
(1996) 04 AHC CK 0083
In the Allahabad High Court
Case No : Civil Revision No. 83 of 1995

Modi Spg.and Wavg.Mills Co.Ltd.,Modinagar	APPELLANT
Vs	
Housing and Urban Development Corporation Ltd.	RESPONDENT

Date of Decision : 22-04-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 17, 22(1)

Citation : (1996) 04 AHC CK 0083

Hon'ble Judges : A.B.Srivastava, J

Final Decision : Allowed

Judgement

A. B. Srivastava, J.—By means of this application in revision the revisionist, otherwise a defendant in the suit pending before the Civil Judge, Senior Division, Ghaziabad, has impugned an order dated 1121994 of the learned Civil Judge rejecting an application of the defendant for amendment.

2. The suit before the court below was filed in the year 1984 by the plaintiffopposite party for recovery of a sum of Rs. 22,08,762 outstanding as loan, repayable by the defendant. During the pendency of the suit a Reference was made in respect of the petitioners mill under Section 15 (1) of the Sick Industrial Companies (.Special Provisions) Act, 1985 (hereinafter referred to as the Act) to the Board for Industrial and Financial Reconstruction (hereinafter referred as the Board). On 1561990 the Board held the petitioner to be a sick industrial company and further proceedings under Section 17 onwards were initiated by the Board. The revisionist thereupon moved an application before the court below to stay the proceedings in the suit under the provisions of Section 22 (1) of the Act. The said application was rejected on 681993 on the ground that there was no provision for suspending or staying the proceeding in a suit under Section 22 (1) of the Act, nor was any declaration under Section 22 (3).

3. Section 22 (1) of Act saw amendment, and by Act No. 12 of 1994 the provision regarding suspension of legal proceedings, contracts etc. was extended

also to the suits for recovery of money or for the enforcement of any security. The revisionist thereupon moved an amendment to the written statement to plead the benefit of the said amended provision. It was this application which was rejected by the impugned order.

4. On hearing learned counsel for the parties and considering the factual matrices as narrated above, there can be no doubt that the learned court below has acted illegally in the exercise of its jurisdiction in rejecting the amendment sought. The earlier order dated 681993 was not relevant in view of the fact that the amending provision which was sought to be incorporated in the pleading, came into existence much thereafter. The amendment as incorporated in Section 22 (1) of the Act by the Amending Act No. 12 of 1994, clearly embraced it its ambit a suit for recovery of money and the embargo on the filing of such suit or being proceeded with further, has been made applicable to the same. The view that the prohibition will only to the suits filed after incorporation of the amending provision, and not to the "suits filed prior to it, is unsustainable on a plain reading of the said provision. What has been prohibited is, the filing of a suit, and where such suit is already pending, its being proceeded with further, except with the consent of the Board, or as the case may be, the appellate authority.

5. The court below was also not justified in refusing the amendment by placing reliance on the proposition laid down in AIR 1990 SC 1017 *The Gram Panchayat and another v. Shree Vallabh Glass Works Limited and others*, because the said decision was rendered by the Apex Court in reference to the unamended provision of Section 22 (1) of the Act. In fact, the provision with regard to the proceedings to be continued against the sick industrial company with the consent or approval of the Board or the appellate authority, is itself indicative that it covers the proceedings which be pending from before.

6. For these above reasons, therefore, the impugned order of the learned court below deserves to be set aside and the amendment sought, allowed.

7. The revision in accordingly allowed. The impugned order of the learned Civil Judge is set aside and the amendment sought for in the written statement is allowed.

Revision allowed.