
(1992) 03 BOM CK 0057

In the Bombay High Court

Case No : Summons for Judgment No. 177 of 1991 in Summons Suit No. 3181 of 1990

Hindustan Ciba Geighy Ltd.

APPELLANT

Vs

Seshasayee Industries Ltd.

RESPONDENT

Date of Decision : 09-03-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 2
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 22, 22(1)

Citation : (1992) 3 BomCR 198 : (1992) 94 BOMLR 345

Hon'ble Judges : S.M. Jhunjunwala, J

Bench : Single Bench

Advocate : Prakash Shah, of MK Ambalal and Co, for the Appellant; Sanjay Kothari, instructed by A. Bhogam and Co., for the Respondent

Judgement

S.M. Jhunjunwala, J.—This Summons for Judgment has been taken out in the suit filed to recover from the defendants the sum of Rs. 2,85,238/- with further interest on the principal amount of Rs. 2,28,880/- at the rate of 18% per annum from date of filing of the suit till payment and costs of the suit.

2. By three contracts in writing evidenced by the defendant's Orders dated 9th July, 1988 and 6th January, 1989 as accepted by plaintiffs by their Orders of Acceptance dated 19th December, 1988, 20th February, 1989 and 23rd May, 1989 read with plaintiffs' invoices bearing Nos. E-3900, dated 24th December, 1988. E-4757 dated 18th March, 1989 and E-0676 dated 26th May, 1989, the Plaintiffs sold and delivered Araldite and Hardener (hereafter referred as "the said goods") to the defendants for an aggregate value of Rs. 2,37,816/- on the terms and conditions mentioned therein. The said goods were duly received by the defendants without raising any objection as to the quality, quantity and price thereof. As per terms of the said contracts, the defendant had agreed to pay to the plaintiffs interest at the rate of 23 per cent per annum if the defendants failed to pay the amounts of the invoices on their respective due dates. The said rate of 23% per annum was reduced to 18% per annum by agreement mutually

arrived by and between the plaintiffs and defendants and recorded in writing on 15th June, 1987.

3. The defendants have admitted their liability to pay the said principal amount as also interest at the rate of 18% per annum. However, according to the defendants, the defendant's Company has become a Sick Industrial Company within the meaning of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred as "the said Act") and as such, a report as required u/s 15 thereof was filed by the defendants with the Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR") which has been registered as Case No. 115 of 1990. The total borrowing of the defendants from various financial institutions as on 31st March, 1990 has been about Rs. 14.50 crores. The BIFR has appointed The Industrial Credit and Investment Corporation of India Limited as the operating Agency. Accordingly, the defendants have submitted that the suit as also the Summons for Judgment be stayed in view of the pendency of the proceedings before the BIFR. In support of his this submission, Mr. Kothari, the learned Counsel appearing for the defendants, has relied upon the case of the The State Industrial and Investment Corporation of Maharashtra Ltd. Vs. Gangaram Agarwal and another, . That suit was filed as a Summary-Suit against the guarantors who were Directors of the Company actively involved in the rehabilitation of the Company. The Court while adjourning the hearing of the Summons for Judgment therein taken out, held as under:

"It is true that in very many summary suits one of the modes of giving conditional leave to defend is to direct the defendants to deposit a certain amount. But that is not the only mode of granting leave to defend. There are various other conditions which can be thought of. In a given case the summons may even be postponed to a fairly long period, to enable the defendants to have a more just and equitable solution of the matter. It is time that we realise that the ordinary mechanism of civil procedural law, is no cure-all for the many complex and complicated situations that arise in a modern economy".

4. The relevant portion of section 22 of the said act reads, as under:

"22(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".

In respect of a Company against which an inquiry u/s 16 of the said Act has

commenced, section 22(1) provides for automatic suspension of (1) any winding up proceedings, (2) any-proceedings for execution etc. in respect of any properties of such Company, and (3) any proceedings for the appointment of a receiver (of the property or undertaking) of such Company. There is no automatic suspension of hearing of a civil suit filed against such Company and pending as on the date of commencement of an inquiry. There is no statutory embargo in proceeding with hearing of such suit till its final disposal. Though provisions of Order XXXVII of the Code of Civil Procedure, 1908 are purely procedural and cannot deprive a person of his rights under the substantive law, since section 22 of the said Act does not prevent a decree begin passed in a civil suit against such Company, there is no reason for staying the suit or the Summons for Judgment or adjourning the hearing of the Summons for Judgment.

5. The essence of the summary suit is that the defendant is not, as in an ordinary suit, entitled as of right to defend the suit. He must apply for leave to defend within ten days from the date of the service of the summons upon him and such leave will be granted only if the affidavit filed by the defendant discloses such facts as the Court may deem sufficient for granting leave to the defendant to appear and defend the suit. The object underlying the summary procedure is to prevent unreasonable obstruction by a defendant who has no defence.

6. In the facts and circumstances of the case, since in my view there is no defence whatsoever to the claim of the plaintiffs in the suit, the defendants are not entitled to leave to defend. The documents of the plaintiffs are admitted in evidence as exhibit "A" (Colly) and the Summons for Judgment is made absolute. The decree as against defendants is accordingly passed. Two-third refund of the institution fees is granted to the plaintiffs. Advocates " fees is qualified at Rs. 2,500/-.

7. Prothonotary to act on the minutes.

8. Certified copy of the minutes be issued expeditiously.