

(1999) 11 MAD CK 0088

In the Madras High Court

Case No : C.S. No. 408 of 1997 with Application No's. 4002 and 4003 of 1998

Express Newspapers Ltd.

APPELLANT

Vs

Kwality Spinning Mills Ltd.

RESPONDENT

Date of Decision : 25-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 3(1)

Citation : (1999) 11 MAD CK 0088

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Judgement

A. Ramamurthi, J.—Application No. 4002 of 1998 is filed by the applicant/plaintiff to pass an interim decree for a sum of Rs. 8,97,960/- as admitted in the letter dated June 3, 1996, against the respondent/defendant. Application No. 4003 of 1998 has been filed by the applicant/defendant to stay all further proceedings in C.S. No. 408 of 1997 u/s 22 of the Sick Industrial Companies Act, 1985, till the disposal of Board of Industrial and Financial Reconstruction (hereinafter referred to as "BIFR") proceedings.

2. The case in brief for disposal of both the applications is as follows :

The defendant-company filed Application No. 4003 of 1998 u/s 22 of the Sick Industrial Companies Act (hereinafter referred to as "the Act") to stay the further proceedings in the suit pending disposal of the BIFR proceedings. The plaintiff-company is primarily running a newspaper industry and not engaged in the business of extending finance either under a hire-purchase or lease transaction. The plaintiff is not a regular non-banking finance company. The transaction entered into between the parties is only a loan transaction and not a lease transaction as stated in the plaint. The plaintiff-company approached the defendant-company with an offer to extend the loan of Rs. 50 lakhs in 1993. Although the transaction was only a simple loan, it was styled and named as a lease agreement so as to enable the respondent to obtain the benefits of 100 per

cent, of depreciation from the Income Tax Department. The loan amount was disbursed only on March 27, 1993, whereas the lease agreement was entered into on March 11, 1993. The spares and accessories mentioned in the lease agreement are items which have a life span of 5 to 7 years. The spares cannot be identified and do not form part of the major machinery in a textile mill. The accessories and equipment have been shown as lease equipment only to enable the respondent-company to avail of the Income Tax benefits. The prayer for permanent injunction from alienating or dealing with A and B schedule properties is not maintainable since these spares and machinery were being used even prior to the loan agreement. The plaintiff-company already filed application for appointment of Commissioner and later the same was dismissed as not pressed.

3. The defendant-company has been declared as sick industry as contemplated u/s 3(1)(o) of the Act by the order dated March 6, 1998, of the Board for Industrial and Financial Reconstruction in Case No. 204 of 1997. The very object of the Act is to ensure that a proceeding having an adverse effect on the working or the finance of a sick industrial company shall not be instituted or continued during the period when the matter is under consideration before the Board. If the plaintiff is permitted to resort to independent action totally disregarding the pending enquiry, the entire exercise under the said provision should be rendered nugatory by the time the BIFR is able to evolve a scheme of revival or rehabilitation. The defendant-company is still confident of revival since it has the infrastructure and the manpower. The action of the plaintiff-company at this stage would only cripple and hamper the revival of the defendant-company. Hence, the petition for stay.

4. The applicant/plaintiff-company filed Application No. 4002 of 1998 under Order XII Rule 6 of the Code of Civil Procedure, 1908, to pass an interim decree based upon the communication sent by the defendant dated March 3, 1996, that the hire-purchase instalments to the extent of Rs. 8 lakhs odd has been admitted.

5. The plaintiff-company filed counter affidavit in Application No. 4003 of 1998 and denied the various allegations. The respondent-company is advancing loans to several parties on lease agreements and is virtually a regular non-banking finance company in the true sense. Nobody decides the nature and character of a document by seeing the nomenclature of the document. If the suit agreements are carefully scrutinised, it can be clearly seen that it is only a lease agreement and nothing else. Section 22 of the Act does not strictly apply to the facts of the case. The suit has been filed for various reliefs and all the prayers are not liable to be stayed. u/s 22 only winding up of the industrial company, execution, distress or the like against its properties, appointment of Receiver and suit for recovery of money or enforcement of security against the industrial company alone be suspended or stayed. The suit is only for declaration to declare the plaintiff as the sole and absolute owner of the leased equipment and is entitled to repossess/retake the same as per the lease agreements dated March 11, 1993 and March 28, 1993, respectively, for mandatory injunction directing the

defendant to deliver the leased equipment to the plaintiff in good working condition and also for permanent injunction restraining the defendant in any manner utilising and dealing with the equipment. u/s 22 recovery of money alone is prohibited. This Court decreed a suit in C.S. No. 211 of 1996 filed by the plaintiff against another company for the same relief while the said company was declared a sick unit by the BIFR. There is no bar in proceeding with the suit and to pass a decree and judgment accordingly. If the proceedings are stayed, the plaintiff will be subjected to great difficulty and loss which cannot be compensated.

6. The defendant filed counter affidavit in Application No. 4002 of 1998 and denied the various allegations. They reiterated the averments made in Application No. 4003 of 1998 and, as such, it is unnecessary to reproduce the same.

7. Heard learned Counsels for both the sides.

8. The points that arise for consideration are : (1) Whether the proceedings in C.S. No. 408 of 1997 are liable to be stayed in view of Section 22 of the Act? (2) Whether the plaintiff is entitled to an interim decree for a sum of Rs. 8,97,960/- under Order XII Rule 6 of the Code of Civil Procedure? and (3) To what relief ?

9. Points : The applicant/defendant filed Application No. 4003 of 1998 u/s 22 of the Act to stay the trial of the suit till the disposal of the BIFR proceedings. There is no dispute that the defendant-company has been declared as a sick industry as contemplated u/s 3(1)(o) of the Act vide order dated March 6, 1998, of the BIFR in Case No. 204 of 1997. Because of this only, learned Counsel for the defendant contended that the proceedings in the suit has to be stayed pending disposal of the BIFR proceedings. Learned Counsel further stated that if the plaintiff is permitted to resort to independent action, the entire exercise under the said provision would be rendered nugatory and, as such, it is just and necessary that the proceedings has to be stayed.

10. Per contra, learned Counsel for the plaintiff contended that only in respect of recovery of money, Section 22 of the Act can be invoked. So far as the suit filed by the plaintiff is concerned, they had claimed several reliefs viz., declaration that the plaintiff is the sole and absolute owner of the lease equipment, for mandatory injunction directing the defendants to deliver the leased equipment, for permanent injunction restraining the defendant from in any manner using or utilising or alienating the leased equipment and also claimed the relief of recovery of money of Rs. 49 lakhs odd. The question is whether Section 22 of the Act can be invoked and further proceedings can be stayed.

11. Learned Counsel for the defendant relied on Blue Star Ltd. v. Hindustan Photo Films Manufacturing Co. Ltd., (1997) 3 LW 306, wherein it is observed as follows (page 345 of Comp Cas) :

"Even on the plain language of Section 22 of the Sick Industrial Companies Act,

there can be no doubt whatsoever that an application like the one filed by the applicant herein for injunction as also for directing furnishing of security cannot be maintained against a sick industrial company regarding which proceedings are pending before the Board. Section 22 of the Act was amended by Sick Industrial Companies (Special Provisions) Amendment Act, 1993. After the amendment, the section specifically prohibits the institution or continuance of any suit for recovery of money or for the enforcement of any security or any guarantee, even in respect of any loans or advances granted to the industrial company. The object of Section 22 of the Act has been made crystal clear. Even a person, whose right to recover is beyond any shadow of doubt, is rendered incapable of instituting proceedings for recovery. A person, whose claim against a company, is yet to be established, cannot by way of interim relief, obtain an order, which would prevent the company from making use of its own assets or which would affect its working or finances."

12. This decision is applicable to the case on hand.

13. Per contra, learned Counsel for the plaintiff relied on a Bench decision of this Court in Ananta Udyog Private Ltd. Vs. Cholanmandalam Investment and Finance Co. Ltd., , wherein it is observed that in a suit for recovery of money based on hire-purchase agreement against the industrial concern which is sick, interim application for seizure and sale of machinery covered by hire-purchase agreement, hirer is the owner of machinery covered by the hire-purchase agreements and such machinery does not belong to industrial concern which takes such machinery on hire-purchase. Hence, such application for seizure and sale falls outside scope of Section 22. A careful reading of facts in that case would clearly indicate that it has no application to the case on hand. In order to appreciate the contention of the parties, I am of the view that it is just and necessary that Section 22(1) of the Act has to be extracted which reads as follows :

"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."

14. Even in the decision cited by learned Counsel for the plaintiff, it is necessary

to state that all further proceedings in the suit were stayed, but the proceedings to enforce the order made in one of the applications has not been stayed for the simple reason that the order has become final and conclusive as no appeal was preferred. Hence, this decision cannot be made applicable to the case on hand.

15. It is apparently clear that the plaintiff has included the relief of declaration relating to the leasehold property coupled with the prayer for recovery of money. When the recovery of money is also one of the reliefs claimed in the suit, in view of the language employed u/s 22 of the Act, I am of the view that the further proceedings have to be necessarily stayed till the disposal of BIFR proceedings. Moreover, the plaintiff is also not in a position to get any interim decree at this stage and the matter can be considered only at a later point of time after the BIFR proceedings are over.

16. For the reasons stated above, Application No. 4003 of 1998 is allowed and further proceedings in C.S. No. 408 of 1998 are stayed pending disposal of BIFR proceedings. Application No. 4002 of 1998 is ordered to be closed and the same can be re-opened on and after the disposal of BIFR proceedings.