(2015) 05 RAJ CK 0144

In the Rajasthan High Court

Case No : Civil Revision Petition No. 26 of 2015

Raj Solvex Limited and Others — APPELLANT

Vs

Sudhir Agro Oil Private Limited — RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 37, 115
Contract Act, 1872 — Section 14
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 26, 3(1)(o), 33, 34

Citation : (2015) 05 RAJ CK 0144

Hon'ble Judges : Prakash Gupta, J

Bench : Single Bench

Advocate : A.K. Bhandari, Senior Counsel and Viabhav Bhargava, for the Appellant; Mahendra Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prakash Gupta, J.

1. This civil revision petition has been filed under Section 115 C.P.C. against the Order dated 22/01/2015 passed by the Additional District and Sessions Judge No. 3, Alwar (hereinafter referred to as ''the trial Court''), whereby, the Court dismissed the application filed by the defendant for rejection of the suit.

2. Briefly stated facts are that the respondent-plaintiff filed a summary suit against the petitioner-defendant in the trial Court under Order 37 C.P.C. for recovery of Rs. 5,69,33,315.80/- in which an application was filed by the petitioner-defendant wherein it was stated that the suit is in contravention of Section 22 and 26 Sick Industries Company Special Provision Act, 1985 (for short ''the Act, 1985'') and in contravention of Section 14 Indian Contract Act therefore, the suit is not maintainable and is liable to be dismissed.

3. A reply to this application was filed by the plaintiff wherein it is stated that

wrong facts have been narrated about the maintainability of the suit. Order dated 05/06/2012 and 15/01/2013 passed by Board for Industrial and Financial Reconstruction (for short ''the BIFR'') has been mentioned in the plaint. The petitioner-defendant has already filed an application on similar facts which has been replied to by the plaintiff. The defendant contravened MOU dated 24/05/2012 as well as addendum dated 23/11/2013 which was executed between the plaintiff and the defendant after the filing of the suit.

4. After hearing both the parties, the trial Court vide the impugned Order dated 22/01/2015 dismissed the application of the petitioner. Being aggrieved, the petitioner filed the present revision petition.

5. It is submitted by the learned senior counsel, Mr. A.K. Bhandari, that when the period of sanctioned scheme was continuing up to 31/03/2014 then how is the suit for recovery maintainable which was filed on 15/10/2013, prior to 31/03/2014. There is a clear and specific bar provided under Section 22 and 26 of the Act, 1985. It is also submitted that the learned trial Court has failed to consider that the present suit is barred under Section 22 of the Act, 1985 which deals with the suspension of legal proceedings and it clearly states that no suit for recovery for money shall lie or proceeded with, further, except with the consent of the Board or the Appellate Authority. No such permission as required, has been sought by the respondent from the BIFR before filing of the present suit; thus, the suit is prima facie not maintainable.

6. Per contra, the learned counsel for the respondent-plaintiff, Sh. Mahendra Singh, submitted that the petitioner-defendant, after service of summons, appeared and submitted an application for leave to defend on the same grounds which is still pending. The BIFR has given a specific finding that the defendant-company is no longer a sick unit hence, the provision of Section 22 and 26 of the Act, 1985 are not applicable to the facts and circumstances of this case. Therefore, the trial court has rightly rejected the application of the petitioner-defendant.

7. I have given my anxious consideration to the rival submissions made by the learned counsels for both the parties and perused the material on record.

8. The Order dated 15/01/2013 passed by the BIFR is quoted as below:

"With this MA-335/2012 read with MA-345/2011 is/are disposed off.

1.15 In respect of MA-375, The Bench observed that the scheme sanctioned for revival of the sick company has been substantially implemented, all secured creditors have been settled and paid by the company and the net worth of the company has turned positive. The Bench further observed that the Monitoring Agency IFCI has also confirmed these facts and recommended for discharging the company from the Board. Having considered the submissions made in the hearing and materials on record, the Bench observed that M/s. Raj Solvex Ltd. (Case No. 355/2001) is ceases to be a sick industrial company, within the meaning of Section 3(1)(o) of the SICA as its net worth has turned positive, and therefore, discharged it from the purview of SICA/BIFR with the following further directions:

i) The Board discharges IFCI from the responsibility of Monitoring Agency (MA) in the captioned case.

ii) The Special Director, if any, appointed by the Board on company''s Board of Directors (BOD), would stand discharged with immediate effect.

iii) The company would complete necessary formalities with the concerned Registrar of Companies (ROC), as may be required.

With this MA-375 of 2012, filed by the company is disposed off.

1.16 In today''s (15.01.2013) in MA-446, Ld. advocate representing the applicant i.e. M/s. Sudhir Agro Oils Pvt. Limited (SAOPL) submitted that they have not received any reply from the company in compliance of Bench directions issued in the hearing held on 06.12.2012. Ld. advocate further submitted that the company has also not complied with the Bench directions issued vide order dated 05.06.2012 wherein the company was directed to abide by the terms of MOU signed with the applicant. He requested the Bench to issue appropriate directions to initiate action under section 33, 34 of SICA for non compliance of Bench directions. 1.17 Ld. advocate representing the company submitted that the company could not submit the reply to MA-446 within stipulated time frame as his client was sick. He placed before the Bench the reply to the MA during the hearing and served a copy to the applicant also. He apologized the Bench for not making payment to SAOPL as the company could not generate expected funds due to the adverse market conditions. Ld. advocate referred the orders dated 20.12.2012 wherein the Bench discharged the company from the purview of SICA on turning the networth of the company positive. Ld. advocate made a statement during the hearing that if it is agreeable to applicant of MA-446 i.e. SAOPL, the company would make full payment of outstanding amount alongwith interest to SAOPL within a period of six months, or/otherwise SOAPL may approach appropriate forum for relief. To this statement from the company, the representative of the applicant (SAOPL) submitted that the said offer of payment is acceptable to them.

2. The Bench observed and took a serious view that the company is not adhering to the directions of the Board. The Bench further observed that the company has made a statement before the Bench that it would make payment of outstanding amount alongwith interest to M/s. Sudhir Agro Oils Pvt. Limited i.e. applicant of MA- 446, in terms of MOU signed between them, within a period of six months, and this offer is also agreeable to the applicant of MA also.

3. Having considered the submissions made and material on record, the Bench issued the following directions:--

(a) The company to make payment of outstanding amount alongwith interest @

12% payable to M/s. Sudhir Agro Oils Pvt. Limited in terms of MOU signed between them, within a period of six month as admitted in today''s hearing."

9. Section 22 of the Act, 1985 provides that no suit for the recovery of money against the industrial company in respect of any loan granted to the industrial company shall be proceeded with further except with the consent of the Board. The BIFR given a finding that the defendant company is no longer a sick unit and therefore, discharged it from the purview of the Act, 1985/BIFR. Further, the advocate who appeared on behalf of the defendant-company stated before the BIFR that if it is agreeable to plaintiff, the defendant would make full payment of the outstanding amount along with the interest to M/s. Sudhir Agro Oils Pvt. Ltd. within a period of six months otherwise M/s. Sudhir Agro Oils Pvt. Ltd. may approach the appropriate forum for relief. The plaintiff accepted the said proposal and thereafter, the BIFR passed the Order dated 24/01/2013. In view of the above, there was no need to obtain consent of the Board either to file the present suit or to proceed further with the suit. In the case at hand, the provisions of Section 26 of the Act, 1985 are also not applicable since, no action taken, in pursuance of any power conferred under the Act, 1985 has been challenged in the present suit by the plaintiff.

10. Although, the present suit has been filed during the rehabilitation period i.e. 2008-2013-14 but, in view of the specific finding given by the BIFR, to the effect that the defendant company is no longer a sick unit and the BIFR has discharged it from the purview of the Act, 1985/BIFR, the suit filed by the plaintiff cannot be regarded as barred by the provision of Section 22.

11. In light of the above, the trial Court has not exercised its jurisdiction illegally or with material irregularity, I find no jurisdictional error in the impugned Order passed by the learned trial Court.

This revision petition is thus, dismissed.

