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**(1999) 07 MP CK 0053**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 554 of 1999**

Kedia Distilleries Ltd.

APPELLANT

Vs

Appellate Authority for Industrial and Financial  
Reconstruction and Others

RESPONDENT

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**Date of Decision : 26-07-1999**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 2(2)  
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

**Citation :** (2002) 109 CompCas 444 : (2000) 1 MPLJ 242

**Hon'ble Judges :** Shambhoo Singh, J;B.A. Khan, J

**Bench :** Division Bench

**Advocate :** Mathur, for the Appellant; Singhvi, for the Respondent

**Final Decision :** Dismissed

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## Judgement

B.A. Khan, J.

The petitioner is engaged in the manufacture of country liquor and IMFL. It is said to have entered into a deal involving Rs. 1 crore or so with private respondent No. 3 and obtained Rs. 50 lakhs from this company for delivery of some equipment through a sure dummy company which was allegedly never supplied. Respondent No. 3 sought refund of the amount of Rs. 50 lakhs for which the petitioner executed a cheque which bounced. Respondent No. 3 thereafter filed a civil suit for recovery of Rs. 55.26 lakhs with interest in the Calcutta High Court which was decreed and in execution the petitioner's money lying with the Excise Commissioner was attached. The petitioner, then, offered a compromise envisaging a repayment schedule culminating in a consent decree dated March 9, 1995, passed by the Calcutta High Court. Pursuant thereto, the company paid two instalments or so and defaulted. It, meanwhile, approached the Board for Industrial and Financial Reconstruction (BIFR) u/s 15(1) of the Sick Industrial Companies Act, 1985, claiming sickness. Respondent No. 3 wanted to intervene in these proceedings but was overruled. The Board consequently passed an order

dated August 6, 1998, declaring the petitioner-company sick and asked it to submit a rehabilitation scheme. Respondent No. 3 took an appeal against this before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) which was disposed of by order dated March 19, 1999, holding that protection u/s 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, could not be availed of by the petitioner for wriggling out of the consent decree granted by the High Court/Civil Court and allowed respondent No. 3 to execute the decree against its assets.

The petitioner has now filed this petition assailing the Appellate Authority's order on the ground that it had misconstrued and misinterpreted the provisions of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, which placed a total bar on taking execution of any decree including a consent decree against a declared sick industrial company. It was submitted by learned Counsel for the petitioner Mr. Mathur that a consent decree was as good a decree as any other decree in terms of Section 2(2) of the Civil Procedure Code, 1908, and was executable, and therefore, fell within the rigour of the provision and could not be executed against the petitioner. The Appellate Authority had also no competence to pass directions to execute such a decree which lacked in basis because the Authority had not examined the financial health of the petitioner to allow such execution. In other words, it is submitted that the Authority should have discussed the merits of the petitioner's sickness claim to allow respondent No. 3 to proceed with execution. Reliance for all this is placed on *Real Value Appliances Ltd. Vs. Canara Bank and Others*, ; *Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of Maharashtra Ltd.* (1993) 78 Comp. Cas. 803 (SC); *V.N. Sreedharan Vs. Bhaskaran*, ; *Parvathiyammal Vs. Sivathanu Pillai*, ; and AIR 1947 53 (Nagpur) .

Mr. Singhvi representing respondent No. 3 on the other hand contended that Section 22(1) did not impose a blanket ban on taking out execution or any other proceedings mentioned therein. All it provided was that the consent of the BIFR or the AAIFR shall be taken for this purpose, which in the present case was granted by the authority. He alleged that the company had manipulated sickness and in fact had practised fraud and deception on respondent No. 3 and others to fill up its own coffers, and therefore, did not deserve any protection u/s 22. He sought support from *Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others*, , in this regard and urged that provisions of Section 22(1) were required to be interpreted reasonably to deny its protection to those who aimed at defeating claims of creditors and defrauding them by feigning sickness. Mr. Singhvi also pointed out that the Appellate Authority had rejected the petitioner-company's reference in Appeal No. 156 of 1998 by order dated July 1, 1999, rendering this petition infructuous and removing all obstacles and impediments in the execution of the consent decree held by respondent No. 3.

Normally this petition could have merited, dismissal for having become infructuous in the face of the Appellate Authority's order dated July 1, 1999,

rejecting the petitioner's reference taking away whatever protection was available to it u/s 22(1) or for that matter any other relevant provisions of the SICA. But, learned Counsel for appellant Mr. Mathur states that the Authority's order was put in abeyance in some writ proceedings and wanted a pronouncement on the merits and that is how we propose to deal with the rival contentions raised and for this it becomes necessary to extract the relevant provisions of Section 22(1) hereunder :

"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."

This provision has received repeated interpretations by the Supreme Court and various High Courts and there is hardly any grey area which required any new interpretation. It is by now well known that the SICA [Sick Industrial Companies (Special Provisions) Act, 1985] was enacted to enable timely detection of sick or potentially sick companies owning industrial undertakings and the identification of the nature of their sickness so as to detail out suitable remedial exercise through appropriate schemes for their revival and rehabilitation or for their winding up as the case may be. The object was to revive the sick units by extending financial aid/assistance and it was in this backdrop that Section 22(1) of the Act provided for suspension of legal proceedings against the assets of such companies who had sought declaration of their sickness before the BIFR, u/s 15(1) and in respect of which an inquiry was pending u/s 16 or any scheme under preparation u/s 17, or any appeal pending on the subject-matter u/s 25. The idea was to freeze any coercive action against such companies until their reference for declaration of sickness or for their revival/rehabilitation was finally determined. The provision, however, did not operate as an absolute bar against proceedings envisaged by it. It only prescribed that action could be taken with the consent of the Board or the Appellate Authority. Therefore, all that was needed was the consent of the Board and the Appellate Authority for proceeding against such companies.

There is no dispute that such a consent was required for taking out the execution of any Court decree against the assets of such company. But a consent decree stood on a somewhat different footing. It may be technically correct to contend that a consent decree was also a decree within the meaning of Section 2(2), CPC and was executable, as held by various High Courts. But the question is whether

protection umbrella of Section 22(1) was available to defeat the consent decree based on the agreement of parties.

In our view Section 22 bars a coercive proceeding of the type envisaged by it against an industrial company whose reference for sickness is registered by BIFR and is pending determination before it or the Appellate Authority. It indeed places an embargo on such proceedings for winding up, for appointment of Receiver or for execution, distress or the like against such company. Similarly it bars a suit for recovery of money or for enforcement of any security against it. All this is aimed at stopping any coercive action to provide abbreathing lime to the company to revive and to stand on its own again or else to wind up. The proceedings contemplated by the provision wherever launched survive in both the cases and these remain under suspension only till the revival/rehabilitation scheme for the company is seen through or the company is wound up.

Having regard to this, it would be too much to claim that execution of a consent decree was also hit by provisions of Section 22(1). After all a consent decree is the product of an agreement between the parties. It may be a decree within the meaning of Section 2(2), CPC and may be executable also, as held by some High Courts but it cannot be said to fall within the boundaries of the provision because it does not partake of the nature of a coercive proceeding which is barred. Any contrary view would be tantamount to placing too loose and undeservingly liberal a construction/interpretation on this provision ignoring and overlooking its true intent and purpose. After all once a company consented to such a decree with its eyes open, it should be presumed to have been conscious of its state of affairs at that time. Sickness claimed by it post-decree should be regarded as induced sickness and a stratagem to resile from its own agreement by seeking shelter under the provisions of Section 22(1).

As already noticed the SICA was enacted to provide opportunity to sick industrial companies to revive and be rehabilitated or wind up. Its purpose was not to enable unscrupulous companies to feign and manipulate sickness and to make a buck out of it. Section 22(1) was only a tool to achieve this object. Its terms were, therefore, to be interpreted reasonably and in that spirit and perspective. Otherwise it would breed dishonesty, encourage unfair practices and shady dealings and defeat the very purpose for which the statute was enacted. There is no dearth of instances where unscrupulous companies had misused this provision by manipulating sickness to ward off legitimate claims of creditors. Therefore, it requires both caution and circumspection to extend protection of Section 22(1) to such companies. This concern was also expressed by Jeevan Reddy, J. in *Deputy CTO v. Corromandal Pharmaceuticals*, (supra), in the following words (page 12) :

"The object of the Act is undoubtedly laudatory but it must also provide for appropriate measures against persons responsible where it is found that sickness is caused by factors other than circumstances beyond the control of the management... The proceedings before the Board for Industrial and Financial

Reconstruction take a long time to conclude and all the while the protective umbrella of Section 22 is held over the company which was reported sick... There have been cases where unfair advantage is sought to be taken of the provisions of Section 22 by certain industrial companies and the wide language employed in the section is providing them a cover. Definitely Section 22 was not meant to breed dishonesty nor can it be so operated as to encourage unfair practices. It is expected that the Government might be thinking of necessary modifications in the Act."

Even assuming that execution of consent decree was barred by Section 22(1), but all that was required was the consent of BIFR/Appellate Authority to proceed with such execution. In the present case the Appellate Authority had allowed respondent No. 3 to execute the decree. Thus all that remained to be seen was whether this suffered from any infirmity and whether its basis was untenable.

According to Mr. Mathur, the Appellate Authority's permission was devoid of any legal basis because it had not touched the merits of the petitioner's reference for sickness to see whether it was required to be granted. He further asserted that the Authority had no competence to direct execution of the decree by respondent No. 3.

Both submissions, in our view, are misconceived because the consent of the BIFR/ Appellate Authority involves exercise of sound discretion. No hard and fast rule or formula could be prescribed or suggested for exercise of such discretion. Nor could it be insisted or urged that their consent ought to have been based on examination of the merits of the company's reference for sickness or governed by principles for grant of injunction in civil matters.

It fell within the province of these two statutory authorities to grant or refuse such consent. How and in what manner would they do so was their domain. They could not be held bound by a particular method for exercising their discretion and their decision in this regard would be unassailable unless it was shown to be perverse, irrational or illogical and unsupported by any reason.

The Appellate Authority in the present case had shown due deference to the consent decree passed by the Calcutta High Court and had taken in regard the conduct of the petitioner while allowing respondent No. 3 to proceed with the execution of the decree. It could not have done better in the circumstances. Nor could its permission be said to be devoid of any legal basis or suffering from any want of reason. It was also not bound to proceed in a particular manner and accord its consent only after examining the merits of the petitioner's claimed sickness.

Mr. Mathur's submission that the Authority's order was conditional and dependent upon application of Section 22(1) to consent decrees and that it was incompetent to direct execution of the decree is again neither here, nor there. It appears that the impugned order was not being read in its correct perspective, The order only conveyed that the company could not be allowed to wriggle out of

its agreement by seeking protection u/s 22(1) which suggested that the Authority had declined to extend protection to it under the provision to allow respondent No. 3 to proceed with the execution. Its direction for execution of decree was its consent to respondent No. 3 to proceed.

We, therefore, hold that provisions of Section 22(1) of SICA were not attracted to the execution of a consent decree in the facts and circumstances of the case even though such decree was a decree technically within the meaning of Section 2(2), CPC and was also executable. Similarly grant or refusal of consent by BIFR or AAIFR involved exercise of sound judicial discretion by these statutory authorities which was not exercisable in any strait-jacket manner and which was unquestionable unless the decision was shown to be perverse, irrational, illogical or unsupported by any reason.

This petition accordingly fails and is dismissed. The Bank guarantee furnished by the petitioner-company shall be encashed and the amount sent to Registrar (J) of the Calcutta High Court to be paid to respondent No. 3 towards liquidation of the decree held by it. The Registrar to do the needful.