

(1989) 09 PAT CK 0028
In the Patna High Court
Case No : Civil Revision No. 988 of 1989

Chhabi Rani Agro Industries Enterprises Ltd.	APPELLANT
Vs	
Shri Gubeshwari Solvent Pvt. Ltd.	RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 22, 22(1), 25

Citation : (1993) 41 BLJR 1020 : (1990) 1 PLJR 229

Hon'ble Judges : S.K. Jha, J

Bench : Single Bench

Advocate : N.K. Agrawal, for the Appellant; Uma Shankar Singh, for the Respondent

Final Decision : Allowed

Judgement

S.K. Jha, J.—Heard Mr. N.K. Agrawal, learned counsel for the petitioner. The decree-holder has appeared through Mr. Uma Shankar Singh who has also argued at length. Having heard learned counsel for the parties, I think this application can be disposed of at this stage itself as all the points involved and necessary for its disposal have been dwelt upon at length by learned counsel for the parties.

2. This application is directed against an order dated April 4, 1989, passed by the Subordinate Judge, Bhabhua, in Execution Case No. 6 of 1985. By the impugned order the learned subordinate judge has rejected the petition filed on behalf of the petitioner for staying Execution Case No. 6 of 1985, up to October 1994.

3. The petitioner is a sick industrial company within the meaning of Clause (o) of Sub-section (1) of Section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act"). There was a decree passed against the petitioner-company which is a private limited company in favour of the opposite party which is also a private limited company. The decree was for a sum of Rs. 3,40,966.66 in Suit No. 1049 of 1980, before the Calcutta High Court

on its original side. The decree has since, it seems, been transferred to the court of the Subordinate Judge, Bhabhua, for execution. The petitioner filed the application u/s 22(1) of the aforesaid Act. Section 22(1) of the Act reads as follows :

"22. Suspension of legal proceedings, contract, 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, 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 shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

4. u/s 18 of the Act, after an order u/s 17 is passed by the Board in relation to a sick industrial company, the Board is required to prepare and sanction a scheme with respect to such company providing for revival or rehabilitation of the sick industrial company by giving financial assistance. The petitioner has been found by the Board to have become a sick industrial company and accordingly necessary orders have been passed by the Board for the implementation of the rehabilitation scheme prepared by the I.R.B.I. sanctioned by the State Government and other financial institutions for the rehabilitation of the petitioner-company. The Board has also allowed time till October, 1994, to make its net worth positive and the scheme approved by the Board is under implementation. All this is clearly established by the order dated October 20, 1987, passed by the Board for Industrial and Financial Reconstruction, Bench III, in Case No. 132 of 1987, in Ganya Vanaspati Ltd., In re. A copy of the aforesaid order had been marked annexure 1 to the supplementary affidavit filed by the petitioner. It is stated at the Bar that this order was also produced before the learned subordinate judge.

5. The learned subordinate judge has rejected the prayer of the petitioner for staying the execution proceeding only on the ground that no proceeding u/s 16 or 17 and no appeal u/s 25 of the Act is pending. It is said in the impugned order that the only conditions for staying the execution proceedings are :

- (i) when any matter is pending consideration u/s 16 ;or
- (ii) when a scheme is under preparation u/s 17 ; or
- (iii) any appeal is pending u/s 25 of the Act.

6. It seems the learned subordinate judge has missed to take note of a provision in Section 22(1) aforementioned that even if a sanctioned scheme is under

implementation, proceedings for execution against the properties of the sick industrial company shall be held in abeyance except with the consent of the Board. As has already been hinted above, the Board by its order dated October 20, 1987 (annexure 1), has granted the petitioner-company time up to October, 1994, to make its net worth positive by implementing the sanctioned scheme prepared by the I.R.B.I. subject to certain conditions as mentioned in annexure 1 which are not relevant for our purpose.

7. All that learned counsel for the decree-holder opposite party submitted was that Section 22 of the Act had no retrospective operation and that the execution proceedings had been started in the year 1985, whereas the Act came into force in the year 1986. Therefore, the provisions of Section 22 could not be invoked in aid of the petitioner-company. I am afraid this contention is misconceived. The express language of the statutory provision of Section 22(1) enjoins that no proceeding for execution against the properties of the sick industrial company shall be carried on further. It is manifest, therefore, that even if the execution proceedings were started earlier, the provisions of Section 22(1) shall be attracted from the stage and with effect from the date on which the Act came into force if the proceedings are still pending. There is no question of giving the Act retrospective effect or retroactive operation. In view of the fact that the execution proceedings are still pending, further proceedings shall have to be stayed. The court below, has, therefore, on a misconstruction of the statutory provision of the Act refused to exercise a jurisdiction which it was enjoined to exercise.

8. This application is allowed, the impugned order is set aside and it is directed that further proceedings in Execution Case No. 6 of 1985, pending in the court of Subordinate Judge, Bhabhua, shall remain stayed up to October, 1994, or until the decree-holder opposite party has obtained the consent for proceeding further with the execution case, whichever is earlier. No costs.