

(2003) 06 BOM CK 0093

In the Bombay High Court

Case No : Notice of Motion No. 2756 of 2002 in Suit No. 3248 of 2002

Infrastructure Leasing and Financial Services Limited

APPELLANT

Vs

Sun Earth Ceramics Limited

RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Bombay Relief Undertakings (Special Provisions) Act, 1958 — Section 4(1)

Citation : (2003) 4 ALLMR 649 : (2004) 1 BomCR 401 : (2003) 117 CompCas 747 : (2004) 2 MhLj 203

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Virag Tulzapurkar and V.R. Dhond, instructed by S. Negandhi Shah and Himayatullah, for the Appellant; R.M. Kadam, C.S. Kapadia, I.J. Nankani and U. Khokhawalla, instructed by Nankani and Associates, for the Respondent

Judgement

S.A. Bobde, J.—This is a plaintiffs motion for appointment of the receiver of the leased equipment.

2. The plaintiffs have leased equipment to the defendants under an agreement dated December 17,1999. Relevant clause No. 2.4 of the agreement reads as follows :

"2.4 Upon expiry of the period or on earlier termination of this agreement, the lessee shall at its own cost and expenses, forthwith deliver or cause to be delivered to the lessor the equipment, at such place and time as may be directed by the lessor, in good repair, order and condition (subject to normal wear and tear)."

3. It appears that the defendants have not paid any lease rental after January, 2002. Hence the plaintiffs have filed this suit, inter alia, for repossession of the leased equipment described in exhibit A to the plaint, for an injunction and for appointment of the court receiver.

4. Mr. Kadam, learned counsel for the defendants resisted the continuance of the

suit and passing of any order for appointment of the receiver relying on the notification of the State Government dated June 10, 2003, issued by order and in the name of the Governor of Maharashtra in exercise of powers conferred by Section 3 and Sub-clause (iv) of Clause (a) of Sub-section (1) of Section 4 of the Bombay Relief Undertakings (Special Provisions) Act, 1958 (hereinafter referred to as "the Act"). Paragraph (a) of the notification declares that the defendant-company be conducted to serve as a measure of an unemployment relief for a period of six months since it has been granted financial assistance of Rs. 34,17,53,473 by the Government of Maharashtra under the package scheme of incentives. Paragraph (b) of the notification contains a direction that for the said period of six months commencing from June 9, 2003, and ending on December 8, 2003, any right, privilege, obligation or liability, excepting the obligations or liabilities incurred in favour of the workmen of the said, relief undertaking, under the legislations specified therein such as the Employees' State Insurance Corporation Act, the Bombay Sales Tax Act, the Land Revenue Code, etc., accrued or incurred before the June 10, 2003, and any remedy for the enforcement thereof shall be suspended and all proceedings relating thereto pending before any court, Tribunal, officer or authority shall be stayed.

5. Clearly, the present order is sought during the aforesaid period of six months between June 9, 2003, and December 8, 2003, hereinafter referred to as the proscribed period. As stated, this notification is issued by the Government of Maharashtra in exercise of its power under Sections 3 and 4(1)(a)(iv) of the Act. The relevant portion of Section 4 reads as follows :

"4. (1)(a) In relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under sub-section (2) of Section 3- . . .

(iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, Tribunal officer or authority shall be stayed."

6. The question therefore, is whether this suit can proceed against the defendants during the proscribed period referred to above in view of the notification of the Act. Now, it is obvious from a plain reading of the provision above that Section 4 bars any remedy for the enforcement of any rights, privileges, obligations or liability accrued or incurred before the undertaking was declared a relief undertaking. The equipment was leased to the defendants under the lease agreement dated December 17, 1999, which is clearly before the undertaking was declared a relief undertaking. Therefore, what must be determined is whether the plaintiffs seek to enforce any right, privilege, obligation or liability by the present suit.

7. Mr. Tulzapurkar, learned counsel for the plaintiffs, stated that the suit is based purely on title. The plaintiffs seek to recover possession of the equipment leased

to the defendants de hors the lease agreement which has come to an end and under which the plaintiffs have become entitled to repossession.

8. An examination of the plaint, as pointed out by Mr. Kadam, learned counsel for the defendants, clearly shows that though the plaintiffs are claiming ownership, i.e., title of the lease equipment, the suit is for recovery of the equipment which was given under the lease and of which the plaintiffs claim to have acquired a right of repossession since "the defendants were in law and under the lease, obliged to return the lease equipment to the plaintiffs". The plaintiffs have, claim to have acquired right to repossess the lease equipment. In other words, the plaintiffs clearly seek to enforce the defendants obligation to return the equipment leased under the lease agreement. It is not a suit on title de hors the lease agreement as contended. This is therefore obviously a suit, though on the assertion that the plaintiffs are owners, which is based on the agreement under which the plaintiffs leased equipment to the defendants.

9. Mr. Tulzapurkar, learned counsel for the plaintiffs, next submitted that under Clause (iv) of Section 4(1)(a) of the Act reproduced above, the defendants have lost their right to remain in possession of the lease equipment since by that provision any such right to be in possession stands suspended. Therefore, according to learned counsel the suit can continue and this court can make an order. May be the defendants' right to possession of the lease equipment is created under the contract and on a plain reading of Clause (iv) of the Act that right stands suspended. None the less, one cannot ignore that even if the right under the lease agreement stands suspended, equally and simultaneously, the plaintiffs' right to seek any remedy at law for the enforcement of its own right to recover possession is also suspended. This argument is, therefore, of no avail to the plaintiffs.

10. Mr. Tulzapurkar, learned counsel for the plaintiffs, next contended that the plaintiffs' right to sue has nothing to do with the contract in that all the rights and obligations under the contract are suspended by reason of Clause (iv) of Section 4(1)(a) of the Act and the plaintiffs suit is purely based on title, i.e., as if the contract did not exist at all. Now, it is true that all the rights, privileges and obligations under the contract must be taken to be suspended by reason of Clause (iv) of Section 4(1)(a) of the Act. But a suspension of the contract contemplated by Clause (iv) of the Act cannot be treated as non-existence of the contract. The contract for lease exists, subject to the plaintiffs contention that it has terminated. In any case, there is no doubt that the defendants obtained possession of the lease equipment under the lease agreement and the suit followed the alleged termination of that lease agreement. Therefore, the contention that the agreement does not exist but suit must be considered as if there is no lease agreement at all must be rejected.

11. The next contention on behalf of the plaintiffs is that the right to repossess is a right that accrued to the plaintiffs after the undertaking was declared a relief undertaking and, therefore, the enforcement of that right is not barred by Clause

(iv) of Section 4(1)(a) of the Act which only bars the enforcement of the rights, privileges and obligations incurred before the undertaking was declared as a relief undertaking. This contention cannot be accepted either. It is clear that Clause (iv) of Section 4(1)(a) of the Act suspends the remedy for enforcement of any right before the undertaking was declared as a relief undertaking. It is, also clear that the plaintiffs had the right to repossess the equipment under the lease agreement itself. It is only the condition on which that right became enforceable, viz., the defaults, that arises after the undertaking was declared, as a relief undertaking. In any case, the present suit and the notice of motion for appointment of the receiver is a proceeding "which is relative thereto", namely, relative to the rights to repossession, which was acquired before the undertaking was declared as a relief undertaking and must by reason of that provision be stayed.

12. The object of Clause (iv) of Section 4(1)(a) of the Act is to prevent the property of an undertaking from being dissipated by any proceedings which may be related to any right, privilege, obligation and liability incurred by the undertaking before it was declared as a relief undertaking. The obvious purpose being to allow the undertaking to which the Government has granted financial assistance to get back on its feet. It would not be permissible to place on this provision any interpretation which would enable the creditors to defeat the purpose. In fact the purpose of the Act having been set out in the Statement of Objects and Reasons set out in the preamble which reads as follows :

"An Act to make temporary provisions for industrial relations and other matters to enable the State Government to conduct, or to provide loan, guarantee or financial assistance for the conduct of, certain industrial undertakings as a measure of preventing unemployment or of unemployment relief.

Whereas it is expedient to make temporary provisions for industrial relations and other matters to enable the State Government to conduct, or to provide loan, guarantee or financial assistance for the conduct of, certain industrial undertakings as a measure of preventing unemployment or of unemployment relief."

13. Mr. Tulzapurkar, learned counsel for the plaintiffs, relied on a decision of the Supreme Court in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, , where the Supreme Court held that proceedings for eviction instituted by a landlady of the sick industrial company would not be invited by Sub-section (1) of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, which reads as follows :

"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 shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

14. It is apparent that the proceedings instituted by the landlord for recovery of his own property were not held to be the proceedings for execution, distress or the like against any of the properties of the industrial company and were therefore held not barred. In the present case the proceedings are in respect of the property of the plaintiffs, the provision namely Section 4 of the Bombay Relief Undertaking Act is materially different from Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. Therefore, that decision has no application to the present case.

15. I am, therefore, of view that this notice of motion for appointment of the court receiver cannot be entertained for the proscribed period and is therefore dismissed. In the circumstances of the case, there shall be no order as to costs.

16. Mr. Kadam, learned counsel for the defendants, fairly submitted that his statement recorded in the order dated October 30, 2002, that the defendants would not create any third party interest in any of the properties shall continue during the pendency of the suit.

17. All authorities concerned to act on an ordinary copy of this order duly authenticated as true copy by the associate of this court.