. Bobde, J;A.P. Shah, J

Bench : Division Bench

Advocate : Janak Dwarkadas and R. Naricharia, instructed by Sushma M. Dave, for the Appellant; Rajani Iyer and Birendra Saraf, instructed by M.K. Ambalal and B.H. Rasputra, instructed by Shaunak Satpute and Co., for the Respondent

Judgement

A.P. Shah, J.—As these appeals give rise to common questions of law and facts and arise out of a common order passed by the learned single Judge, they are being disposed of by this common order.

2. The Baroda, Rayon Corporation Ltd., which is the appellant in all the three appeals, is a company having its mills at Surat in the State of Gujarat. The appellant is original defendant No. 1. Respondent No. 1 ICICI Ltd, has filed a suit in its capacity as trustees of the debenture-holders for recovery of money for the benefit of the debenture-holders in respect of certain debentures issued by the appellant. Respondent No. 1 has also sought enforcement of the securities in the form of mortgage and hypothecation of immovable/movable properties which had been mortgaged/hypothecated in favour of respondent No. 1 as the trustees of the debenture-holders. A notice of motion was filed by respondent No. 1 in the said, suit and by an order dated 14-2-2001, the Court Receiver was appointed in respect of the immovable properties of the appellant and was also given power to take physical possession of the properties and, if required, to take them forcibly. An appeal was filed from this order and by consent, the order of the learned

single Judge was modified vide order dated 26-2-2001. By this order passed in appeal, certain plants and immovable properties of the appellant were excluded from the order of the learned single Judge. The Receiver was to take only formal possession of the plants which were excluded, without dispossessing the appellant. The royalty was to be fixed at the time of confirmation of the ad-interim order. The Receiver visited the appellant's mill premises on 13th and 14th March 2001, but he could not take possession of the plant and other assets of the appellant. On 16-3-2001, the Receiver took possession of two units of the appellant, viz., Rayon Plant and Nylon Tyre Cord Plant. It seems that the Receiver also took formal possession of the appellants property at Udhana. On 16-3-2001 itself a notification was issued u/s 3 of the Bombay Relief Undertakings (Special Provisions) Act, 1957, hereinafter referred to as the "Act", by the Government of Gujarat declaring the appellant as a relief undertaking. The Receiver again visited the premises on 17-3-2001 when the General Manager of the appellant claimed that in view of the fact that the appellant had been declared as a relief undertaking, possession of the property could not be taken. It seems that the company had obstructed the security guards in the factory premises which were in possession of the Receiver and therefore, respondent No. 1 filed a contempt petition, being Contempt Petition No. 70 of 2001, which is pending. The Receiver could not take possession of the remaining properties and the appellant also failed to execute the undertaking and other documents which were required by the Receiver in respect of the properties of which the Receiver had taken formal possession. The ad hoc royalty was also not fixed by the Receiver.

3. In the above background, Chamber Summons No. 361 of 2001 was taken out by the respondent No. 1 for enforcement of the order dated 14-3-2000 appointing the Court Receiver and for direction to the appellant to execute such documents as required by the Receiver in respect of the properties of which the Court Receiver is in formal possession. Chamber Summons No. 365 of 2001 was filed by the appellant seeking restoration of the possession of Rayon Plant and Nylon Tyre Cord Plant of which physical possession was taken by the Receiver on 16-3-2001. A third chamber summons, being Chamber Summons No. 146 of 2001, was filed by the appellant for revocation of the leave granted under Clause XII of the Letters Patent.

4. The learned single Judge, following the Full Bench decision of this Court in *Hatimbhai Hasanally v. Framroz Eduljee Dinshaw*, reported in AIR 1927 Bom. 278, dismissed Chamber Summons No. 146 of 2001 taken out by the appellant for revocation of the leave. The learned single Judge held that the proceedings against the appellant undertaking in a court outside the State of Gujarat could not be suspended by virtue of notification issued u/s 3 of the Act. The learned single Judge, relying on the decision of the Supreme Court in *R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd.*, held that the Legislature could confer upon the relief undertaking immunity effective within the bounds of the State and not beyond the State of Gujarat. In that view of the matter, the learned Judge dismissed Chamber Summons No. 365 of 2001 while making

Chamber Summons No. 361 of 2001 absolute.

5. Mr. Dwarkadas, learned counsel appearing for the appellants, fairly conceded that in view of the Full Bench decision of this Court in Hatimbhai Hasanally's case (supra), he does not wish to press the prayer for revocation of the leave at this stage. Mr. Dwarkadas, however, strenuously contended that the learned single Judge has completely misconstrued the provisions, the objects and scheme of the Act. The learned counsel submitted that when the order dated 26-2-2001 was passed by this Court, the notification issued under the Act had not come into force. He submitted that the learned Judge ought to have taken into account the change which was brought about by the notification issued u/s 3 of the Act. According to Mr. Dwarkadas, the immunity granted under the Act applies even against execution of orders and decrees passed outside the State of Gujarat but in respect of the properties of the undertaking in the State of Gujarat and, therefore, the Receiver was not entitled to take possession of the two units, viz., Rayon Plant and Nylon Tyre Cord Plant. Mr. Dwarkadas placed heavy reliance on the decision of the Supreme Court in Binod Mills Co. Ltd. Vs. Suresh Chandra Mahaveer Prasad Mantri, , and the decision in R. S. D. V. Finance Co. Pvt, Ltd. v. Shree Vallabh Glass Works Ltd. (supra).

6. Ms Iyer, learned counsel appearing for respondent No. 1, on the other hand, submitted that the ratio of the decision in Binod Mills' case has no application in this case, since the proceedings are taken by a Court outside the State of Gujarat and since the Receiver has already been appointed prior to issuing the notification u/s 3 of the Act further and the Receiver has taken possession of the two units, the appellant cannot claim any immunity under the provisions of Section 4 of the Act.

7. The short question which falls for our consideration is whether Section 4 operates against execution of orders obtained against the relief undertaking by its creditors outside the State of Gujarat prior to the undertaking having been declared as a relief undertaking. There is no dispute that by a notification dated 16-3-2001 the appellant has been declared as a "relief undertaking" u/s 3 of the Act as amended and applied to the State of Gujarat. It is contended that by virtue of the said notification the order of appointment of Receiver passed by this Court vide order dated 26-2-2001 remains suspended during the period of operation of the notification as provided in Section 4(1)(a)(iv) of the Act. It would be clear from the preamble of the Act that the Act was enacted "to make temporary provisions for industrial relations and other matters to enable the State Government to conduct, or to provide loan, guarantee or financial assistance for the conduct of, certain industrial undertakings as a measure of preventing unemployment or of unemployment relief. Initially, it was applicable only to those industrial undertakings which were started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by itself or under its authority. But by an amendment made in the 1960, the Act was made applicable also to industrial undertakings to which any loan, guarantee

or other financial assistance has been provided by the State Government. Section 3 expressly declares that on issuance of a notification thereunder, the specified industrial undertaking shall "be conducted to serve as a measure of preventing unemployment or of unemployment relief and the undertaking shall accordingly be deemed to be a relief undertaking for the purpose of this Act." Sub-section (2) of Section 3 says that a notification u/s 3(1) shall have effect for such period not exceeding 12 months as may be specified in the notification. It is, however, renewable for a like period from time to time so, however, that all the periods in the aggregate do not exceed five years.

8. Section 4(1) is relevant for our purpose and may be set out in full:--"4. Power "to prescribe industrial relations and other facilities temporarily for relief undertakings. -- (1) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, order or other provision whatsoever, the State Government may, by notification in the Official Gazette, direct that -

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under Sub-section (2) of Section 3 --

(i) all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply (and such relief undertaking shall be except therefrom), or shall, if so directed by the State Government, be applied with such modifications (which do not however affect the policy of the said laws) as may be specified in the notification;

(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government or before any loan, guarantee or other financial assistance was provided to it by, or with the approval of the State Government for being run as a relief undertaking, shall be suspended in operation, or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification;

(iii) rights, privileges, obligations and liabilities shall be determined and be enforceable in accordance with Clauses (i) and (ii) and the notification;

(iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement, thereof shall be suspended and all proceedings relative there to pending before any court, Tribunal, officer or authority shall be stayed;

(b) the right, privilege, obligation or liability referred to in Clause (a)(iv) shall, on the notification ceasing to have force, revive and be enforceable and the proceedings referred to therein shall be continued:

Provided that in computing the period of limitation for the enforcement of such right, privilege, obligation or liability, the period during which it was suspended

under Clause (a)(iv) shall be excluded notwithstanding anything contained in any law for the time being in force."

9. Ms. Iyer, learned counsel for respondent No. 1, has relied on the decision of the Supreme Court in *R. S. D. V. Finance Co.*'s case (supra). According to the learned counsel, the said decision conclusively establishes that a suit or proceedings at Mumbai for enforcement of any remedy against the relief undertaking cannot be suspended as the State of Gujarat is not competent to make law in respect of suit or proceedings pending in Court outside the State of Gujarat. The argument of Ms Iyer is two fold: firstly, that Section 4(1)(a)(iv) cannot have the effect of suspending the enforcement of any decree or order passed by the court in Mumbai and, therefore, bar contained in the Act does not come into play. Secondly, that the Court Receiver having been appointed prior to the issuance of the notification u/s 3, the bar u/s 4(1)(a)(iv) is not attracted. We are unable to accept the submission of the learned counsel. In *K. S. D, V. Finance Co.* 's case, the question before the Supreme Court was whether the notification issued under the Act has the effect of suspending the proceedings in the Bombay High Court. In that case, a summary suit was filed against the respondent therein in the High Court for recovery of money. In the written statement, the defendant submitted that the receipt contained the endorsement "subject to Anand jurisdiction" and, as such, Bombay High Court had no jurisdiction to entertain the suit. The learned single Judge held that the Bombay High Court had jurisdiction to try the suit as the suit was based on postdated cheques and those cheques being payable in Mumbai, the Court at Mumbai had jurisdiction to decide the case. On an appeal filed by the respondent, the Division Bench held that leave granted under Clause 12 of the Letters Patent is liable to be revoked and that the Bombay High Court had no jurisdiction to entertain and try the suit. In appeal, the Supreme Court reversed the decision of the Division Bench and held that the Bombay High Court had jurisdiction to try the suit. At the hearing of the appeal before the Supreme Court it was also pointed out that by a notification, the respondent has been declared a relief undertaking u/s 3 of the Act and, therefore, relying upon Section 4(1)(a)(iv), it was contended that if the very right/liability itself is suspended, no suit to establish or enforce such right/liability can proceed. It was argued that even though the proceedings are going on in a Court outside the State of Gujarat, the outcome of the proceedings is bound to affect the undertaking which is situated within the State of Gujarat. The Supreme Court rejected this contention holding, inter alia, that the State Legislatures do not possess the power to make a law having extra-territorial operation and only Parliament has that power. The Gujarat Legislature is not competent to regulate, modify or extinguish the obligations and liabilities incurred by a relief undertaking outside the State of Gujarat nor can it suspend or stay the suit or other proceedings relating to such obligations and liabilities.

10. In the above case, the Supreme Court observed :--"The State Legislatures do not possess the power to make a law having extra-territorial operation (see *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras* and

Others, . Only Parliament has that power [Article 245(3)]. The State of Bihar and Others Vs. Charusila Dasi, and The State of Bihar and Others Vs. Bhabapritananda Ojha, do not say to the contrary as explained hereinabove. The Legislature of Gujarat cannot say that obligations and liabilities incurred by a "relief undertaking" outside the State of Gujarat shall remain suspended during the period the notification u/s 3 read with Section 4 is in operation and/or that no suit or other proceedings can go on in a court outside the State of Gujarat in respect of such an obligation/liability. The Legislature may well confer an immunity (no doubt, temporary) upon the relief undertaking effective within the bounds of the State of Gujarat, but it cannot extend that immunity beyond its bounds. By way of illustration, it cannot say that the sales/purchases effected by the relief undertaking in another State shall not be liable to sales tax under the law of that other State. It cannot prevent the other State from levying and realising (by proceeding, if necessary, against the properties and assets of the undertaking situate outside the State of Gujarat) the tax due from the relief undertaking in respect of the sales and purchases effected in that State. Similarly, it cannot say that the properties of the relief undertaking situated in other States shall not be liable to property tax. Nor can it say that those properties cannot be proceeded against the realisation of amounts due from the relief undertaking to third parties in pursuance of decrees/orders made by courts outside the State of Gujarat. It is true that such proceedings, may ultimately affect the relief undertaking adversely; they may also tend to defeat the objective underlying the Act and the notification. But that cannot be helped: That is the limitation of power. It is probably, for this reason that Parliament has enacted the Sick Companies (Special Provisions) Act, 1985. Incidentally, it may be mentioned that according to the respondent-company, a rehabilitation scheme has been sanctioned by the BIFR for the respondent-company on January 21, 1992, but the inter-corporate depositors are said to have been kept out of the scheme as framed by the I.C.I.C.I. Ltd., the operating agency.

The result of the above discussion is that the Gujarat Legislature is not competent to regulate, modify or extinguish the obligations and liabilities incurred by a relief undertaking (declared as such u/s 3 of the Bombay Act) outside the State of Gujarat nor can it suspend or stay the suit or other proceedings relating to such obligations and liabilities. Section 4(1)(a)(iv) is not effective to suspend the plaintiff-appellant's right to money nor can it operate to stay the proceedings in the present suit in the Bombay High Court. If and when any execution is levied within the State of Gujarat and/or against the properties of the relief undertaking situated within the State of Gujarat, they can be interdicted by the said notification read with Section 4(1)(a)(iv) of the Act as held by this court in Binod Mills Co. Ltd. Vs. Suresh Chandra Mahaveer Prasad Mantri, ."

11. It would be apparent from the observations made by the Supreme Court that the suit or proceedings pending outside the State of Gujarat cannot be suspended. However, if any execution in respect of a decree or order passed in

such proceedings is sought to be levied within the State of Gujarat against the properties of the relief undertaking situate within the State of Gujarat, they can be interdicted by the said notification read with Section 4(1)(a)(iv) of the Act. In other words, though the suit or proceedings outside the State of Gujarat does not come within purview of the Act, the enforcement of any decree or order passed therein in respect of the properties of the relief undertaking within the State of Gujarat will be hit by such notification and such decree or order cannot be enforced so long as the notification remains in operation.

12. In *Binod Mills Go's case* (supra), the Supreme Court dealing with similar provisions of the M.P. Sahayata Upkram (Vishesh Upbandh) Adhiniyam, 1978 which was enacted to give relief to sick undertakings. In that case, relief was given to the appellant therein under the said Act and was extended from time to time by subsequent orders. The respondent, therein filed a summary suit in the Bombay High Court and the suit was decreed. The respondent got the decree transferred for execution to the District Judge, Ujjain, and then applied for execution of the decree. The appellant resisted the execution by pleading that since it was a relief undertaking under the Act, the benefits thereunder were available at the time the objection was filed and that the decree could not be executed against the undertaking, in view of the bar contained in Section 5 of the said Act. The respondent admitted that the appellant was a relief undertaking. However, it was contended that the District Judge had no jurisdiction to entertain any objection to the execution of the decree validly passed by the Bombay High Court. The Execution Court, it was contended, could not go behind the decree and the decree mandated execution on its terms. The contention of the respondent was accepted by the District Judge and the revision filed against the said order was dismissed by the Madhya Pradesh High Court. The matter was then carried to the Supreme Court. The question before the Supreme Court was whether proceedings taken in M. P. Court for execution of a decree validly obtained from the Bombay High Court has to be or can be stayed u/s 5 of the M.P. Relief Undertaking Act and whether Section 5 of that Act operates even against execution of decrees obtained against the relief undertaking by its creditors outside the State of Madhya Pradesh. It was held by the Supreme Court that the decree will not be enforceable during the period for which the notification is operating. The Supreme Court observed:--

"24. The learned counsel for the respondent brought to our notice decisions reported in AIR 1953 Mys 37 and similar other decisions to contend that the execution court cannot, while executing decrees, adopt a procedure under any special law available in the State in which the execution court is situate, in relation to decrees obtained outside the States. For example, suppose a decree is obtained in Madras and it is transferred to Madhya Pradesh. Suppose against that in Madhya Pradesh, there is an enactment to scale down the decree amount either in installments or to wipe out the debt of an agriculturist; will it be open to the executing court to take recourse to such enactments and give relief to debtors in the State in relation to a decree obtained in a Court outside the State.

It is settled law that the transferee Court has to execute the decree in accordance with the law obtaining in the Court that passed the decree and determine the rights and liabilities of the parties in accordance with the substantive law obtaining in the State where that Court is situate. That being so the Judgment-debtor cannot move the execution court and get the benefit of the procedure available in the State in which the transferee Court is situated.

25. Here we are not confronted with such a situation. Nobody contends that the executing Court has to change the terms of the decree. All that is stated is that its execution has to be suspended for a specified period. Section 5, therefore, does not come into conflict either with Section 40 or Section 42, Civil Procedure Code. In our view, the bar u/s 5 is an absolute one for the duration of the period contemplated in the Act.

26. If the relief undertakings are not protected by a provision like section 5, the position will be distressing. The creditors will proceed against them. Their properties and goods will be attached. The workers will be rendered jobless. In this case, this unit is said to employ nearly 2,000 workers. The creditors will not be in a more advantageous position either. If liquidation proceedings are initiated, the creditors will get only pro-rate from the sale proceeding of the assets, if creditors are permitted to proceed against the assets and the products of the undertaking, that would be detrimental to the heavy investment made by the State and other financial institutions. The concert of the Government in enacting this law is thus in the interest of the large number of workmen employed in these undertakings and in the revival, if possible, of sick unit. It is to protect them and not to render them unemployed that such relief undertakings are financed by the State."

13. Now coming to the facts of the present case, the Receiver was appointed by the Bombay High Court when the notification was not issued. The Receiver had gone to the premises to take possession on 13th and 14th March 2001 but he could not obtain possession. By the time the Receiver again visited the premises, the notification had been issued by the State of Gujarat u/s 3 of the Act declaring the appellant as a relief undertaking. In view of the provisions of Section 4(1)(a) (iv), the order of the Receiver could not be enforced against the properties of the undertaking in Gujarat State so long as the notification is in force. Consequently, the Receiver was not entitled to take possession of the Rayon Plant and Nylon Tyre Cord Plant of the appellants. We do not have the slightest hesitation in holding that the immunity given to the relief undertaking also applies in the case of decrees or orders passed by the Court outside the State of Gujarat, if sought to be proceeded against the properties of the relief undertaking in the State of Gujarat. Thus though the notification will not have effect of suspending proceedings, pending in this Court, the orders passed by this Court cannot be enforced against the properties of the relief undertaking situate within the State of Gujarat. We hasten to add that position would be different if the properties of the relief undertaking are situated outside the State of Gujarat and in that event

the bar u/s 4(1)(a)(iv) would not operate.

14. In the result, in view of the foregoing discussion, Appeal No. 837 of 2001 and Appeal No. 838 of 2001 succeed. The order of the learned Single Judge insofar as it relates to Chamber Summons No. 361 of 2001 and Chamber Summons No. 365 of 2001 is set aside. Chamber Summons No. 361 of 2001 is dismissed. Chamber Summons No, 365 of 2001 is allowed. The Receiver is directed to hand over possession of Nylon Plant and Tyre Cord Plant to the appellants forthwith. Appeal No, 864 of 2001 is dismissed. The learned counsel for the appellant states that the appellant will not sell, transfer or create any third party rights in respect of their assets except in due course of business.

On the request of Ms. Iyer, the operation of this order is stayed for four weeks.

15. Copy of this order duly authenticated by the Associate/Personal Secretary of this Court be supplied to the parties.