

(2015) 09 RAJ CK 0082

In the Rajasthan High Court

Case No : Civil Revision Petition No. 431/2011

Perfect Thread Mills Limited

APPELLANT

Vs

Tarun K. Shah

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 26, Order 21 Rule 29, Order 21 Rule 3, Order 21 Rule 30, Order 21 Rule 48
Limitation Act, 1963 — Section 14, 5
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 16, 17, 18, 22

Citation : (2015) 09 RAJ CK 0082

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : Manoj Bhandari and Suniel Purohitt, for the Appellant; Ramit Mehta and Arpit Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.—Petitioner judgment-debtor has filed this revision petition under Section 115 of Code of Civil Procedure, 1908 (for short, "CPC") to assail the impugned order dated 20th January, 2007 passed by District Judge, Udaipur (for short, learned executing Court") in Execution Case No. 30/1996.

2. Succinctly stated, the facts of the case are that Central Bank of India (for short, "Bank") instituted a summary suit against petitioner-Company in February, 1990 before the Bombay High Court on its original side and the same was registered as Suit No. 418 of 1990. The High Court of Bombay, after issuance of summons found the defence of petitioner-Company untenable and consequently decreed the suit. As a matter of fact, the petitioner-Company, in its defence, taken shelter of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, "SICA, 1985"). Upon consideration of the

provisions of Section 22 of the SICA, 1985, the High Court of Bombay declined to accept said defence observing that said provisions cannot prohibit the Court from passing a decree. Eventually, the suit was decreed for a sum of Rs. 12,75,338.95 with interest @ 18% per annum from due date upto 16th January, 1990.

3. On 23rd August 1996, the High Court of Bombay forwarded certified copy of decree dated 20th August, 1990 to District Judge, Udaipur for its execution by exercising powers under Section 39 and Order 21 Rules 5 & 6 CPC. On receipt of certified copy of the decree, the learned executing Court registered Execution Case No. 30/1996 and issued notices to petitioner-Company on 12.09.1996. In response to the notices, petitioner-Company submitted an application on 24th October, 1996 under Order 21 Rule 26 and Section 151 CPC read with Section 22(1) of SICA, 1985 with the prayer not to proceed or drop execution proceedings. In the application, it was, inter alia, averred by the petitioner-Company that Board of Industrial and Financial Reconstruction (for short, "BIFR"), by its order dated 21st of November 1988, declared the petitioner-Company as a sick industrial company under the provisions of SICA, 1985 and also sanctioned rehabilitation scheme on 18th December 1990, which was further reviewed for its implementation, and finally BIFR sanctioned a revised rehabilitation scheme on 18th December, 1993. The petitioner-Company also submitted in the application that against the order of BIFR dated 20th March 1996, an appeal, confirming its opinion for winding up of the petitioner-Company under SICA, 1985, was pending consideration before Appellate Authority for Industrial and Financial Reconstruction (for short, "AAIFR"). It was further submitted that AAIFR stayed the orders passed by BIFR till disposal of the appeal.

4. The whole thrust of the petitioner-Company was that as the matter is pending before AAIFR, the proceedings for execution of decree be either suspended or dropped under the provisions of Section 22(1) of SICA, 1985. The litigation, at the behest of the petitioner-Company, continued before BIFR and AAIFR.

5. The aforesaid application of the petitioner-Company was contested by the decree-holder by filing its reply, and the learned executing Court, by its order dated 22nd of February 1997, rejected the application of the petitioner with a direction to the petitioner to approach the Court which passed the decree. It transpires from the pleadings that being aggrieved of the said order of executing Court, petitioner-Company approached this Court laying Revision Petition No. 495/1997, wherein, at the threshold, interim order was granted.

6. During pendency of revision petition, respondent filed an application on 20th of February, 2002 for its substitution as respondent in place of Bank. The aforesaid application of respondent under Order 22 Rule 10 was allowed and it was substituted as respondent in place of Bank. After its impleadment by way of substitution in place of Bank, respondent submitted yet another application whereupon this Court vacated the stay granted in revision petition No. 495/1997 on 13th of October, 2003.

7. The respondent also made endeavour for being substituted as decree-holder before the learned executing court by filing application under Section 151 read with Order 21 Rule 30 CPC. The learned executing Court allowed the application of the respondent by substituting it as a decree-holder in place of Bank.

8. It so happened that the petitioner-Company filed yet another application under Section 151 CPC read with Section 22 of SICA, 1985 before the learned executing Court for staying recovery proceedings and recalling warrant of recovery and further praying for return of decree to the High Court of Bombay. The said application of the petitioner-Company did not find favour from the learned executing Court, and the learned executing Court by the impugned order partly allowed the application permitting the petitioner-Company to approach High Court of Bombay for staying execution proceedings and for that purpose allowed four months" time and also stayed the execution for a period of four months.

9. It appears that instead of assailing impugned order directly by way of availing remedy of civil revision, petitioner-Company laid Company Application No. 2/2007 before this Court, and the Company Court granted interim protection to the petitioner-Company by staying the impugned order. Finally, the Company Petition itself was decided by this Court on 14th October, 2008. While disposing of the company petition, the Court was pleased to observe that petitioner-Company could move appropriate application after 31st of October, 2008 whereupon appropriate order would be passed.

10. The petitioner-Company made yet another attempt to invoke jurisdiction of the Company Court and thereupon by its order dated 25th of November, 2008, the Company Court pleased to allow its application permitting the Company to submit a proper petition before BIFR apprising it about the fact scenario and occurrence of changes so that, in that background, BIFR may reconsider its prayer. It was observed by the Court that BIFR shall afford full opportunity to all concern before deciding the prayer of the petitioner-Company in accordance with law. The Company Petition was subsequently dismissed on 25.11.2008 as withdrawn.

11. Subsequent to that the petitioner-Company made all efforts in approaching BIFR and AAIFR, but all efforts went in vain and that prompted it to file this revision petition against the impugned order in 2011. The Court, at the threshold, while issuing notices of the application under Section 5 of the Limitation Act, on 30th of March, 2009, granted interim protection to the petitioner. The order reads as under:

"Issue notice of the application under Section 5 of the Limitation Act.

Heard learned counsel for the petitioner on stay petition.

Since the matter is pending before the BIFR and before rejection of the petition of the petitioner there was ad-interim order passed in company case, therefore,

proceedings in execution petition shall remain stayed till further order."

12. On 24th July, 2012, after hearing both the parties, the application of the petitioner under Section 5 of the Limitation Act was allowed and the delay was condoned. Order dated 24th July, 2012 reads as under:

"Heard learned counsel for the parties upon application filed under Section 5 of the Limitation Act.

Learned counsel for the respondents submits that in view of language of Section 5 of the Limitation Act, the delay of 641 days cannot be condoned and in support of his contention, he has invited my attention towards judgment rendered by Andhra Pradesh High Court reported in Gunda Jagan Mohan Rao and another Vs. Kanneti Krishnaiah and another, and judgment of Hon'ble Supreme Court reported in Damodaran Pillai and Others Vs. South Indian Bank Ltd., " and submits that limitation cannot be condoned in this revision petition, hence, this revision petition may be dismissed solely on this ground.

On the other hand, learned counsel for the petitioner submits that application filed by him is not only under Section 5 but also under Section 14 of the Limitation Act, 1963. Further it is submitted that for exercising revisional jurisdiction, there is no bar for condoning delay under Section 5 of Limitation Act, the bar is only for Executing court and not for High Court in entertaining the revision petition.

After hearing learned counsels for the parties, I have perused Section 5 & 14 of the Limitation Act. In my opinion, the delay of 641 days in filing the revision petition has been explained with reasons in the application, therefore, the application for condonation of delay is liable to be allowed.

Accordingly, the application under Section 5 of the Limitation Act is allowed. Office is directed to list this revision petition before the Court for admission after one week."

13. Precisely, in the revision petition, the petitioner-Company has assailed the impugned order by urging that the same has been passed in utter disregard of Section 22(1) of SICA, 1985. The petitioner-Company has set out a ground in the revision petition that as per rigor of Section 22(1) of SICA, 1985, no decree of any court can be executed where any scheme sanctioned by the company court is under consideration for its implementation and the matter is pending consideration before BIFR. The petitioner-Company has also taken shelter of Order 21 Rule 29 CPC by submitting that it authorizes the executing court to stay execution proceedings. While referring to sub-Section (4) of Section 39 CPC, Petitioner-Company has submitted that the decree passed by the original Court i.e. Bombay High Court is not authorized to execute against it sans two conditions namely person or property both outside of its local jurisdiction. In substance, the petitioner-Company has urged that the learned executing Court has acted illegally and with material irregularity in exercise of its jurisdiction by

calling upon the petitioner to approach the High Court of Bombay for staying execution proceedings.

14. Respondent has opposed the revision petition tooth and nail by submitting its detailed reply. In reply to revision petition, the respondent/decreed-holder has incorporated many objections highlighting the conduct of petitioner-Company as well as merits of the case to persuade this Court for dismissal of the revision petition. In the return, it is submitted that earlier also petitioner invoked revisional jurisdiction of this Court by filing S.B. Civil Revision Petition No. 495/1997 and the same was dismissed on 13th October 2003 while taking note of the fact that BIFR and AAIFR have decided the matter against the petitioner. It is also urged in the return that the High Court of Bombay, while exercising its ordinary original civil jurisdiction on a notice of motion, declined to grant interim relief by its order dated 25th April, 1997 and the said order has been confirmed by the Division Bench while dismissing the appeal No. 487/1997 on merits. Taking shelter of the doctrine of *res judicata*, the respondents have also romped in following legal maxims:

(i) *Nemo debet its vexari pro una et eadem causa* (i.e. no man should be vexed twice for the same cause);

(ii) *Interest republicae ut sit finis litium* (i.e. it is in the State's interest that there should be an end to the litigation) and;

(iii) *Res Judicata pro veritate occipitur* (i.e. a judicial decision must be accepted as correct).

15. Narrating checkered history of the case and highlighting conduct of the petitioner in prolonging execution proceedings, respondent has specifically averred in the reply that even Company Application No. 2/2007 laid at the behest of petitioner has been dismissed as withdrawn and thereafter instead of taking recourse to the appropriate remedy before the High Court of Bombay, petitioner has laid this revision petition. It is also submitted that at the threshold petitioner has not apprised this Court about the fact scenario for persuading the Court to grant interim *ex-parte* stay. An attempt is also made by the respondent to question the maintainability of revision petition while defending the impugned order. The respondent has also specifically referred to sub-section (4) of Section 39 of CPC and urged that the same is having no application vis-a-vis stay of execution proceedings. Asserting with full emphasis, respondent has submitted in the return that the decree passed by the High Court of Bombay has attained finality and as such it is binding between the parties and petitioner cannot be allowed to disown the same to thwart the execution proceedings by way of resorting to legal remedies, which are not available to it. An affirmative attempt is made by the respondent to castigate the petitioner for committing perjury while referring to earlier Revision Petition No. 495/1997, decided by this Court on 22nd of February, 1997. For elaborating the allegation of perjury, the respondent has submitted in the reply that petitioner has concealed this material fact about

dismissal of the earlier revision petition. While joining issue with the petitioner on SICA, 1985, respondent has submitted in the return that petitioner-Company cannot claim protection under SICA, 1985 and the protection stands terminated. With a view to substantiate this plea, it is submitted in the reply that on account of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act"), action undertaken by Kotak Mahindra Bank Ltd., reference by BIFR is being abated on 29th November, 2011 on invocation of third proviso to Section 15(1) of SICA, 1985. In order to substantiate this plea, respondent has urged that any action initiated by secured creditor under Section 13(4) of the SARFAESI Act pre-supposes that no protection under Section 22(1) of SICA, 1985 is available to the debtor. In support thereof, some legal precedents are also referred in the reply. Adverting to the merits of case, in substance, respondent has submitted that protection under Section 22 of SICA, 1985 is not available to the petitioner by virtue of sub-section (3) of Section 22 of SICA, 1985 after lapse of seven years. Once again, respondent has reiterated that provisions of Section 39(4) of CPC are not applicable in the present case and as such the impugned order passed by learned executing Court cannot be faulted. Stoutly defending the impugned order, respondent has submitted in the reply that the learned executing Court has rightly granted limited indulgence to the petitioner under Order 21 Rule 26 CPC while granting liberty to approach the High Court of Bombay for seeking stay of the execution proceedings. Deprecating the practice of the petitioner-Company for indulging in unnecessary litigations to stall the execution proceedings, respondent has submitted that its claim for execution of decree is legitimate and same cannot be denied or prolonged on wholly non-est grounds in the guise of unnecessary and unwarranted litigations.

16. Although it is a revision petition, and parties to the litigation have unnecessarily multiplied the pleadings by filing reply, rejoinder and some counter affidavits, it is needless to observe here that revisional jurisdiction of this Court is to be exercised within the parameters set out under Section 115 CPC and the only endeavour of the Court is to see the legality or propriety of the impugned order within four corners of the provisions contained therein.

17. In that background, I do not consider it appropriate to discuss the other part of the pleadings laid at the behest of rival parties.

18. Mr. Manoj Bhandari, learned counsel for the petitioner-Company, submits that the petitioner-Company is a sick Company and as such is entitled for protection of Section 22(1) of SICA, 1985 but the learned executing Court, while passing the impugned order, has not at all cared to examine the provisions contained therein making the impugned order vulnerable. Mr. Bhandari would contend that the learned executing Court, while passing the impugned order, has committed illegality and material irregularity in exercise of its jurisdiction in construing sub-section (1) of Section 22 of SICA, 1985, and therefore, the impugned order warrants interference in exercise of revisional jurisdiction. Mr.

Bhandari, learned counsel submits that the learned executing Court while passing the impugned order has not at all cared to examine the rigor of sub-Section (4) of Section 39 CPC, wherein it is envisaged that any court passing a decree is not authorized to execute such decree against any person or property outside the local limits of its jurisdiction. Elaborating his submissions, Mr. Bhandari has urged that the property in question is situated outside local limits of the jurisdiction of High Court of Bombay, and therefore, in such a situation the learned executing Court has erroneously asked the petitioner to approach the High Court of Bombay for stay of execution proceedings. Learned counsel further submits that the learned executing Court has invoked Rule 26 of Order 21 CPC in complete ignorance of the mandate of sub-section (4) of Section 39 CPC, and therefore, impugned order is glaring example of serious jurisdictional error warranting interference by this Court under Section 115 CPC. Lastly, learned counsel would contend that the petitioner-Company is a sick unit and if fresh rehabilitation scheme of BIFR and AAIFR is sanctioned, the learned executing Court ought to have suspended the execution proceedings in adherence of sub-section (1) of Section 22 of SICA, 1985. In support of his contentions, learned counsel has placed reliance on following legal precedents:

Real Value Appliances Ltd. Vs. Canara Bank and Others, .

M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd., .

Ghanshyam Sarda Vs. Shiv Shankar Trading Company, .

KSL & Industries Ltd. Vs. Arihant Threads Ltd., .

Mohit Bhargava Vs. Bharat Bhushan Bhargava and Others, .

19. Mr. Ramit Mehta, learned counsel for the respondent/decreed-holder submits that petitioner has miserably failed to make out a case for interference in the revisional jurisdiction of this Court. Mr. Mehta would contend that whole attempt of the petitioner is to thwart the execution of a binding decree on wholly flimsy pretexts which is not at all permissible at the behest of a party guilty of perjury and gross abuse of process of law. Defending the impugned order, learned counsel would contend that the learned executing Court has not committed any illegality or material irregularity in exercise of its jurisdiction by staying the execution of decree for a limited period with the stipulation that petitioner may seek interim relief from the Court which has passed the decree. Mr. Mehta, learned counsel for the respondent, further submits that the petitioner has misconstrued sub-section (4) of Section 39 CPC inasmuch as it is not applicable in the present case in view of clear and unambiguous provisions contained under Rule 26 & 29 of Order 21 CPC. Learned counsel for the respondent would contend that the petitioner has exhausted all the remedies and in view of proceedings under SARFAESI Act by Kotak Mahindra Bank Ltd., the protection under SICA, 1985 stands abated is a very vital issue, which has been taken note of in the earlier proceedings by AAIFR and the fact that earlier revision petition filed by the petitioner-Company has been dismissed, no interference in the

impugned order is called for. Lastly, Mr. Mehta, learned counsel for the respondent submits that scope of judicial review under Section 115 CPC is very much limited and no ground is available to the petitioner to assail the impugned order by invoking revisional jurisdiction. In support of his contentions, Mr. Mehta has placed reliance on following judgments:

Sri Krishna Singh Vs. Mathura Ahir and Others,

Shaukat Hussain alias Ali Akram and Others Vs. Smt. Bhuneshwari Devi (Dead) by Lrs. and Others,

Indian Bank Vs. The Official Liquidator, Chemmeens Exports (P) Ltd. and Others,

Lyallpur Rubber Mills Vs. Sri. Tulsi Industries and Another,

Rajasthan Financial Corporation V/s. M/s. Man Industrial Corporation [rendered by Hon''ble Supreme Court in Appeal (Civil) 16814 of 1996 - on 23.08.2003].

Joaquim Joao Fernandes Vs. Nazario Pinto, .

Vedic Girls Senior Secondary V/s. Smt. Rajwanti & Ors. [rendered by Hon''ble Supreme Court in Appeal (Civil) 1220 of 2007 - on 08.03.2007].

S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, .

S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others,

M/s. Alpine Industries Ltd. V/s. Appellate Authority for Industrial & Financial Reconstruction (rendered by Delhi High Court in W.P. (Civil) No. 1106/2011 - on 01.03.2011].

M/s. Salem Textiles Ltd. V/s. Phoenix Arc Pvt. Ltd. & Ors. [rendered by Madras High Court in W.P. No. 26905/2011 - on 22.04.2013].

State Bank of India V/s. Prima Agro Ltd. & Anr. [rendered by Kerala High Court in WP (C) No. 27033/2008 - on 09.07.2009]

Madras Petrochem Ltd. & Anr. V/s. BIFR & Ors. [rendered by Delhi High Court W.P. (C) No. 48/2004 - on 24.07.2008]

Nouveaw Exports Pvt. Ltd. V/s. Appellate Authority for Industrial Financial Reconstruction Co. & 7 Ors. [rendered by Bombay High Court in WP No. 2079/2010 - on 19.05.2010]

Punjab National Bank & Ors. V/s. AAIIR & Ors. [rendered by Delhi High Court in W.P. (C) No. 12097-12100/2006 - on 26.05.2008]

20. I have heard learned counsel for the parties and bestowed my consideration to the materials available on record.

21. Judicial scrutiny of the lis lies in a very narrow compass but both the parties while locking horns against each other have unnecessarily blown it out of

proportion. The endeavour of the Court, while exercising revisional jurisdiction, is to examine the legality and propriety of the impugned order within the parameters set out under Section 115 CPC. It goes without saying that revisional jurisdiction is very much limited and it is not akin to appellate jurisdiction. There is yet another aspect of the matter that after substitution of proviso to sub-section (1) of Section 115 CPC by Amendment Act 46 of 1999 w.e.f. 01.07.2002, the scope of revision is all the more circumscribed.

22. Now, advertent to the question involved in this revision petition, suffice it to observe that the decree which is sought to be executed by the respondent was passed by the High Court of Bombay in a summary suit laid by the Bank. The High Court of Bombay, while decreeing the summary suit, brushed aside the objection of the petitioner under Section 22(1) of SICA, 1985. Therefore, as a matter of fact, even in the summary suit, the petitioner-Company has not put-forth any substantial defence against the claim of the Bank and its only defence was that it is a sick unit and as such legal proceedings against it are liable to be suspended and the suit may not be proceeded except with the consent of the Board, or as the case may be, the appellate authority. For ready reference, Section 22 of SICA, 1985 is reproduced as under:

"22. Suspension of legal proceedings, contracts, etc.

(1) Where in respect of an industrial company, an inquiry under section 16 is pending, or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 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 under section 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 under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period of consideration of any scheme under section 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 adoptions 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.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything, contained in the Companies Act, 1956 (1 of 1956) or any other law, the memorandum and articles of association of the company or any instrument having, effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly,-

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing, to have effect-

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

23. A bare perusal of sub-section (3) of Section 22 of SICA, 1985 makes it apply clear that any inquiry which is pending under Section 16 of SICA, 1985, or any scheme referred to in Section 17 of the Act, is under preparation or during the period of consideration of any scheme under Section 18 , a company cannot be declared sick at the threshold for a period exceeding two years with further

extension of one year and a deadline of seven years in aggregate is provided. Proviso to sub-Section (3) of Section 22 of the SICA, 1985 is crystal clear in this behalf.

24. The case in hand is having a checkered history inasmuch as the decree, which was passed in the year 1996, is still awaiting its execution and it is being prolonged on one pretext or other at the behest of petitioner-Company. After many round of litigations before BIFR and AAIFR by the petitioner-Company nothing fruitful turned up and every effort of the petitioner-Company has proved catastrophic. The company application laid by petitioner-Company before this Court has also not yielded any favourable result to it. Even in the earlier round of litigation, its revision petition was dismissed by this Court on 22nd of February, 1997.

25. In the background of plethora of litigations, laid on behalf of the petitioner, it has become imperative for this Court to scrutinize the impugned order not only in the background of scope of judicial review under Section 115 CPC but also on the touchstone of available material demonstrating litigious perseverance of the petitioner.

26. In *Real Value Appliances* (supra), Hon''ble Supreme Court has analysed the scope and ambit of Sections 22 & 16 of SICA, 1985 for the purpose of suspension of legal proceedings against industrial company pending inquiry and while interpreting word "inquiry", held that it includes investigation.

27. In *M/s. Rishabh Agro Industries Ltd.* (supra), Hon''ble Apex Court held that power under Section 22 to suspend or stay winding up proceedings against industrial company is not limited to the stage of passing of winding up order. Considering Section 434 of the Companies Act, Court has further held that winding up proceedings, after order for winding up has been passed, can also be stayed.

28. In *M/s. Ghanshyam Sarda* (supra), while considering the rigor of Section 22(1) of SICA, 1985, the Court held that insofar as the suit pertaining to recovery of money from the company, the same could lie and be proceeded with only after express consent of BIFR is received by the plaintiff.

29. In *KSL & Industries Ltd.* (supra), Hon''ble Apex Court had the occasion to consider the conflict between two special laws with different purposes namely SICA, 1985 and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "Act of 1993"). While observing that normally latter enactment with non-obstante clause prevails over former enactment, the Court held that provisions of SICA, 1985 shall prevail over provisions of the Act of 1993.

30. In *Mohit Bhargava* (supra), Hon''ble Apex Court examined the scope of Sections 38 and 39(4) CPC and held:

"There cannot be any dispute over the proposition that the court which passed the decree is entitled to execute the decree. This is clear from Section 38 of the

Code which provides that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 42 of the Code indicates that the transferee court to which the decree is transferred for execution will have the same powers in executing that decree as if it had been passed by itself. A decree could be executed by the court which passed the decree so long as it is confined to the assets within its own jurisdiction or as authorised by Order 21 Rule 3 or Order 21 Rule 48 of the Code or the judgment-debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment-debtor. But when the property sought to be proceeded against, is outside the jurisdiction of the court which passed the decree acting as the executing court, there was a conflict of views earlier, some courts taking the view that the court which passed the decree and which is approached for execution cannot proceed with execution but could only transmit the decree to the court having jurisdiction over the property and some other courts taking the view that it is a matter of discretion for the executing court and it could either proceed with the execution or send the decree for execution to another court. But this conflict was set at rest by Amendment Act 22 of 2002 with effect from 1-7-2002, by adopting the position that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the Code shall be deemed to authorise the court to proceed with the execution. In the light of this, it may not be possible to accept the contention that it is a matter of discretion for the court either to proceed with the execution of the decree or to transfer it for execution to the court within the jurisdiction of which the property is situate.

Pending a suit, the court approached with the suit, may have jurisdiction to order attachment of a property even outside its jurisdiction. In execution, under Order 21 Rule 54 of the Code, it may also have jurisdiction to order attachment of the property prohibiting the judgment-debtor from transferring or charging the property in any way when it exercises its jurisdiction over the judgment-debtor though not over the property itself. It could in such a case issue a percept in terms of Section 46 of the Code and thereupon, the court to which the percept is sent, has to actually attach the property in the manner prescribed. Section 136 of the Code provides for an order of attachment in respect of a property outside the jurisdiction of the court and sending the order of attachment to the District Court within whose local limits the property sought to be attached, is situate as provided for therein. But Section 136 clearly excludes execution of decrees from within its purview. An execution against immovable property lying outside the jurisdiction of the executing court is possible in terms of order 21 Rule 3 of the Code which governs a case where the particular item of immovable property, forms one estate or tenure situate within the local limits of jurisdiction of two or more courts, and one of those courts is approached for execution of the decree against that property. In a case where Order 21 Rule 3 has no application, the position seems to be that if a decree-holder wants to proceed against a property situate outside the jurisdiction of the court which passed the decree, he has to

get the decree transferred to the appropriate court for execution on moving the executing court in that behalf. Whatever doubts there might have been earlier on this question, must be taken to have been resolved by the introduction of sub-section (4) of Section 39 of the Code which is a mandate to the executing court to desist from proceeding against a property situate outside its jurisdiction, unless it be a case coming under Order 21 Rule 3 of the Code.

31. In the impugned order, learned executing Court has examined thoroughly the true impact of sub-section (3) of Section 22 of SICA, 1985. It envisages with clarity and precision that BIFR or AAIFR cannot make a declaration after making inquiry under Sections 16, 17 and 18 of sanctioning scheme for rehabilitation of the sick industrial company beyond a period of seven years in aggregate.

32. One more significant fact is that status of petitioner-Company being a sick company was also brought to the notice of High Court of Bombay while trying the summary suit but that defence was not considered a valid defence by the Court while passing the decree. Therefore, in that background, at the stage of execution of decree, which is binding on the petitioner/judgment-debtor, the legal precedents on which learned counsel for the petitioner has placed reliance, cannot render any assistance to its cause.

33. As regards judgment dilating on Sections 38 & 39 CPC, in my considered opinion, in that judgment, Hon"ble Court had no occasion to consider the question of staying execution under Order 21 Rule 29 CPC, and therefore, in that background this judgment too cannot render any assistance to cause of the petitioner and even on the strength of this verdict, it is difficult to opine that the learned executing Court has committed any illegality or material irregularity in exercise of its jurisdiction.

34. Although learned counsel for the respondent has placed reliance on many legal precedents referred to supra, but it is worthwhile to refer some of the legal precedents throwing light on the controversy involved in the matter. In Sri Krishna Singh (supra), Hon"ble Apex Court, while examining jurisdiction of the Court held:

"There is yet a very formidable defect in the order passed by the Civil Judge. Under O. XXI, Rule 29 jurisdiction is vested only in the Court which had passed the decree to stay its execution. In the instant case, the suit which was the subject matter of the appeal was decided by the Munsiff, Varanasi who had passed the decree. Therefore, an application for stay of execution, if any, could have been made before that Court and not before any other Court, including the Civil Judge. We are fortified in our view by a decision of this Court in Shaukat Hussain alias Ali Akram and Others Vs. Smt. Bhuneshwari Devi (Dead) by Lrs. and Others, where this Court observed as follows (at p. 531 of AIR):

"Rule 29 clearly shows that the power of the Court to stay execution before it flows directly from the fact that the execution is at the instance of the decree-holder whose decree had been passed by that court only. If the decree in

execution was not passed by it, it had no jurisdiction to stay the execution.

(Emphasis supplied)

35. In its earlier verdict, Hon"ble Apex Court in Shakuat Hussain Alias Ali Akram (supra), has held:

"...Rule 29 clearly shows that the power of the court to stay execution before it flows directly from the fact that the execution is at the instance of the decree-holder whose decree has been passed by that court only. If the decree in execution was not passed by it, it had no jurisdiction to stay the execution. This is also emphasized by rule 26..."

36. Bombay High Court in Joaquim Joao Fernandes (supra), examined the powers of High Court and held:

"The law on the point that the Executing Court cannot go beyond the decree is well-settled. The Executing Court cannot sit in appeal over the decree passed by the Court nor is entitled to pass an order which will virtually result in affecting the rights of the parties already settled under the decree..."

37. That apart the judgments of High Courts of Delhi, Madras and Bombay insofar as abatement of proceedings before BIFR after taking action under Section 13(4) of the SARFAESI Act are concerned, the ratio decidendi of these judgments also throw some light on the issue involved in the matter. Therefore, the legal position, as it emerges out from the threadbare examination of the factual gamut of the case, leaves no room of doubt about there being any infirmity much less legal infirmity in the impugned order within the ambit of Section 115 CPC.

38. I am aghast to observe that petitioner/judgment-debtor's quest to thwart execution of decree dated 20th August 1990, which was put to execution in 1996 is unending. At the threshold, original decree-holder Bank utterly failed to reap the fruits of the decree, and now the respondent who is stepping in its shoes is experiencing waterloo in its cherished mission to recover the decretal amount. In order to prolong execution, petitioner has indulged in many litigations including resort to BIFR and AAIFR on umpteen occasions. As a matter of fact, while contesting the summary suit before the High Court of Bombay, petitioner set out its defence by taking shelter of Section 22 of SICA, 1985. The said defence did not find favour of the Court and the suit was decreed. Efforts made before the Company Court as well as BIFR and AAIFR also proved abortive on many occasions.

39. In that background, if the order impugned is examined then it becomes crystal clear that the executing Court has considered the true purport of Order 21 Rule 26 & 29 CPC and thereafter granted limited indulgence to the petitioner by staying execution of the decree for four months with the condition that in the interregnum, petitioner may approach the High Court of Bombay which passed the decree for staying of the execution.

40. After examining the matter thoroughly and more particularly the provisions of Order 21 Rule 26 & 29 as well as Section 39 CPC, in my opinion, learned executing Court while passing the impugned order has not committed any illegality or material irregularity in exercise of its jurisdiction. The learned executing Court has also granted indulgence to the petitioner for four months in staying execution by resorting to Rule 26 of Order 21 CPC with the condition that the petitioner may approach the original Court which has passed decree for stay of execution in the interregnum under Rule 29 of Order 21 CPC.

41. In substance, the impugned order is passed by the learned executing Court while exercising its jurisdiction and as such the order impugned is not liable to be upset by exercising the revisional jurisdiction of this Court.

42. The upshot of above discussion is that the instant revision petition fails and same is, hereby, dismissed.