(2009) 01 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 1425 of 2004

Shri Rohit Sidramappa Abdulpurkar APPELLANT

Vs

The Laxmi Vishnu Textiles Mills and Others RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 22(1)

Citation : AIR 2009 Bom 56 : (2009) 1 BomCR 485 : (2010) 155 CompCas 86 : (2010) 8 RCR(Civil) 2375

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : K.Y. Mandlik, for the Appellant; Anand S. Kulkarni, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—The petitioner has challenged the order dated 29.10.2003 on Exhibit "22" in Regular Civil Suit No. 156/1999, whereby Joint Civil Judge, Junior Division, Solapur has stayed the suit on application filed by the defendant by invoking the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Amendment Act, 1985, by holding that the suit for recovery of money is not tenable as the suit was for recovery of rent/money against the Sick Company without obtaining prior permission.

2. The facts are as under:

The petitioner is the owner of suit premises viz. Municipal House No. 192 admeasuring about 50''x30'' situate in Neela Nagar Solapur.

3. In 1957, the respondent company took it on lease for the purposes of storing finished goods and raw material. Since 1992, respondent-company is closed.

4. On 9.9./1996 the petitioner terminated tenancy on the ground of non-user and subletting to the respondent No. 3. Notice was not replied by respondents 1

and 2. On 8.2.1999 the petitioner filed suit for possession.

5. On 8.6.2000 respondent No. 3 filed the written statement and denied the non-user and subletting and also stated that respondent No. 1 company was declared as sick Industrial company and suit could not be proceeded with. Respondents 1 and 2 adopted the written statement filed by respondent No. 3.

6. On 24.4.2000 the respondents made an application Exhibit 22, for a stay of the suit contending that respondent company was wound up and the Receiver was appointed by the Honourable High Court and, therefore, in view of provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 suit be stayed.

7. On 29.10.2003, though the respondents did not place any evidence on record to show that suit premises were property of the company and it was subject matter of winding up proceedings. The learned Judge stayed the suit for want of permission of the Board.

8. The Apex Court in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, , held that the provisions of Section 22(1) does not bar the eviction petition under the Rent Control Legislation.

9. The Apex Court again reiterated the same in Carona Ltd. Vs. Parvathy Swaminathan and Sons, , considering the Maharashtra Rent Control Act and the same provision has observed as under:

19. The Courts were also right in relying upon Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, and in holding that eviction proceedings initiated by the landlord against the tenant were maintainable even if the Company was ''sick'' under SICA and Section 22 of that Act would not operate as bar to such proceedings.

10. In view of this settled law, the submission of respondent based upon Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd. AIR 2000 SC 1583 is of no assistance, as that was not the case arising out of Rent Control Legislation. In view of above two decisions of the Supreme Court directly on the issues arising out of Rent Control Legislation, in my view, supports the case of the petitioner in all respects. The stay of suit is contrary to the law. The impugned order is set aside.

11. Resultantly, the writ petition is allowed in terms of prayer (b), which reads thus:

(b) Order dated 29.10.2003 passed by the Joint Civil Judge, Junior Division, Solapur below Exhibit 22 in Regular Civil Suit No. 156 of 1999 be kindly ordered to be set aside.

No costs.