(1997) 02 AP CK 0030

In the Andhra Pradesh High Court

Case No : C.R.P. No. 364 of 1993

Sri Venkatachalapathi Mills Ltd. and Others — APPELLANT

Vs

Andhra Bank and Others — RESPONDENT

Date of Decision : 21-02-1997

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

Citation : (1997) 2 ALT 677 : (1997) 2 APLJ 242

Hon'ble Judges : K.B. Siddappa, J

Bench : Single Bench

Advocate : K. Srinivasamurthy, for the Appellant; D. Gopala Krishna, for the Respondent

Final Decision : Dismissed

Judgement

K.B. Siddappa, J.—This Revision is filed against the order passed in I.A.No. 155/91 in O.S.No.135/88 on the file of Principal Subordinate Judge, Tirupati.

2. The Suit is filed by the 1st respondent herein which is Andhra Bank to recover an amount of Rs. 81,41,000/- from the defendants 1 to 17. The 1st defendant Industry became sick. The same was referred before the B.I.F.R. and it was registered on 2-6-1988. The contention of the Revision Petitioners is that once an industry becomes sick and registered before the B.I.F.R. the proceedings before any Court in respect of that industry have to be stayed until disposal of the application pending before the B.I.F.R. This contention was negatived by the lower Court.

3. Aggrieved by the said order the present Revision is filed.

4. The learned Counsel for the Revision Petitioners submitted that the Petitioner No. 1 herein which is an Industry became sick and an application is pending disposal before B.I.F.R. In such a case, the proceedings before the lower Court have to be stayed by virtue of Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985.

5. In support of his contention the learned Counsel relied upon the Bench Judgment of this Court in Corromandal Pharmaceuticals Ltd. v. Deputy Commercial Tax Officer and Ors., 1996 Sales Tax Cases 97. In that case it was held that where a sanctioned scheme for the rehabilitation of a sick industrial company under the Sick Industrial Companies (Special Provisions) Act, 1985 is under implementation, the prohibition u/s 22(1) of the Act is attracted and has to be given effect notwithstanding anything contained in the Companies Act, 1956 or any 30 other law which includes the Andhra Pradesh General Sales Tax Act, 1957 and that no proceedings for execution, distress or the like against any of the properties of the company shall lie or be proceeded with further except with the consent of the Board for Industrial and Financial Reconstruction. It was also held, while considering the scope of Section 19 of the said Act that, in such cases also sub-section (1) of Section 22(1) of the Act is attracted and the State Government cannot initiate proceedings for execution, distress or the like against any other properties of the industrial company for the recovery of such arrears without the consent of the B.I.F.R. Giving reasons for the said observation, the Bench held that Sections 19 and 22(1) of the Act, operate in different fields. u/s 19 of the Act, the scheme may provide for total exemption from tax or for deferment of the payment of tax, whereas Section 22(1) prohibits coercive proceedings for collection of tax during the pendency of an enquiry u/s 16 of the Act or during the preparation or consideration of any scheme referred to u/s 17 of the Act, etc. Therefore the Bench held that no coercive proceedings for the purpose of recovery of tax dues including action u/s 17 of the A.P. General Sales Tax Act can be taken against a sick company without obtaining consent of the B.I.F.R.

6. The learned Counsel further submitted that the 1st respondent herein has not obtained permission from B.I.F.R. before instituting the Suit to recover the sum aforesaid mentioned. Therefore all the further proceedings including the trial of the Suit have to be stayed till the application before the Board for Industrial and Financial Reconstruction is disposed of.

7. On the other hand, the learned Counsel appearing for the 1st respondent submitted that the Bank is well within its powers to institute a suit to recover the amount due to it. The amendment in Section 22(1) of the Act prohibiting filing of suit for recovery of money etc., was inserted by Sick Industrial Companies (Special Provisions) Amending Act, 1993. In this case the Suit itself was filed in 1988 and the petition to stay all further proceedings is filed and disposed of before introduction of this amendment. The order under Revision was actually passed on 22-9-1992. Therefore, the amendment is not applicable to the facts of this case. Under unamended Section 22(1) there is no provision for staying the filing and trial of a Suit. What was prohibited was proceedings 20 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 the appointment of a receiver in respect thereof and a 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, except with the consent of the Board or, as the case may be, the Appellate Authority. This being the scope of the unamened Section the further proceedings such as trial etc., in the Suit cannot be stayed.

8. In support of his contention he relied upon the Judgment in Special Steels Ltd. v. Jay Prestressed Products Ltd. (1991) 72 Company Cases 277. In that case it was held that the object of the Section 22(1) is to see that a Company is given a chance to survive and for this no winding-up proceedings or execution of any decree or attachment of any property or any distress sale of any property be allowed during the pendency of the enquiry and that it in no way stalls any proceedings against the Company, and that if any decree is passed and it is required to be executed either by way of attachment, distress sale, or the like, then the provisions of Section 22(1) of the Act come into operation, for otherwise, during the pendency of any proceedings it is not for sure that a decree will be passed; it may or it may not.

9. I am inclined to accept the submission made by the learned Counsel for the respondents. The unamended Section did not prohibit the trial of a suit etc. filed against a sick industry. What was prohibited u/s 22(1) of the Act was coercive steps in execution of a decree. In the case on hand such a stage has not reached. The plaintiff after full trial may succeed or may 45 not succeed, as it observed in the decision cited (2) above. Until decree is obtained the proceedings cannot be stayed. The Suit was instituted in 1988 and the Order in the LA. was passed before the amendment of Section 22(1), brought about by Amending Act 1993. Therefore, I am of the view that Section 22(1) of the Act does not prohibit further proceedings i.e. trial in this case even if no permission is obtained from B.I.F.R. by the plaintiff in the suit. The judgment cited by the counsel for petitioners itself supports this view.

10. The lower Court considered all these aspects and rightly dismissed the petition. There are no grounds to interfere with the order under Revision.

11. Hence, the Civil Revision Petition is dismissed, and in the circumstances, without costs.

