

(2014) 11 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : CR No. 949 of 2003

Indian Drugs and Pharmaceuticals Limited	APPELLANT
Vs	
Ashok Kumar and Others	RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Companies Act, 1956 — Section 446
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 12 15(1) 16 17 18

Citation : (2015) 178 PLR 207

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Subhash Ahuja, Advocate for the Appellant; Ashok Gupta, Advocate for the Respondent;

Final Decision : Allowed

Judgement

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Rakesh Kumar Jain, J.

1. The question involved in the present revision petition is as to "whether the suit for recovery of arrears of rent would also mean the suit for recovery of money and is barred, if filed, without the prior permission of the Board of Industrial and Financial Reconstruction, in terms of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985?" This petition is directed against the order dated 4.12.2002, passed by Civil Judge (Jr. Division), Chandigarh, dismissing the objection filed by the respondents against the execution of the decree.

2. The brief facts are that the respondents filed an eviction petition against the petitioner on the ground of non-payment of arrears of rent. The eviction was ordered on that account and possession has already been delivered. The respondents then filed the suit for recovery of arrears of rent in which the petitioner was proceeded against ex parte and a decree dated 12.4.2001 was

passed. The respondents filed the execution application to recover the amount determined under the decree but it was contested by the petitioner by filing objections on the ground that in view of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 [for short "the Act"], suit for recovery of the arrears of rent could not have been filed by the respondents without seeking prior permission of the Board of Industrial and Financial Reconstruction [for short "the BIFR"].

3. On the pleadings of the parties, as many as five issues were framed by the Executing Court on 30.10.2001, which read as under:--

"1. Whether the judgment and decree dated 12.4.2001 is nullity in the eyes of law as per the objections of the JD? OPD

2. Whether the ex parte decree is liable to be set aside being without jurisdiction? OPJD

3. Whether the JD-firm was declared sick unit under the provisions of Sick Industrial Companies (Special Provisions) Act,. 1985, if so, its effect? OPJD

4. Whether the objection petition is not maintainable? OPDH.

5. Relief."

4. Issues No. 1 to 3 were taken up together and decided against the objector, holding that Section 22 of the Act prohibits recovery of money and not the rent.

5. Learned counsel for the petitioner has submitted that the words "no suit for recovery of money.....to the industrial company" were added in the Section by way of an amendment in the year 1994 by Act No. XII of 1994 by virtue of Section 12 of that Act".

6. Section 22 after amendment is reproduced as under:--

"22. Suspension of legal proceedings, contracts, etc.--(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 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 [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.

(2) Where the management of the sick industrial company is taken over or changed [in pursuance of any scheme sanctioned under section 18] notwithstanding anything contained in the Companies Act, 1956, or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law

a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) [where an inquiry under section 16 is pending or any scheme referred to in Section 17 is under preparation or during the period] of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurance of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by the Board"

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year, at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956, or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act, or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly,-

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect-

(i) any right, privilege, obligation or liability so remaining suspended or modified shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been

reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

7. In support of his submissions, learned counsel for the petitioner has relied upon two decisions of the Supreme Court in the cases of Gujarat Steel Tube Co. Ltd. Vs. Virchandbhai Bhogilal Shah, and Dunlop India Limited Vs. A.A. Rahna and Another, .

8. He has also submitted that the word "money" would not be confined to the simple suit for recovery of the amount advanced to a person but also includes recovery of properly tax and in that regard he has referred to a judgment of the Supreme Court in the case of The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others, . In order to buttress his argument, he has also referred to a Single Bench judgment of this Court rendered in Loil Continental Foods Ltd. Vs. Punjab Wireless Systems Ltd. (In Liquidation) and Others, , to contend that even in the case of liquidation of the company as per Section 446 of the Companies Act, 1956, order passed by the Estate Officer, PUDA resuming the property of the company is held to be illegal and invalid as those orders were passed without leave of the company Court. It is submitted that similar is the position in the present case as it has been provided that the prior permission of the Board is to be obtained before filing such a suit in which money is sought to be recovered. It is also submitted that they have been wrongly proceeded against ex parte because of the collusion of the Regional Manager with the landlord/plaintiff. He has further submitted that if the decree is void ab initio as the suit has been filed without seeking permission of the competent authority under the Act, the jurisdiction of the Court can also be challenged in the execution, as held by the Supreme Court in the case of Kiran Singh and Others Vs. Chaman Paswan and Others, .

9. In reply, learned counsel for the respondents has submitted that the question framed in this revision petition is not made out because the respondents have not filed suit for recovery of the money but for the rent, which is already due against the petitioner, who had been ordered to be evicted for the non-payment of arrears of rent. In support of his submission he has relied upon judgment of Single Bench rendered in Gujarat Steel Tube Co. Ltd. Vs. Virchandbhai B. Shah and Others, , and has referred to para 16 of the said judgment, which read as under:--

"16. Be it suit for eviction or suit for recovery of arrears of rent, the above-mentioned principle propounded by the Apex Court is equally applicable to the recovery of arrears of rent also. Therefore, the principle propounded by the Apex Court is not at all affected by the subsequent Amendment in Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 in 1994."

10. Learned counsel for the respondents has also argued that the petitioner has

no locus standi to maintain these objections because they did not choose to contest the suit as they were proceeded against ex parte. It is also submitted that even on equity they cannot contest this execution because they remained in possession of the property in dispute for such a long time and are in arrears of rent which they had to pay to the landlord/respondents.

11. I have heard both the learned counsel for the parties and perused the record.

12. The admitted facts are that the respondents had filed an application for eviction on the ground of non-payment of arrears of rent. The eviction was ordered because of non-payment of arrears of rent and the possession has also been delivered. The respondents then filed the suit for recovery of arrears of rent in which the petitioner was proceeded against ex parte and an ex parte decree was passed against it. In order to recover that amount, the execution has been filed in which objection was raised that in view of Section 22 of the Act, the recovery of the arrears of rent cannot be effected without seeking prior permission of the BIFR.

13. In the case of Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, , decided on 29.04.1992, the issue was "whether the proceedings instituted by a landlord for eviction of a tenant, which is a sick company, from the premises let out to it, required to be suspended under Section 22(1) of the Act?" The Apex Court had taken into account that the following proceedings only are automatically suspended under Section 22(1) of the Act:--

"1. Proceedings for winding up of the industrial company;

2. Proceedings for execution, distress of the like against the properties of the sick industrial company; and

3. proceedings for the appointment of receiver."

14. Although it was the case of the company therein that initiation of eviction petition by the landlord against the petitioner-company would fall in category (2) since they are proceeding against the property of the sick industrial company but those arguments were not accepted and it was held that Section 22(1) of the Act would not cover the proceedings instituted by a landlord for the eviction of the company let out to it.

15. In Gujarat Steel Tubes Co. Ltd.'s case (supra), decided by a Single Bench of the Gujarat High Court, the facts were that the landlords filed a Civil Suit in the Small Causes Court at Ahmedabad against the company. In the said suit, the landlords filed an application under Section 11(4) of the Bombay Rent Act for directing the tenant to deposit the amount of arrears of rent and the rent of each month for use and occupation of the rented premises. The application was opposed by the company on the ground that it was a sick company which already filed a reference to the BIFR under Section 15(1) of the Act, the said reference was registered as Case No. 99 of 1997 and the BIFR had already proposed to

make an enquiry under Section 16 of the Act. It was also the contention of the company that as per Section 22(1) of the Act, no suit for recovery of money can be filed or proceeded with against it. The trial Court upheld the contention of the company and held that since the matter has been referred to the BIFR, Section 22(1) of the Act would be attracted which creates a bar against the recovery of money of the arrears of rent and dismissed the application of the landlords. Aggrieved against the order of the trial Court, the landlords filed the Revision before the Appellate Bench of the Small Causes Court at Ahmedabad. The Appellate Bench, while relying upon the judgment of the Supreme Court in M/s. Shree Chamundi Mopeds Ltd.'s case (supra), held that the eviction petition filed by the landlords against the tenant is not covered under Section 22(1) of the Act and held that the recovery of arrears of rent would not be barred under Section 22(1) of the Act.

16. Aggrieved against the order of the Appellate Bench of the Small Causes Court, Civil Revision was filed by the company before the Gujarat High Court which was dismissed by the Single Bench holding that be it suit for eviction or suit for recovery of arrears of rent, the above-mentioned principle propounded by the Apex Court is equally applicable to the recovery of arrears of rent also. Therefore, the principle propounded by the Apex Court is not at all affected by the subsequent Amendment in Section 22(1) of the Act. Thereafter, the company filed the Special Leave Petition before the Apex Court against the decision of the Single Bench in which the reference was made to Section 11(4) of the Bombay Rent Act, which reads as under:--

"11. Court may fix standard rent and permitted increase in certain cases.....

xx xx xx xx

(4) Whether at any stage of a suit for recovery of rent, whether with or without a claim for possession of the premises, the Court is satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, the Court shall, in any other case if it appears to the Court that it is just and proper to make such an order the Court may make an order directing the tenant to deposit in the Court forthwith such amount of the rent as the Court considers to be reasonably due to the landlord, or at the option of the tenant an order directing him to pay to the landlord such amount thereof as the Court may specify. The Court may further make an order directing the tenant to deposit in Court periodically, such amount as it considers proper as interim standard rent or at the option of the tenant an order to pay to the landlord such amount thereof as the Court may specify, during the pendency of the suit. The Court may also direct that if the tenant fails to comply with any order as aforesaid, within such time as may be allowed to it, he shall not be entitled to appear in or defend the suit except with leave of the Court, which leave may be granted subject to such terms and conditions as the Court may specify.

xx xx xx xx"

17. While interpreting the aforesaid provision, the Supreme Court has held as under:--

"9. Section 22 no doubt, inter alia, stated that notwithstanding any other law no suit for recovery of money shall lie or proceeded with except with the consent of the Board, but as we look at it the filing of an eviction petition on ground of nonpayment of rent cannot be regarded as filing of a suit for recovery of money. If a tenant does not pay the rent, then the protection which is given by the Rent Control Act against his eviction is taken away and with the non-payment of rent order of eviction may be passed. It may be possible that in view of the provisions of Section 22, the trial Court may not be in a position to pass a decree for the payment of rent but when an application under Section 11(4) is filed, the trial Court in effect gives an opportunity to the tenant to pay the rent failing which the consequences provided for in the subsection would follow. An application under Section 11(4), or under any other similar provision, cannot, in our opinion, be regarded as being akin a suit for recovery of money."

18. It was ultimately concluded by the Supreme Court that the High Court and the Appellate Bench of the Small Causes Chief Court were, therefore, right in coming to the conclusion that the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 did not in any way prevent the filing of an eviction petition on the ground of non-payment of rent and that the order under Section 11(4) of the Bombay Rent Act could have been passed.

19. In Dunlop India Limited's case (supra), again the question was raised as to whether an eviction petition can be maintained under the Rent Act in respect of the premises which is on rent with the company which has been declared to be a sick industrial company? In this case, the observations have been made by the Court in para 31 of its judgment which reads as under:--

"31. In Gujarat Steel Tube Co. Ltd. Vs. Virchandbhai B. Shah and Others, , it was argued on behalf of the appellant that suit for recovery of rent etc. is not maintainable in view of the prohibition contained in Section 22(1). While affirming the judgment of the High Court, the Court referred to the earlier judgment in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association (supra) and held:

"Section 22 no doubt, inter alia, states that notwithstanding any other law no suit for recovery of money shall lie or be proceeded with except with the consent of the Board, but as we look at it the filing of an eviction petition on the ground of non-payment of rent cannot be regarded as filing of a suit for recovery of money. If a tenant does not pay the rent, then the protection which is given by the Rent Control Act against his eviction is taken away and with the non-payment of rent order of eviction may be passed. It may be possible that in view of the provisions of Section 22, the trial court may not be in a position to pass a decree for the payment of rent but when an application under Section 11(4) is filed, the trial court in effect gives an opportunity to the tenant to pay the rent failing

which the consequences provided for in the sub-section would follow. An application under Section 11(4), or under any other similar provision, cannot, in our opinion, be regarded as being akin to a suit for recovery of money."

(emphasis supplied)

The same view was reiterated in *Carona Ltd. Vs. Parvathy Swaminathan and Sons, .*"

20. From the aforesaid discussion, it is clear that the facts and circumstances of the present case are altogether different from the facts and circumstances of the cases referred to above because in *Gujarat Steel Tubes Co. Ltd.'s case (supra)*, the application was filed for recovery of rent during the pendency of the eviction petition by resorting to an application filed under Section 11(4) of the Bombay Rent Act and on that issue, the Apex Court had held that the application under Section 11(4) cannot be regarded being akin a suit for recovery of money. However, in the present case, the eviction petition has already been allowed, possession has been delivered and the arrears of rent has not been paid by the tenant who is seeking protection of Section 22(1) of the Act because the purpose and the object behind this provision is to ensure 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. These provision are made with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of Experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and, therefore, these provisions are made to save assets and the property of the sick company and to render assistance and help till Board or the Appellate Authority finalize the proceedings.

21. In view thereof, the suit for recovery, may be of the rent independently, is not maintainable without seeking permission of the BIFR and as held by the Supreme Court in *Kiran Singh and others"* case (supra) that a decree by a Court without jurisdiction is a nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. The defect of jurisdiction whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of the parties. Accordingly, the question posed in the beginning of the judgment is answered in affirmative and the revision petition is thus allowed and the impugned order is hereby set aside.