
(2003) 04 MP CK 0057
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5276 of 2002

Gulabdas Namdeo

APPELLANT

Vs

Ambuja Cement Eastern Ltd. and Others

RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

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

Citation : (2003) 3 MPHT 250 : (2003) 3 MPLJ 528 : (2004) 52 SCL 5

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Sanjay Baxi, for the Appellant; M.L. Jaiswal and Mamta Billore, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioner in this writ petition seeks the quashment of the order passed by the learned Civil Judge Class II staying execution of a decree with respect to charges of the plaintiff which was passed in Civil Suit No. 4-B/99 on 29-7-99 for a sum of Rs. 40,000/- due on account of labour charges of painting & signboard work along with interest of 10% invoking Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985.

Execution application was preferred on 31-7-2002. Respondent-Company was declared sick under Sick Industrial Companies (Special Provisions) Act, 1985 on 5-11-1997 as per order (R-3) passed by the BIFR (Board for Industrial and Financial Reconstruction) in Case No. 86/94. Labour charges for painting work relates to the period of the year 1997 and objection was raised by the respondents before the Executing Court that by virtue of Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the SICA"), execution of decree cannot proceed without consent of the BIFR. The Executing Court has allowed the application for stay of execution by the

impugned order (P-4), dated 29-7-2002, hence, the present writ petition has been filed before this Court by the petitioner assailing the same.

It is averred in the petition that petitioner undertakes "painting of sign boards" and "wall painting" work. Respondent Industry was originally under the name and style of M/s. Modi Cements which has been later on merged with respondent No. 1 M/s Ambuja Cement Eastern Ltd. Petitioner was required to prepare boards and to do wall paintings. The work was done pursuant to the advertisements dated 13-12-96 and 18-4-97 which was duly completed by the petitioner. Petitioner issued bills dated 5-4-97 for Rs. 19,908/- and dated 20-12-97 for Rs. 16,320/- total Rs. 36,328.00 in the name of respondents and prayed for payment of the said bills. The bills were not honoured. As such petitioner had to file civil suit No. 4-B/99 which was decreed on 29-7-99. Petitioner filed execution proceedings. An application (P-2) raising objections was filed. Petitioner filed reply and contended that petitioner is not a creditor of the Company. He had undertaken the labour work for the Company of wall painting and sign boards and as he is not a creditor of the respondents, an application filed for stay of an execution is not tenable. Reply is P-3. The Trial Court has accepted the prayer as per order (P-4), dated 29-7-2002, hence, present writ petition has been filed. Petitioner's main ground of challenge is that provision of Section 22 is not applicable to the subject-matter for which decree if passed which essentially relates to the labour charges for the work rendered. Petitioner is not a creditor, hence, the Executing Court has erred in staying the execution and labour charges never comes in the definition of the loan/credit. This position of law the learned Civil Judge has failed to appreciate.

A return has been filed by the respondents M/s. Ambuja Cement and Eastern Ltd., reiterating the objection and supporting the impugned order. An application for setting aside an ex parte decree has been filed which is still pending. Respondent is a sick company within the meaning of Section 3(o) of SICA. Claim has been sanctioned u/s 16 of the Act as per order (P-3), dated 7-10-97. Section 22 of the SICA stipulates about suspension of legal proceedings, no suit for recovery of money shall lie or be proceeded with and no proceedings for execution shall lie except with the consent of the Board. The petitioner has filed an execution application without obtaining consent from the BIFR and the same is an illegal act. The order (P-4) passed is proper. No proof of work done was produced. Petitioner is not entitled for any amount claimed by him. Thus, writ petition is liable to be dismissed.

Shri Sanjay Baxi, learned Counsel appearing for the petitioner, has submitted that Section 22 of SICA is not applicable for the execution of decree in question. He submitted that the decree is for painting work of sign boards and wall, which essentially is for the labour charges and the work done it cannot be said that the decree is for any loan or advance granted to the Industrial Company. The object of SICA is not to stop such proceedings when the work has been taken. The respondent-Company wants to take the work without payment which is not

permissible. Thus, the impugned order is bad in law and deserves to be set aside.

Shri M.L. Jaiswal, learned Sr. Counsel appearing on behalf of the respondent, has submitted that Section 22 of SICA bars all legal proceedings including execution. It is not a case of the labour of industrial concern, thus, the Bar created u/s 22 is fully attracted and is applicable to an execution of money decree. An application for setting aside an ex parte decree is pending. The impugned order is just and proper on facts and law and called for no interference.

The main question for consideration is whether Section 22, SICA which stipulates about suspension of legal proceedings, no suit for recovery of money shall lie or be proceeded with and no proceedings for execution shall lie except with the consent of the Board, is attracted to the instant case. Section 22 is quoted below:--

"Section 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."

It is apparent, once an order is passed as contemplated u/s 22 or an enquiry is pending u/s 16 or any scheme referred to u/s 17 is under preparation, 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. It cannot be said that it is a case of any "loan or advance" granted to the industrial company. Institution of suit is barred for recovery of any loan or advance granted to the industrial company shall not lie or be proceeded with further, except with the consent of the Board. The Apex Court in *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*, has laid down in the context of landlord and tenant suit and right to recover the rent, the provision regarding suspension of legal proceedings contained in Section 22(1) seeks to

advance the object of the Act by ensuring that a proceeding having an effect on the working or the finances of a sick industrial company shall not be instituted or continued during the period the matter is under consideration before the Board or the appellate authority or a sanctioned scheme is under implementation without the consent of the Board or the appellate authority. The Apex Court held thus :--

*** ** "12. The provision regarding suspension of legal proceedings contained in Section 22(1) seeks to advance the object of the Act by ensuring that a proceeding having an effect on the working or the finances of a sick industrial company shall not be instituted or continued during the period the matter is under consideration before the board or the appellate authority or a sanctioned scheme is under implementation without the consent of the Board or the appellate authority. It could not be the intention of Parliament in enacting the said provision to aggravate the financial difficulties of a sick industrial company while the said matters were pending before the Board or the appellate authority by enabling a sick industrial company to continue to incur further liabilities during this period. This would be the consequence if Sub-section (1) of Section 22 is construed to bring about suspension of proceedings for eviction instituted by landlord against a sick industrial company which has ceased to enjoy the protection of the relevant rent law on account of default in payment of rent. It would also mean that the landlord of such a company must continue to suffer a loss by permitting the tenant (sick industrial company) to occupy the premises even though it is not in a position to pay the rent. Such an intention cannot be imputed to Parliament. We are, therefore, of the view that Section 22(1) does not cover a proceeding instituted by a landlord of a sick industrial company for the eviction of the company premises let out to it."

In Baburao P. Tawade and Ors. v. Hes Limited and Anr., 1995 Lab.IC 2200, His Lordship Shri B.N. Srikrishna, J., as he then was considered the provisions of Section 22 of the SICA and it was held that Bar created u/s 33C(2) of Industrial Disputes Act for recovery of earned dues by workmen, consent of BIFR for such an application is not to be obtained and it was held that such consent was not necessary, much less to challenge adverse order in such application u/s 33C(2). It was held thus:--

"14. Having considered the position in law as canvassed at the Bar, on the strength of the judgments referred to by me, I am of the view that, even if the application had been made by the workmen u/s 33C(2) of the Industrial Disputes Act for recovery of the monies due to them, after the reference under SICA made to the BIFR, such application could not have attracted the Bar u/s 22(1) of SICA; much less can the writ petition under Articles 226 and 227 of the Constitution of India pending before this Court to challenge the adverse order in the application u/s 33C(2) of the Industrial Disputes Act, be held to attract the Bar u/s 22(1) of SICA. In my view, the Bar u/s 22(1) of SICA would not apply to the present writ petition, which cannot be dismissed on the ground that no consent had been

obtained from the BIFR for the continuation of the present proceedings."

Allahabad High Court in *Modi Industries Ltd. v. Additional Labour Commissioner, Ghaziabad* (1994) 1 Lab.LJ 482 = 1994 Lab.IC 1609, considered the question; a sum exceeding Rs. 50,000/- was due and payable to the workmen towards their wages which were not paid by an industrial company in respect of which proceedings had started before the BIFR. With respect to the wages payable to the workmen certificate which was issued by the Labour Commissioner Bar Created by Section 22(1) of the SICA was set up in defence. The observations of the Supreme Court in *Shri Chamundi Moped's case* (supra) were considered. It was held in *Modi Industries Ltd., Modi Nagar v. Addl. Labour Commissioner, Ghaziabad* (supra) that:--

"15. In my opinion the aforesaid reasoning adopted by Hon"ble Supreme Court applies with full force to the facts off the present case also. The Parliament while putting Section 22 of the Act 1985 could never have intended that the industrial unit under the garb of sickness or for any like difficulty may be allowed to shirk its liability to pay the wages to its workers for the work they have done. Thus proceedings u/s 3 of the U.P. Act of 1978 will not be affected by Section 22 of Act of 1985."

This Court also considered the provisions of Section 22 of SICA. In *Keshri Steels and Another Vs. M.P. Electricity Board and Others*, , it has been held that payment of arrears of electricity charges of M.P. Electricity Board for energy consumed by petitioner company, such a claim is neither loan nor an advance granted within the meaning of Section 22 of SICA. This Court held that Bar created by Section 22 of SICA is not attracted to such charges as it is not a case of the loan granted to the industrial company payable as per the agreement entered into between the parties. It was held that petitioners have no right to contend that even such amount cannot be recovered on the ground that petitioner is sick industrial unit.

Learned Counsel for the petitioner has relied upon the decision of the Apex Court in *The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others*, , it was held that all proceedings for execution, distress or the like against any of the properties of the company would be automatically suspended and could not be taken without consent of the Board. Gram Panchayat is not entitled to recover property tax and other amounts due from the company by initiating coercive proceedings u/s 129 of Bombay Village Panchayat Act, 1959 without consent of the Board. The claim in this decision was not for labour charges.

The Apex Court in *M/S Patheja Bros. Forgings and Stamping and Another Vs. I.C.I.C.I. Ltd. and Others*, has laid down that the words of Section 22 are crystal clear. There is no ambiguity therein. It must, therefore, be held that no suit for the enforcement of a guarantee in respect of a "loan" or "advance" granted to the industrial company concerned will lie or be proceeded with. In *M/s. Rishabh*

Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd., , it has been held that the object of the Act is to afford maximum protection of employment optimize the use of financial resources, salvaging the assets of production, realising the amounts due to the banks and to replace the existing time consuming and inadequate machinery by efficient machinery for expeditious determination by a body of experts of safeguard the economy of the country and protect viably sick units.

In the instant case, the work has been obtained by the respondents and the recovery is essentially for the work rendered; the labour charges incurred in sign boards and wall painting. It is not a case of execution of decree for any loan or advance, thus, in my opinion, Bar created u/s 22 is not attracted.

For the foregoing reasons, in my opinion, the impugned order (P-4) is not sustainable and is hereby quashed. The Executing Court is directed to proceed with the execution. No order as to costs.