

(1997) 04 DEL CK 0082

In the Delhi High Court

Case No : Civil Writ Petition No. 2350 of 1996

Krimpex Synthetics Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

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

Citation : AIR 1998 Delhi 27 : (1998) 94 CompCas 495 : (1997) 43 DRJ 504

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Sudhir Chandra, B.R. Pradhan, R.N. Karanjawal, B. Babbar, Raju Subramaniam and Rajiv Shakdhan, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition, is filed to impugn the order dated April 16, 1996 passed by the Appellate Authority for Industrial and Financial Reconstruction, New Delhi. The Appellate Authority gave, consent for continuation of the proceedings in Suit No. 1595/89 against the petitioner company and the insolvency petitions 8 to 13 of 1994 against the guarantors. However, it was made clear that in case any decree was obtained by respondent No. 3 against any of the properties of the petitioner company it shall not be executed without the prior consent of the Appellate Authority. The petitioners have omitted to give the relevant facts which culminated in the passing of the impugned order in the petition and these facts are brought on record in the counter affidavit filed on behalf of respondent No. 3. There is practically no denial in respect of the same. These in brief may be reproduced as follows: (i) In October, 1986 the petitioner company had approached the third respondent Ifci Ltd. and Bank of Baroda for financial assistance for setting up a draw text rising and twisting unit at Silvassa, in Dadra and Nagar Haveli, Union Territory of India. The project cost was estimated at a sum of Rs. 440 lacs which the petitioner company proposed to finance in the following manner: a) Project cost : Rs. 440 lacs b) Means of Finance Equity share

capital (Promoters contribution Rs. 90 lacs & Public Rs. 100 lacs) : Rs. 190 lacs
Rupee Term Loan Rs. 250 lacs Icici Rs. 100 lacs Ifci Rs. 65 lacs Bob Rs. 20 lacs
Bom Rs. 20 lacs Dena Bank Rs. 20 lacs Central Subsidy Rs. 25 lacs Rs. 440 lacs
(ii) The respondent in or around November, 1986 acting on the request of the
petitioner company sanctioned a term loan of Rs. 165 lacs jointly with Ifci Ltd., in
furtherance of which on 18th March, 1997 a Loan Agreement was executed by
and between the petitioner company and the respondent company. (iii) Out of
the sanctioned loan of Rs. 165 lacs by the third respondent and Ifci Ltd. a sum of
Rs. 145 lacs was disbursed in favor of the petitioner company. The said
respondent contributed a sum of Rs. 87 lacs while Ifci contributed the balance
sum of Rs. 58 lacs. (iv) The petitioner company defaulted in payment of
installments towards principal and interest as early as in July, 1987. There was
consistently breaches of essential conditions under the Loan Agreement. These
breaches are specifically cited in the counter affidavit and it will not be necessary
to reproduce them herein.

(2) In view of the breaches and continued failure of the petitioner company in
paying its installments forced the respondent in issuing a Recall Notice on
January 12, 1989. By the said notice the petitioner company was called upon to
repay the following sums outstanding on 31st December, 1989: Third respondent
Icici Rs. 1,05,06,289.00 Ifci Rs. 69,94,795.00 Rs. 1,75,01,084.00

(3) The failure on the part of the petitioner company to respond to the Recall
Notices compelled the third respondent company along with Ifci Ltd. to jointly
institute two suits in the Bombay High Court, one against the petitioner company
and the other against petitioners 2 and 3 and one Ramanlal Khanna. The facts
are incorporated in paras (iv) to (x) of the counter affidavit which are reproduced
herein below :

"(IV) Failure of the first petitioner Company to respond to the recall notices
propelled the third Respondent Company Along with Ifci Ltd. to jointly institute
two Suits in the Hon''ble Bombay High Court, one against the 1st petitioner
company and the other against Petitioners 2 and 3 and one Shri Ramanlal
Khanna. The first Suit bearing No. 1595 of 1989 is a mortgage Suit while the
second Suit being a Summary Suit bearing No. 1935 of 1989 filed against the
guarantors (i.e. Petitioner No. 2, 3 and one Shri Ramanlal Khanna) invoking their
personal guarantees. The monetary claim in both the Suits is the same i.e.:- Icici
Ltd. : Rs. 1,11,30,538.00 Ifci Ltd. : Rs. 75,95,864.00 Rs. 1,87,26,402.00 The
Suits contain a prayer for interest @ 12.5% up to the date of payment or
realisation. v) In the recovery Suit 1595 of 1989, the Hon''ble Bombay High
Court vide Order dated 20th July, 1989 granted an Interim relief by way of an
injunction against first Petitioner company restraining it from alienating and/or
parting possession of mortgaged and hypothecated properties. vi) In Suit No.
1595/89 filed against Petitioner No. 1 Company the answering Respondent
moved Application under Order 40 Rule 1 of CPC for appointment of a Receiver.
The Hon''ble Bombay High Court vide its order dated 23rd October, 1989 acceded

to the prayer and appointed a Court Receiver to take custody of the immovable and moveable property of the Company. The said Order was confirmed by the Bombay High Court vide order dated 18.12.1990 with a direction that the First Petitioner company could take up agency on such terms and conditions as to security and compensation which the Court Receiver may deem fit and proper. It was also observed that in the event the petitioner company did not accept the terms of agency the Court Receiver would be free to affect sale of hypothecated properties and retain the sale proceeds till further orders. Acting under the Orders of the Hon''ble Bombay High Court the Court Receiver took physical possession of the mortgaged and hypothecated immovable and moveable property on 15th January, 1991. vii) In the meanwhile 01st June, 1990 Bank of Baroda, Dena Bank and Bank of Maharashtra filed a Recovery Suit bearing No. 2017 of 1990 against the petitioners to recover a sum of Rs. 4,56,38,045.00. viii) Against the order dated 18.12.1990, the first Petitioner Company preferred an Appeal to the Division Bench of the Bombay High Court being an Appeal No. 147 of 1991 in notice of motion 1819 of 1989 in Suit No. 1595 of 1989. The Division Bench by its Order dated 03rd April 1991 confirmed a substantive part of the Order except that portion of the Order of the learned Single Judge which directed sale of the hypothecated property. ix) The Court Receiver as directed held several meetings for fixing terms of Agency. Finally at the meeting held on 15th December, 1991 the Receiver laid down the terms for appointing the Petitioner company as the Agent of the Court Receiver. The terms being that the Petitioner company would deposit as security a sum of Rs. 50 lacs and pay monthly compensation of sum of Rs. 3 lacs to the Court Receiver. Being dissatisfied with the terms fixed the first Petitioner Company took out a notice of Motion. The learned Single Judge by an order dated 21st April, 1993 dismissed the notice of the motion, which was confirmed, by the Division Bench by its order dated June 24th, 1993. Against the Order of the Division Bench dated June 24th, 1993 the first Petitioner company preferred a SLP to the Hon''ble Supreme Court which was disposed of by an order dated 06th August, 1993 whereby the first petitioner company was given the liberty to furnish a Bank Guarantee of a Nationalised Bank in the sum of Rs. 25 lacs in place of Rs. 50 lacs fixed by the Court Receiver towards security. The Petitioner company failed to comply with the order of the Hon''ble Supreme Court within the time stipulated. Thereupon, the first Petitioner moved another Interlocutory application before the Hon''ble Supreme Court seeking extension of time by a further 12 weeks, to furnish the said Bank Guarantee to the Court Receiver in a sum of Rs. 25 lacs. The said Interlocutory Application was disposed of by the Hon''ble Supreme Court whereby, the first petitioner Company was directed to furnish a Bank Guarantee within six weeks failing which the Court Receiver was authorised to issue peremptorily an advertisement in the News-papers for inviting offers from third parties to run the first petitioner company factories as the agent of the Court Receiver. By the same order the 1st Petitioner Company was also directed to renew insurance policies to ensure security of assets and was directed to reimburse premium paid on the Policy in the past by the Financial Institutions

and the Banks. The petitioner company not only failed to furnish the Bank Guarantee but also neglected to renew the Insurance Policy in respect of the Assets from time to time. Since the Petitioner company did not fulfill its obligation the Financial Institutions and Banks had no other option but to take out Insurance Policies by paying premiums to ensure the security of Assets. x) In the meanwhile in the summary Suit No. 1935 of 1989, by an Order dated 16 January, 1990 the guarantors were conditionally given leave to defend the suit subject to deposit of Rs. 50 lacs in Court by guarantors. Against this Order the guarantors preferred an Appeal to the Division Bench of the Bombay High Court which was dismissed by an Order dated 25.06.1990. Against, the aforesaid order the guarantors preferred a Special Leave Petition. The Hon''ble Supreme Court by an Order dated 26.07.1990 modified the Order to the extent that the guarantors were given liberty to furnish Bank Guarantees in the sum of Rs. 50 lacs as against deposit of the like amount. The guarantors neglected to fail and furnish the requisite Bank Guarantee, whereupon, the Bombay High Court decreed the Suit by an Order dated 05th November, 1990. It is on the basis of the decree dated 05th November, 1990 that the third Respondent Initiated insolvency proceedings against the guarantors i.e. Petitioner No. 2, 3 and one Mr. Ramanlal Khanna. In the proceedings the insolvency Registrar attached to the Bombay High Court issued insolvency notices against the guarantors. The guarantors challenged the issuance of insolvency notices by taking out Notice of Motion which was, dismissed by the Hon''ble Trial Judge of the Bombay High Court by an Order dated 04th August, 1993. Against the Order of the learned Single Judge Appeals were preferred first to the Division Bench of the Hon''ble High Court of Bombay and then to the Hon''ble Supreme Court, both of which, were summarily dismissed by both the Courts, by their respective orders dated 17.09.93 and 05.11.1993."

(4) The guarantors made another attempt in moving an application for furnishing as security a property which, it is alleged, was the property of the petitioner company in the possession of the Court Receiver appointed in the suit filed by the Banks. This application was dismissed by the Trial Judge on January, 21, 1993 by the following order:

"An application is made in the above suit by way of Judges order. Heard counsel. Mr.Mody is right in his submission that such an application in this form is not maintainable. Moreover, he has pointed out and rightly, that there is a complete suppression of facts inasmuch as that the 1st defendant company has not mentioned material facts regarding pari passu charge being held in respect of the very same property by the other Banks viz., Bank of Baroda, Bank of Maharashtra and Dena Bank. This application is nothing else but an application made ostensibly by the 1st defendant-company but at the instance of the Director of the Company to save them from insolvency. Application refused."

(5) SLP was filed against the above said order which was also dismissed on August 13, 1993.

(6) In the above background, having exhausted all remedies, the petitioner company as well as the Guarantors did not even let the matter rest there. The petitioner company as well as Guarantors on March 16, 1993 filed their first reference u/s 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the Act'). This reference was rejected on December 15, 1993. The operative part of the order reads as follows:

"10. On consideration of the material on record and submissions made before us in regard to admissibility of the reference, we find that the present reference filed by the company is not maintainable for the following reasons: a) The possession of the plant and machinery was taken over by the official receiver of the Court in January, 1991. The plant has closed since then as submitted by Ici in today's hearing. The fact was further corroborated by the statement of the representative of Dena Bank in regard to commencement of commercial production by the company in 1987 as mentioned in its revival scheme. There was, as such, no commercial activity since 1991. The operative definition of a company is that it should own an industrial undertaking pertaining to a scheduled industry carried on in one or more factories owned by it. The material point, Therefore, is whether the company conforms to the definition of an 'industrial undertaking' in terms of the provisions of the Act. Sickness is an attribute of an industrial company and as such the provisions of Section 3(1)(o) of the Act would cover only a sick industrial company. The term industrial undertaking has been defined in Section 3(1)(f) of the Act. Going by the facts of the case, the company though incorporated for 7 years, became an industrial under-taking only subsequently when it started production in 1987. As such it does not fulfill the requirement of 7 years. b) Further the accumulated losses as shown in the balance sheet of the company for the year ended 31st March, 1992 stood at Rs. 162.76 lakhs against its net worth of Rs. 215 lakhs and as such there was no erosion of the entire net worth of the company in terms thereof. As the balance sheet was prepared and adopted by the company, it is not for the company to say that it does not reflect the correct position and that it should be read with the Auditors report. Obviously the company has been following different accounts for different purposes. Moreover, it has been the consistent approach of Bifr, that it should not by its orders put itself in conflict with the directions given by the High Courts/Supreme Court. In this case the High Court is already seized of the matter and has appointed a Receiver who has taken possession of the assets of the company. The company should not use the forum of Bifr to thwart the process in the High Courts. Thus, it follows that the reference made by the company is not legally maintainable and is, Therefore, hereby struck off."

(7) The second reference was rejected by Board for Industrial and Financial Reconstruction (BIFR) on October 18, 1995 on the ground that the company did not satisfy the requirements as contained in Section 3 of the Act as it had not completed five years of commercial production on March 31, 1991. The appeal against this order has been filed before the Appellate Authority for Industrial and Financial Reconstruction, New Delhi wherein respondent No. 3 moved an

application u/s 22 of the Act to seek permission of the Appellate Authority to continue its suit bearing No. 1595 of 1989 against the petitioner company as well as for a declaration that prohibition contained in the Act did not cover or apply to enforcement of the guarantees given by the guarantors to respondent No. 3. This application was allowed and consent of the Appellate Authority was given for continuation of proceedings in suit No. 1595/89 against the petitioner company and insolvency petitions against the guarantors. It was, however, stipulated that in case the respondents obtained any decree against any of the properties of the company these shall not be executed without the prior consent of the Appellate Authority.

(8) The appeal against the order dated October 18, 1995 was subsequently allowed and the matter was remanded back to Bifr for reconsideration in accordance with law. The matter has since been disposed of vide order dated December 13, 1996 and its operative part reads as follows:

"7.2 In the light of the observations made above, the Bench held that on the basis of the company's Balance Sheet as on 31.3.1993, its net worth had not been totally eroded. Its net worth was Rs. 2.19 crores (Paid-up capital - Rs. 2.15 crores plus Free Reserves- Rs. 0.04 crore) as against its accumulated losses of Rs. 0.58 crores. The Bench held that as the net worth of the company had not been totally eroded on the date from which sickness is being claimed by the company in this case, the reference u/s 15(1) of the Act is not maintainable for this reason alone, and it is not necessary to determine whether the company fulfills other criteria of being a sick industrial company. The Bench dismissed the reference accordingly."

(9) The learned counsel for the petitioner has contended that (a) the Appellate Authority has misdirected itself in holding that Insolvency petition is not a suit and such petitions against the guarantors do not imply any distress or the like against any properties of the petitioner company; (b) the guarantors who have given loans are analogous to the company and placed at par. Therefore, suit does not mean only a civil suit and includes insolvency petition as well; (c) there has to be suspension of all legal proceedings under the provisions of Section 22 of the Act.

(10) The provisions of sub-sections (1), (2) and (3) of Section 22 of the Act may now be reproduced 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 (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 u/s 18, notwithstanding anything contained in the Companies Act, 1956 (1 of 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 u/s 16 is pending or any scheme referred to in Section 17 is under preparation or during the period of consideration of any scheme u/s 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, assurances 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 there under before the said date, shall remain suspended or shall be enforceable with such adaptations 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."

(11) The amended portion in bracket in sub-section (1) of Section 22 was inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993. It is on the basis of the amendment that the learned counsel for the petitioner argues that no proceedings for recovery of money or for the enforcement of any security against the company or of any guarantee in respect of any loans or advances shall lie or be proceeded further. The question whether the amended-provisions in Section 22 of the Act will apply to suits as well as to insolvency proceedings was considered in *Sharad R.Khanna v. Karimjee Limited* (1996) 3 Company Law Journal 436 (Bom). The Division Bench of the Bombay High Court has stated the law in paragraph 8 of the judgment which reads as follows:

"It is next submitted that Section 22, of the Sick Industrial Companies (Special Provisions) Act, 1985, has been amended by the Amending Act of 1993, as a result of which certain protection is given to a guarantor. In the present case, the decree against the appellant is in his capacity as a guarantor of certain debts

incurred by a company which is at present before the Board for Industrial and Financial Reconstruction. The application of the company has been rejected by the Board, but an appeal u/s 25 is still pending. Under the amended Section 22, inter alia, no suit for the enforcement 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. This amendment came into effect from 1 February, 1994. The question is whether the issuance of an insolvency notice and its service can be considered as the original suit for the enforcement of guarantee being further proceeded with. It is difficult to consider the issuance of an insolvency notice as proceeding further with the original suit. It is an independent proceeding with its own consequences although it may be considered as a mode of equitable execution. In any case, this amendment came into force only with effect from 1 February, 1994. It cannot affect retrospectively an insolvency notice issued and served long prior to the coming into effect of the Amending Act. the Amending Act is prospective and will apply to all the suits filed or proceeded with after the amendment came into effect. Section 22, Therefore, as amended, cannot affect the order in the present case which is in a notice of motion to set aside the insolvency notice. This point was also not urged before the learned Single Judge. However, since it is a point of law we have allowed the appellant to urge it."

(12) The above view was followed by the Madras High Court in Trichy Steel Rolling Mills Ltd. v. Arvind Steels (P) Ltd. and another (1996) 85 CompCas 425 and it was held that the amendment to Section 22 of the Act would only be prospective and the plea that the amended provisions would apply to pending proceedings also was specifically rejected. The learned Judge made reference to the settled law in paragraphs as stated on pages 431-432 and the same read as follows:

"The further contention of Mr.C.Harikrishnan is that there can be an interval between Section 16 and Section 17(3) of the Act and that this will be relevant for considering the bar now recently introduced by the amendment. It is for this Court to consider that even assuming that there is a bar u/s 22 of the Act to proceed further with the suit, the said bar cannot be applied to pending proceedings. As pointed out by learned counsel for the defendants, the amendment having come into force on February 1, 1994, cannot be applied retrospectively to a suit filed on July 23, 1991. It is well settled that if an amendment is on a procedural aspect, the presumption is that the amendment has a retrospective effect, but if it is a matter relating to a substantive right, it will have only prospective effect unless the Amending Act makes it very clear without ambiguity that the amended provisions apply retrospectively. The filing of a suit and proceeding with the same are substantive rights. In support of his submissions Mr.C.Harikrishnan cited two decisions reported in Y. Arul Nadar Vs. The Authorised Officer, Land Reforms, Thanjavur, ; Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, . In Y. Arul Nadar Vs. The Authorised Officer, Land Reforms, Thanjavur, , a Full Bench of this Court has

observed as follows (headnote): "The general rule is, when an amendment is introduced in the statute governing the case already pending, the rights and obligations of parties should be decided only according to the law, which existed when the action was begun, unless a clear contrary intention is evident in the Amending Act. There could not be imputation of retrospective operation to an Amending Act and that could be done only by the Amending Act either expressly or by necessary implication. In the instant case the Amending Act has indicated that the amendments introduced shall have only prospective operation and pending proceedings should continue as if the Amending Act had not been passed."

In the decision reported in *Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others*, , the Supreme Court has observed as follows (at page 1079);

"It is well settled that ordinarily, when the substantive law is altered during the pendency of an action, rights of the parties are decided according to law, as it existed when the action was begun unless the new statute shows a clear intention to vary such rights. A plain reading of the impugned Act would show that there was nothing of this kind which expressly or by necessary intendment affects pending actions. There is no non-obstante clause in these Amending Acts 17 and 18 of 1957 with reference to pending or closed civil actions. These Amending Acts were published in the Government Gazette of December 23, 1957, and will, Therefore, be deemed to have come into force from that date only. They could, Therefore, be construed as having prospective operation only. In the Amending Act 20 of 1960, also no back date for its commencement has been mentioned. It will, Therefore, be deemed to have commenced on June 23, 1960, which is the date on which it was published in the Government Gazette."

In view of the above said legal position, I am of the view that there cannot be any stay of the suit as there is no retrospective effect for the amendment."

(13) In the present case, the petitioners have only tried to ward off their debts due to Financial Institutions by multiplicity of proceedings in different forums. This will be evident from the narration of facts referred to in the earlier part of this judgment. The Insolvency Notices were taken out by respondent No. 3 on November 2, 1992 i.e. prior to the amendment of the provisions of sub-section (1) of Section 22 of the Act. In view of the law settled by the Bombay High Court in *Sharad R. Khanna* (supra) such a provision can only apply prospectively and not retrospectively. Incidentally this matter was also agitated between the same parties in which petitioner No. 2 was contesting the insolvency notices.

(14) The present petition concerns only with the order dated April 16, 1996 passed by the Appellate Authority for Industrial and Financial Reconstruction wherein the Court has merely held as follows:

"4. In conclusion, both the prayers of the applicant (respondent No. 2 in the appeal) are allowed and consent of the Appellate Authority is given for the

continuation of the proceedings in suit No. 1595/1989 against the appellant company and the insolvency petitions 8 to 13 of 1994 against the guarantors. However, if the applicant obtains any decree against any of the properties of the appellant company, they shall not be executed without the prior consent of the Appellate Authority."

(15) In terms of the provision of Section 22(1) of the Act, it is always open for the Creditor to apply to the Board or as the case may be to the Appellate Authority for enforcement of its rights. The necessary consent has been granted and this amply protects the interest of the petitioners. The Bifir vide its order dated December 13, 1996 has again dismissed the reference of the petitioner company though the appeal against that order stated to be pending. The Supreme Court in Gram Panchayat and another v. Shree Vallabh Glass Works Ltd. and others (1991) 71 Comp Case 169 has clearly defined the rights of the creditors and left it open for them to seek permission for proceedings against the company for recovery of its dues. The following paragraphs read as follows:

"In the light of the steps taken by the Board under Sections 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any of the properties of the company shall lie or be proceeded with further except with the consent of the Board. Indeed, there would be automatic suspension of such proceedings against the company's properties. As soon as the inquiry u/s 16 is ordered by the Board, the various proceedings set out under sub-section (1) of Section 22 would be deemed to have been suspended. It may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the company for the recovery of their dues/out standings/overdues or arrears by whatever name they are called. The Board, at its discretion, may accord its approval for proceeding against the company. If the approval is not granted, the remedy is not extinguished. It is only postponed. Sub-section (5) of Section 22 provides for exclusion of the period during which the remedy is suspended while computing the period of limitation for recovering the dues."

(16) In view of the above reasons, there is no merit in this petition. The same is, accordingly, dismissed with costs which are quantified at Rs. 10,000.00 .