(2002) 05 DEL CK 0089

In the Delhi High Court

Case No : C.R. No. 449 of 2002 and CM No. 979 of 2002

National Textile Corporation (D.P. and R) Ltd. APPELLANT

Vs

Shri Ramesh Chander Puri RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 11(4), 16, 17, 22, 22(1)

Citation : (2002) 05 DEL CK 0089

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Satish Kumar, for the Appellant; Arun Mohan and B.B. Gupta, for the Respondent

Final Decision : Partly Allowed

Judgement

R.C. Jain, J.—This civil revision is directed against the order of the learned Additional District Judge dated 23.1.02 by which an application u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short `the Act'') filed on behalf of the petitioner-defendant No.2-Corporation challenging the maintainability of the suit filed by the respondent has been dismissed.

2. Briefly, the relevant facts are that the respondent-herein filed a suit for ejectment and recovery of a sum of Rs.4,35,000/- against the petitioner. During the proceedings of the suit, the petitioner filed an application u/s 22 of the Act stating therein that the petitioner-Company has been declared a sick company under the provisions of Section 16 of the Act and further proceedings are pending before the BIFR u/s 17 of the Act and Therefore the suit filed by the respondent was not maintainable and cannot be proceeded further in view of the statutory bar created u/s 22 of the Act as the respondent had not taken any permission from the BIFR before filing the suit. The application was opposed on behalf of the respondent-plaintiff thereby controverting the pleas of the petitioner-defendant and the pleadings that suit for ejectment and for recovery

of mesne profits was not barred under the provisions of Section 22 of the Act. The trial court on a consideration of the matter and more particularly relying upon Supreme Court decision in the case of Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others, anda decision of this court in the case of Cement Corporation of India Vs. Smt.Manohar Bhasin reported in 1999 6 AD (Del) 398 held that the suit for eviction was not liable to be stayed and further that there was no document on record to show that any scheme has been sanctioned and the dues in the nature of arrears of rent, damages and mesne profits is part of the scheme for rehabilitation and accordingly dismissed the application.

I have heard Mr.Satish Kumar learned counsel for the petitioner and Shri Arun Mohan, senior advocate appearing on behalf of the respondent. Learned counsel for the respondent at the very outset urged this Court to dismiss the present petition on the ground that the petition is an abuse of the process of the Court because on an earlier petition filed by the petitioner-Corporation, this Court in the case of National Textile Corporation Vs.Smt.Kamla Sharma 66 (1997) DLT 22, has categorically held that the provisions of Section 22 is no hurdle in the way of suit for possession. He also sought support from a later judgment of this Court in the case of Sirmor Sudburg Auto Ltd. Vs. Kuldip Singh Lamba, wherein the Court on a consideration of the matter held that a suit for recovery of arrears of rent, damages and mesne profits is a suit for the recovery of money within the meaning of the expression as inserted by the 1993 Amendment Act. In as much as a decree for recovery of arrears of rent, damages and mesne profits would result in financial liability cast on the defendant and such a suit would attract the applicability of Section 22(1) of the Act. However, a suit for ejectment is not covered by the said provision of law and can be maintained. This authority, in my view, supports the contention of the petitioner rather than the respondent. Reliance was then placed on the Supreme Court decision in the case of Gujarat Steel Tube Co. Ltd. Vs. Virchandbhai B. Shah and Others, wherein the Court considered the question of maintainability/stay of an eviction petition on the ground of non-payment of rent and held as under :-

"Section 22 no doubt, inter alia, states that not with standing any other law no suit for recovery of money shall lie or proceeded with except with the consent of the Board, but as we look at it the filing of an eviction petition on ground of non-payment of rent cannot be regarded as filing of a suit for recovery of money. If a tenant does not pay the rent, then the protection which is given by the Rent Control Act against his eviction is taken away and with the non-payment of rent order of eviction may be passed.It may be possible that in view of the provisions of Section 22, the trial Court may not be in a position to pass a decree for the payment of rent but when an application u/s 11(4) is filed, the trial Court in effect gives an opportunity to the tenant to pay the rent failing which the consequences provided for in the sub-section would follow. An application u/s 11(4), or under any other similar provision, cannot, in our opinion, be regarded as being akin to a suit for recovery of money."

Learned counsel for the petitioner has not disputed the legal preposition that the plaintiff-respondent is entitled to maintain a suit for ejectment, but his contention is that the suit for recovery of Rs.4,35,000/- towards mesne profits/ damages etc is not maintainable in view of the provisions of Section 22(1) of the Act as it stands after amendment. He relied upon a Supreme Court decision in the case of Real Value Appliances Ltd. Vs. Canara Bank and Others, . In that case the Hon''ble Supreme Court considered the scope of various provisions contained in Chapter III of the Act. With regard to the applicability of Section 22 of the Act, it was stated that the legal proceedings, contract etc are liable to be suspended where an inquiry u/s 16 is pending or any scheme u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 is pending before the Appellate Authority (AAIFR). Having considered the rival contentions put forth on behalf of the parties and the admitted position that the petitioner-Company has been declared a sick company under the provisions of Section 16 of the Act and further proceedings are pending before the BIFR u/s 17 of the Act and the legal position emerging from the above referred decisions of the Supreme Court and this Court, this Court is of the considered opinion that while the provisions of Section 22(1) of the Act are not attracted to a suit or proceedings seeking the ejectment or recovery of possession of the premises but the provisions of the said Section would come into play once a claim is made in a suit for the recovery of money. In the case in hand beside seeking the possession of the demised premises, the respondent has sought recovery of a sum of Rs.4,35,000/- which relief on the face of the above factual and legal position is barred. In the result, this petition succeeds and is partly allowed and the impugned order so far it has dismissed the application u/s 22 of the Act for the relief of adjustment/possession of the demised premises is upheld, but so far as it has declined to suspend the proceedings with regard to the relief of recovery of a sum of Rs.4,35,000/- towards mesne profits is liable to be set aside and the application of the petitioner to this extent will be deemed to have been allowed. It will be open for the respondent to pursue his suit so far as the relief of ejectment is concerned. The contention of the learned counsel for the plaintiff-respondent that the suit in regard to recovery of the said amount may also be allowed to be proceeded with and the respondent-plaintiff is prepared to give an undertaking that he will not execute the money decree so passed, cannot be accepted in view of the embargo placed by Section 22(1) of the Act in regard to the very maintainability of a suit for recovery of money. The revision petition stands disposed of accordingly. CM also stands disposed of.

