
(2010) 08 DEL CK 0300

In the Delhi High Court

Case No : CM (M) No. 1021 of 2010 and CM No. 14150 of 2010

National Textile Corporation Limited

APPELLANT

Vs

Sh. Kunj Behari Lal

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Companies Act, 1956 — Section 25

Constitution of India, 1950 — Article 227

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

Citation : AIR 2010 Delhi 199 : (2011) 167 CompCas 29

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Sanjoy Ghose, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Petitioner which is a Government Undertaking and a sick company after getting concurrent adverse findings from the courts below, is bent upon wasting public time and money. Now, it has chosen to file present petition before this Court under Article 227 of the Constitution of India

2. Before dealing with this petition, it would be necessary to state as to what is the scope of Article 227 of the Constitution of India. Law is well settled that jurisdiction of this Court, under this Article is limited.

3. In Waryam Singh and Another Vs. Amarnath and Another, , the court observed;

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in - Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

4. In light of principles laid down in the above decision, it is to be seen as to

whether present petition under Article 227 of the Constitution of India against impugned orders is maintainable or not.

5. In *Narain Singh through LRs. and Others Vs. Shanti Devi through LRs and Others*, , this Court observed;

It is settled law that where two courts below have given a concurrent finding of facts, this Court under Article 227 of the Constitution of India shall not disturb the finding even if there is some mistake committed in appreciation of some part of evidence. Under Article 227, the court does not correct the mistakes of law or mistakes of facts. The intervention of this Court under Article 227 has to be only in those exceptional cases where the courts below had either not exercised their jurisdiction or had acted beyond jurisdiction or had ignored the well-settled legal proposition and acted contrary to law.

6. Coming to the facts of this case, respondent filed a suit for possession, rent/ mesne profits etc. against petitioner to whom property in question was let out more than twenty years ago (i.e. in 1990).

7. In March, 2010, petitioner filed an application for suspension of legal proceedings for eviction pending against it on the ground that it is a sick company and as per provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (for short as "SICA") respondent be asked to obtain prior consent of BIFR before proceedings in the matter.

8. Interestingly, in the written statement no such plea was taken. Now without amending the written statement petitioner cannot take a new and all together different plea in the application in question.

9. It is contended by learned Counsel for petitioner that purport of Section 22 of SICA is to protect a sick company from legal proceedings which would foist any additional financial liability upon the sick company and imperil the rehabilitation process. The suit filed by respondent is for recovery of rent, arrears as well as mesne profits and not limited to eviction alone. Therefore, lower courts were required to examine the entire prayer clause of the original suit and not limit the question to eviction alone.

10. In support learned Counsel has cited following judgments;

(i) *Stichting Doen-Postcode Loterij Vs. Vin Poly Recyclers Pvt. Ltd. and Others*, , and

(ii) *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*, .

11. Section 22(1) of SICA which is relevant in this case read as under;

Section 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) XXX XXX XXX (3) XXX XXX XXX (4) XXX XXX XXX (5) XXX XXX XXX

12. Above Section nowhere states that no suit for possession can be filed against the sick company.

13. Trial court in its impugned order dated 18th March, 2010 observed;

plaintiff has filed the present suit for possession, mesne profits and permanent injunction. By way of this suit, plaintiff is praying a decree of possession of the tenanted premises B-33/2, Ground Floor, Laxmi Nagar, Vikas Marg, Delhi-110092. plaintiff also prayed for a decree of permanent injunction restraining the defendant from sub-letting/transferring the possession of suit premises to any other person. Counsel for the defendant had placed reliance on judgment of Hon''ble Delhi High Court passed in case titled as "Stitching Doen-Postcode Loterij v. Vin Poly Recyclers Pvt. Ltd. and Ors." This judgment is not helpful to the defendant as the facts of the case law cited by the defendant are distinguished from the fact of the present case. The case law cited is a suit under the provisions of 37 CPC but the present suit is for possession, mesne profits and permanent injunction. plaintiff has placed reliance on AIR 1992 SC. 1445 to the effect that the proceedings are not covered u/s 22 of Sick Industrial Companies (Special Provisions) Act, 1985. I am bound to follow the judgment of Hon''ble Apex Court. In this judgment, their Lordships have clearly observed that the following proceedings only are automatically suspended u/s 22(1) of the Act:

- i) Proceedings for winding up of the industrial company.
- ii) Proceedings for execution, distress or the like against the properties of the industrial company; and
- iii) Proceedings for the appointment of receiver.

In para 12 of this judgment, Hon''ble Apex Court has clearly observed that;

eviction proceedings initiated by a landlord against a tenant company would not fall in categories (i) and (iii) referred to above. It is also observed that it has been urged by the learned Counsel for the appellant company that such

proceedings fall in category (ii) since they are proceedings against the property of the sick industrial company. The submission is that the lease-hold right of the appellant company in the premises leased out to its property and since the eviction proceedings would result in the appellant company being deprived of the said property, the said proceedings would be covered by category (ii). We are unable to agree. The second category contemplates proceedings for execution, distress or the like against any other properties of the industrial company. We are therefore of the view that Section 22(1) does not cover a proceeding instituted by a landlord of a sick industrial company for the eviction of the company premises let out to it.

14. Whereas, first appellate court in its impugned order dated 25th May, 2010 observed;

Present suit was filed by the plaintiff in January 2009 and written statement was filed by the plaintiff/respondent in April, 2009. Thereafter an application under Order 12 Rule 6 CPC was also filed which was duly replied by the defendant/appellant. In all these pleadings, the defendant/appellant had not taken any such plea at any point of time that the present proceedings are governed by Section 22 of SICA and prior permission of the BIFR are required to prosecute the proceedings. It is matter of record that in the application on behalf of the defendant/appellant for suspension of the legal proceedings, it is informed that the said scheme was referred to the BIFR way back in the year 2002 and BIFR have even sanctioned the revival scheme of the eight subsidiaries of NTC Limited and these proceedings were being continued for long time and despite having all such information well within the knowledge of the defendant/appellant, no such plea was taken by the defendant/appellant either in the written statement or in application under Order 12 Rule 6 CPC. It is only then, when the matter was fixed for arguments on application under Order 12 Rule 6 CPC, the present application was filed. Despite all that it has nowhere been stated as to whether present unit of the defendant/appellant for which is being sought had ever been referred/included in the scheme so prepared by the BIFR. It is not even clearly and transparently stated by the defendant/appellant as to whether it is the defendant company or whether it is a subsidiary of the defendant company which has been included in the scheme, so prepared by BIFR. There is no specific averment at all in the entire application, in the written statement or in the reply to the application of plaintiff/respondent under Order 12 Rule 6 CPC that this property under dispute, for which eviction proceedings are going on was ever a part of properties which have been included by BIFR for preparing the scheme of revival ship of defendant/appellant herein. Further, this is a suit for possession as filed by the plaintiff/respondent against the defendant/appellant on the ground that lease period for which the premises was let out to the plaintiff/respondent has come to an end and, therefore, he be directed to vacate the premises. Plea of the defendant/appellant on the other hand initially was that although the lease period for which it was agreed to have been expired yet it was orally extended. Now the case before the court is that defendant/appellant would never inform

the court with respect to the pendency of the proceedings before BIFR nor would take such plea nor would vacate the premises and would take the plea of oral extension of lease deed as against a person who just want to get his premises vacated. If the premises would have been vacated in view of the written lease deed just after the expiry of the lease period, there would not have been any dispute of such nature, and further the contention of the defendant/appellant would have been well found, if it would have been clearly stated that the immovable property under the lease deed of the defendant/appellant, is a part and parcel of the Scheme, so prepared by the BIFR. Prima Facie, the defendant/appellant is not being covered u/s 22(1) of SICA and the averment is only with respect to subsidiary company of the defendant/appellant and not with regard to the defendant itself.

Therefore, keeping in view all the above facts, court is of the considered opinion that there is no irregularity/illegality in order passed by the Ld. Trial Court being order dt. 18.3.10

15. In M/s Shree Chamundi Mopeds Ltd. (Supra) Supreme Court observed;

We are, therefore, of the view that Section 22(1) does not cover a proceeding instituted by a landlord of a sick industrial company for the eviction of the company premises let out to it.

16. Further, decision of Stichting Doen Postcode Loterji (supra) is not at all applicable to the facts of the present case, as that case was under Order 37 of CPC for recovery of money.

17. Thus, in view of decision of Supreme Court in M/s Shree Chamundi Mopeds Ltd. (Supra) there is no reason to disagree with the reasoning given by the courts below and there is no illegality, infirmity or irrationality in the impugned orders.

18. Present petition is most bogus and frivolous one and has been filed just to squander public money and to harass a common man who committed blunder by giving his property on rent to the mighty public undertaking. It is a well known fact that courts across the country are saddled with large number of cases. Public Sector undertakings indulgences further burden them. Time and again, courts have been expressing their displeasure at the Governments"/Public Sector undertakings compulsive litigation habit but a solution to this alarming trend is a distant dream. The judiciary is now imposing costs upon Government/Public Sector undertakings not only when it pursue cases which can be avoided but also when it forces the public to do so.

19. Public Sector undertakings spent more money on contesting cases than the amount they might have to pay with regard to the premises which have been taken on rent by them. In addition there to, precious time, effort and other resources go down the drain in vain. Public Sector undertakings are possibly an apt example of being penny wise, pound foolish. Rise in frivolous litigation is

also due to the fact that Public Sector undertakings though having large number of legal personnel under their employment, do not examine the cases properly and force poor litigants to approach the court.

20. Frivolous litigation clogs the wheels of justice making it difficult for courts to provide easy and speedy justice to the genuine litigants. Public Sector undertakings should not indulge in mindless litigation and unnecessary waste the time and public exchequer's money. A strong message is required to be sent to those litigants (whether Government or Private) who are in the habit of challenging each and every order of the trial court even if the same is based on sound reasoning and also to those litigants who go on filing frivolous applications one after another.

21. Under these circumstances, present petition which is meritless, bogus and most frivolous one, is hereby dismissed with costs of Rs. 50,000/- (Fifty Thousand Only).

22. Petitioner is directed to deposit the costs by way of cross cheque with Registrar General of this Court, within four weeks from today.

23. Meanwhile, petitioner shall recover the cost amount from the salaries of delinquent officials who have been pursuing this meritless and frivolous litigation, with the sole aim of wasting the public exchequer. Affidavit giving details of the officials from whose salary the costs have been recovered be also filed in four weeks.

24. List for compliance on 20th September, 2010.

CM No. 14150/2010

25. Dismissed.