

(2022) 08 TEL CK 0007

In the Telangana High Court

Case No : Civil Revision Petition No. 6095 Of 2016

M/S Priyarajai Fibers Ltd.,

APPELLANT

Vs

M/S Z K Containers, Secunderabad

RESPONDENT

Date of Decision : 02-08-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 21 Rule 26
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 16, 17, 22,
22(a)
Limitation Act, 1963 — Section 5

Citation : (2022) 08 TEL CK 0007

Hon'ble Judges : P. Sree Sudha, J

Bench : Single Bench

Advocate : Gopala Rao Amancharla V, Zeeshan Adnan Mahmood

Final Decision : Dismissed

Judgement

1. This Civil Revision Petition is filed against the orders in E.A. No. 318 of 2016 in E.P. No. 79 of 2004, Dated 22.11.2016 on the file of 1st Senior Civil Judge, City Civil Court, at Hyderabad.

2. M/s. Priyaranjani Fibers Ltd., is the petitioner herein and he filed the petition under Order 21 Rule 26 r/w. Sec. 151 CPC to stay all further proceedings in E.P. No. 79 of 2014. The trial Court after considering the arguments of both sides at length dismissed the I.A. No. 318 of 2016 against which the petitioner herein preferred the present C.R.P. He mainly contended that the trial Court failed to appreciate the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 and also failed to appreciate that the petitioner's company is a sick company referred to BIFR (Board for Industrial and Financial Restructuring) under the provisions of Section 15 and registered as case No. 366 of 2001 pending enquiry under the provisions of Section No.16 and 17 for viable/rehabilitation scheme under the Act. He further stated as per the provisions of Section 22 of the SICA 1985 that no recovery proceedings shall lie against the

sick company and ignoring the same the Court below passed erroneous orders on a presumption under the E.A. No. 42 of 2007 was opened suo motto and orders are passed without notice to the petitioner. The question of restoring E.A. No. 42 of 2007 does not arise as every E.A. is independent in nature and petitioner has right to file interlocutory applications as and when required. The registered office of the company is shifted to factory premises at Rayapole Village, R.R. District. The respondent is aware of the same, intentionally kept filing process and applications on the erstwhile address at Dharamam Karan Road, Ameerpet, Hyderabad and it was also brought to the notice of the Court below. But without taking into consideration the change in address of the petitioner the process was issued to the erstwhile address erroneously. It was also observed by the trial Court that the case No. 366 of 2001 is pending on the file of BIFR/AIFR for the last 15 years. The petitioner's company was declared as sick as per the provisions of Act 1985 and that itself to stop all further proceedings under Section 22 of the SICA. There is statutory bar for any recovery proceedings against the sick company. Therefore requested the Court to set aside the order of the trial Court.

3. O.S. No. 542 of 2002 is filed by M/s. Z.K. Containers against M/s. Priyaranjani Fibres Ltd., and decreed the suit on 3.09.2003 against the defendant for recovery of Rs.2,81,628/-with future interest @ 6% per annum from the date of suit till the date of realisation on Rs.1,65,664/-.The address mentioned in the suit is factory address and registered office at Rayapole Village. But in the decree the address of the factory is mentioned as Plot No.601, Street No.11, Dharama Karam Road, Ameerpet, Hyderabad. Revision petitioner herein mainly contended that the registered office was at Rayapole village in Ibrahimpatnam Mandal. They wrongly mentioned the address of Ameerpet, Hyderabad. In spite of giving information regarding change of address they are serving process on the wrong address. In E.A. No. 190 of 2004 in E.P. No.79 of 2004 in a docket order dated 23.04.2004 it was observed that the petitioner filed a memo stating that the counsel for respondent refused to receive notice. Hence, the J.Dr company was referred to BIFR under S.I.C.A.. As such the Court granted interim stay of all further proceedings. E.P. No. 79 of 2004 is filed for attachment of moveables for the recovery of the said amount. The contention in the said E.P is that the address of Ameerpet was mentioned but the fact remains that petitioner herein is contesting in all the matters. Therefore, it can be said that notice was served upon him in a proper address. E.A. No. 318 of 2016 in E.A No. 190 of 2004 in E.P. No. 79 of 2004 is filed. The Manager (Administration) of the petitioner company stated that their company was declared as a Sick Company under Sec. 3 of the Sick Industrial Companies special Provisions Act, 1985 and as per the provisions of Section 22 (a) of the SICA 1985 no suit shall lie against the sick company for recovery of amounts or execution or distress, without special permission of the BIFR. He also stated regarding the stay proceedings in E.P. No. 41 of 2007. He further stated that when bailiff approached M/s. Siri Consultants at Dharam Karan Road for execution of the warrants on 03.03.2016 basing on

the information given by the office he returned the warrant without execution. It was informed that M/s. Siri Consultants (Architects and Engineers) is no way concerned with M/s. Priyaranjani Fibers Ltd., (Cotton Yarn Manufacturing Company). The two are different unconcerned business entities. The registered office of the said M/s. PFL Company is situated at Rayapole Village within the factory premises. They are still trying to mislead the Court. Therefore requested the Court for recalling of the warrants dated 11.02.2016 in E.P. No. 79 of 2004 and to stay all further proceedings in E.P. 4. In a counter filed by the Decree Holder that the O.S. No. 542 of 2002 was decreed in their favour on 03.09.2003 and attachment was issued. The petitioner illegally resisted the bailiff. He filed I.A. No. 55 of 2005 under Section 5 of Limitation Act for condoning the delay of 197 days to set aside the decree but it was again dismissed on 12.06.2006 on their contest. Later they filed E.A. No. 41 of 2007 for stay of all proceedings on the ground that it was declared as sick industry when they filed counter petitioner failed to prosecute the same on one or other pretext and hence the E.A. No. 41 of 2007 was reserved for pronouncement of orders and thereafter suo moto reopened the same and directed the petitioner to lead evidence for proper adjudication of the said case. Even then the petitioner failed to adduce the evidence and thus dismissed it and issued warrant of attachment and against which the present petition is filed for the same relief, as such it is devoid of merits, therefore, requested the court to set aside the same.

5. The trial Court observed that petitioner company was registered as 366/2001 and the proceedings and the hearing held on 27.12.2004 before the bench of BIFR are pending for the past 15 years. They filed Summary record of the proceedings held on 22.11.2011 before Bench II of BIFR, still the proceedings were not finalised. No doubt the petitioner herein was declared as sick company under BIFR. But at the time of filing the suit it was not a sick company, decree was granted against the petitioner company. E.P. is filed for recovery of meagre amount of Rs.3,10,000/-. They took an objection regarding the said fact and filed application and also trying to protract the litigation on one or other grounds, the trial Court considered all the aspects in detail and dismissed the application. Therefore, the C.R.P preferred by the petitioner herein is devoid of merits. This Court finds no reason to interfere with the order of the trial Court.

6. In the result, the Civil Revision Petition is dismissed by confirming the orders in EA No. 318 of 2016 in E.P. No. 79 of 2004, Dated 22.11.2016 on the file of Ist Senior Civil Judge, City Civil Court at Hyderabad.

As a sequel, pending miscellaneous petitions, if any, shall stand dismissed as infructuous. No order as to costs.