

(2004) 07 MAD CK 0099

In the Madras High Court

Case No : C.R.P. (PD) No. 2595 of 2003 and C.M.P No. 19553 of 2003

DCM Hyundai Ltd.

APPELLANT

Vs

Sita World Travels (I) Ltd.

RESPONDENT

Date of Decision : 28-07-2004

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2005) 1 BC 35 : (2004) 4 CTC 204 : (2004) 3 MLJ 694

Hon'ble Judges : M. Thanikachalam, J

Bench : Single Bench

Advocate : Srinath Sridevan, for the Appellant; No appearance, for the Respondent

Final Decision : Allowed

Judgement

M. Thanikachalam, J.—The defendant-company in O.S.No. 3613 of 2001 on the file of 13th Assistant City Civil Court, Chennai, having failed in its attempt to stay the further proceedings of the suit till the disposal of the case No. 151 of 1998 pending before the Board for Industrial and Financial Reconstruction (for short "B.I.F.R."), New Delhi, has come to this Court for the same relief.

2. The respondent in this revision, as plaintiff, moved the Trial Court for the recovery of a sum of Rs. 2,02,363 with interest thereon at the rate of 24% per annum from the date of the plaint till the date of realization, from the revision petitioner contending that they have engaged the service of the plaintiff/company for the purchase of air travel tickets as well as for obtaining visa, etc., but failed to pay the sum despite repeated demands.

3. The revision petitioner/defendant, before filing the written statement in this case, had filed a petition u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short SIC (SP) Act, 1985) for the stay of all further proceedings in the suit on the ground that the company had filed a petition before the B.I.F.R., which has been numbered as 151 of 1998 and till such time,

the proceedings should be postponed, since all the matters have to be decided only in that proceedings. The application for stay was opposed by the respondent/plaintiff, contending that they have not received any notice from the Board, that it is not clear whether the petition said to have been filed before the B.I.F.R. is still pending or not, in view of the fact that it was not disclosed by the defendant when pre-suit notice was issued by the plaintiff demanding the amount.

4. The learned trial Judge, upon the consideration of the rival claims of the parties, came to the conclusion that the revision petitioner failed to establish the pendency of the proceedings before the B.I.F.R., that even before the filing of the suit, when a notice was issued, there was no whisper and under these circumstances, the stay sought for, for the further proceedings of the suit is not at all sustainable. Thus concluding, the petition for stay came to be dismissed on 5.9.2003, which is under challenge in this revision.

5. Heard the learned counsel for the revision petitioner, Mr. Srinath Sridevan. No appearance on behalf of the respondent, despite service of notice. 6. The learned counsel, Mr. Srinath Sridevan submits that the revision petitioner-company has become a sick industrial company resulting in a reference before the B.I.F.R. and when the matter is pending before the Board, no suit for the recovery of money against the sick industrial company shall lie. But unfortunately, without considering the mandatory provisions of SIC (SP) Act, 1985, the learned trial judge dismissed the application, which deserves setting aside.

7. The learned trial Judge has observed that the defendant/revision petitioner has failed to inform the pendency of proceedings before B.I.F.R. when he had issued notice and that the petitioner-company has not produced any document also to prove that the proceedings are actually pending before the Board. When a petition is filed supported by an affidavit giving the case number also, it is not challenged specifically except evasive denial, that too on the ground that the plaintiff had not received any notice from the Board. As submitted by the learned counsel, upon Reference, an operating agency was also nominated and the scheme is under way to settle all the claims. In support of the above contention, an affidavit is also filed before this Court by the Company Secretary stating that the reference, viz., Case No. 151 of 1998, is still pending and the operating agency appointed by the B.I.F.R. is ICICI Bank, who is taking all the necessary steps in order to evolve a scheme and the last hearing also took place on 14.2.2004. I find no reason to ignore the affidavit filed by the Company Secretary. Considering the evasive denial in the counter or the formal denial, as the case may be, as well as the affidavit filed before this Court, it should be held that the defendant has become a sick industrial company and the same was referred to the Board as contemplated u/s 15 of the SIC (SP) Act, 1985.

8. Section 22 of the SIC (SP) Act, 1985 says, in respect of an industrial company, where an inquiry u/s 16 is pending, no suit for the recovery of money against the industrial company shall lie or be proceeded with further except with the consent of the Board. It seems, since the plaintiff/respondent in this revision is an

unsecured creditor, the liability to the plaintiff has not been shown in the audit account separately and that is why it appears no individual notice has been issued and the same cannot be a ground for the plaintiff in this suit, to proceed further with the trial, ignoring the fact that the matter is pending before B.I.F.R. and in view of Section 22, the Board alone is competent to decide the matter.

9. The learned counsel, Mr. Srinath Sridevan, in support Of his above contention, relied on the decision rendered by the Apex Court in Tata Davy Ltd. v. State of Orissa, 1996 (6) SCC 669. The case before the Apex Court was in respect of arrears of sales tax from the company, which has become a sick industry. The Apex Court, considering the effect of Section 22 of the SIC (SP) Act, 1985, has held thus :

"In the larger interest of the industrial health of the nation, Section 22 of the Central Act requires all creditors seeking to recover their dues from sick industrial companies in respect of whom an inquiry u/s 16 is pending or a scheme is under preparation or consideration or has been sanctioned, to obtain the consent of the Board to such recovery. If such consent is not secured and the recovery is deferred, the creditors' remedy is protected for the period of deferment and is, by reason of Section 22(5), excluded in the computation of the period of limitation".

In view of the ratio laid down by the Apex Court, as well as, as guided by Section 22, the proceedings between the parties have to be stayed awaiting the outcome of B.I.F.R. The Trial Court, without considering the effect of Section 22 of the SIC (SP) Act, 1985, has dismissed the application, as if, there is no proof for the reference or its pending before B.I.F.R., which is incorrect. In this view, the order passed by the Trial Court is liable to be set aside.

10. In the result, the revision is allowed setting aside the order of the Trial Court in I.A.NO. 14072 of 2002 in O.S.No. 3613 dated 5.9.2003. Consequently, C.M.P.No. 19553 of 2004 is closed. No order as to costs.