
(1999) 09 DEL CK 0040

In the Delhi High Court

Case No : C.R. 21 of 1999

Cement Corporation of India

APPELLANT

Vs

Smt. Manohar Bhasin

RESPONDENT

Date of Decision : 09-09-1999

Acts Referred:

Citation : (1999) 6 AD 398 : (2001) 103 CompCas 915 : (1999) 82 DLT 343 : (1999) 51 DRJ 535

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. S.K. Taneja, for the Appellant; Mr. Rajiv Nayyar and Mr. Kamal Mehta, for the Respondent

Judgement

Dr. M.K. Sharma, J.—The present revision petition is directed against the order dated 4.12.1998 passed by the Additional District Judge, Delhi dismissing the application filed by the petitioner/defendant u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the Act). the respondent/plaintiff filed the aforesaid suit being Suit No. 31/1996 seeking for a decree for recovery of possession and for recovery of damages and mesne profits amounting to Rs. 1,19,000/-. The said suit is pending before the Additional District Judge, Delhi. In the said suit an application came to be filed by the petitioner/defendants contending, inter alias that the defendant company has become sick and accordingly, its case has been referred to the Board of Industrial and Financial Reconstruction (BIFR) u/s 15 of the Act. It was further stated in the said application that the reference has since been registered by the BIFR and that pursuant thereto the Board has declared the defendant to be a sick company and IFCI has been appointed as the operating agent.

2. The aforesaid application was contested by the respondent by contending inter alia, that the provisions of Section 22 of the Act are not applicable to the aforesaid suit as the said suit has been instituted seeking for decree of recovery of possession and for recovery of damages and mesne profits. The Additional

District Judge took up the said application for consideration and after hearing the parties dismissed the application. Being aggrieved the present petition has been preferred.

3. Mr. Taneja appearing for the petitioner submitted that as the recovery of damages/mesne profits claimed by plaintiff from the defendants in this case relate to a period prior to the date on which the defendant was declared sick and thus are liabilities to be included in the Scheme and thus the same cannot be recovered in view of the provisions of Section 22 of the Act.

4. Mr. Rajiv Nayyar appearing for the respondent on the other hand, submitted that the provisions of Section 22 of the Act are not applicable and would not cover a proceeding where decree is sought for either for eviction of the tenant or for payment of damages and mesne profits or for both.

5. In order to appreciate the contentions of the learned counsel appearing for the parties it is necessary to extract the provisions of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, which are extracted below:-

22. suspension of legal proceedings, contracts, etc. - (1) 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 winding 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 and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

6. The aforesaid provision came to be interpreted by the Supreme court in Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others, . Atleast two judgments of this Court were, referred to at the bar. They are National Textile Corporation Vs. Kamla Sharma, and Sirmor Sudburg Auto Ltd. Vs. Kuldip Singh Lamba, .

7. In Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, , it was held by the Supreme Court that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is started till after implementation of the scheme or disposal of an appeal, it would be reasonable to hold that the bar or embargo can apply to such of those dues reckoned or included in the sanctioned scheme. Although the Supreme Court decision was rendered in the light of unamended provisions of Section 22 and the amended provisions relate

not only to legal proceeding but also to suit, in my considered opinion the said amendment shall have no bearing and relevancy. It also does not in any manner bring about a change in the legal proposition laid down in M/s. Shree Chamundi Mopeds (Supra). It was held in the case of Deputy Confidential Tax Officer (Supra) that to be entitled to stay of the legal proceedings u/s 22 a mere pendency of the enquiry would not suffice and to get benefit one has to show that the dues have been reckoned or included in the sanctioned scheme. It was also held that Section 22(1) is also not attracted to the dues incurred after the date of sanctioned scheme. This Court in Sirmor Sudburg Auto Ltd. (supra) took notice of the aforesaid factors laid down by the Supreme court.

8. In view of the aforesaid proposition of law laid down by the Supreme court there could be no two opinions on the effect thereof. There is no scope to agitate that the suit seeking for eviction and recovery of possession should be stayed in view of the provisions of Section 22 of the Act. Therefore, section 22 stand as a hurdle in the way of a suit for possession. This however, is not the end of the matter, for the present suit was also instituted for recovery of mesne profits and damages, which according to the counsel for the petitioner were dues relating to the period prior to the date when the petitioner was declared sick and Therefore, in view of the provisions of section 22 of the Act continuation of the suit so far as it relates to the recovery of mesne profits and damages is required to be stayed.

9. No documentary evidence has been produced to show that any scheme has been sanctioned. Unless and until the dues in the nature of arrears of rent and damages and mesne profits which is in arrears form part of the scheme for rehabilitation there could be no embargo or bar to realize such arrears of rent and mesne profits and damages, for the landlord cannot be deprived of the amount which is legitimately due to him and such amount cannot be withheld indefinitely and unreasonably. As is held in Corromandal Pharmaceuticals case (supra) a reasonable construction should be given to the language of the provisions of the Act which is not unfair and also not unreasonable. The Additional District Judge has also considered the aforesaid aspect and has held that as the recovery of damages/mesne profits claimed by the plaintiff from the defendants in the present case are not included in the sanctioned scheme of the Board the suit cannot be stayed even for the recovery of such damages/mesne profits. The said conclusions are in consonance with the ratio of the decision laid down by the supreme Court.

10. I, Therefore, do not find any error in the exercise of jurisdiction by the trial court. The petition has no merit and is dismissed accordingly.