
(2002) 09 MAD CK 0130

In the Madras High Court

Case No : Civil Revision Petition (P.D.) 1915 of 1996 and C.M.P. No. 10573 of 1996

The Khatau Makanji Spinning and Weaving Co. Ltd.

APPELLANT

Vs

Bapalal and Co.

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

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

Citation : (2003) 113 CompCas 477

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : Sandeep S. Shah, for Shah and Shah, for the Appellant; T.K. Ravikumar, for the Respondent

Final Decision : Dismissed

Judgement

K. Gnanaprakasam, J.—The Revision Petitioner is a tenant in the eviction proceedings taken by the respondent/landlord in R.C.O.P.613 of 1990 before the Small Causes Court, Chennai.

2. The respondent, who is the landlord has filed a petition against the revision petitioner for eviction. During the pendency of the said petition, the revision petitioner has filed a petition in M.P.569/1992 under Order XXVIII Rule 7 of the Tamil Nadu Buildings (Lease and Rent) Control Rules 1974 praying the Court to stay the trial of the main R.C.O.P. Itself till Board of Industrial and Financial reconstruction dispose of the application of the revision petitioner.

3. The Revision petitioner in the affidavit filed in support of the petition has stated that it is one of the tenant under the respondent and the petitioner-Company is in a critical stage and also claim that the revision petitioner is a sick industrial company as defined u/s 22(3) of the Sick Industrial Company (Special Provision Act 1985). It is also stated that the revision petitioner has submitted an application to the Board of Industrial and Financial Reconstruction (in short BIFR)

and the same is pending and therefore, the eviction proceedings taken by the respondent/landlord has got to be stayed.

4. The respondent/landlord resisted the said petition on the ground such a petition is not maintainable. It is also stated that they are not aware of the financial condition of the revision petitioner. 5. The learned Rent Controller, after taking into consideration of the respective case of the parties, had come to the conclusion that the eviction proceedings cannot be stayed and dismissed the petition in M.P.No.569/1992. As against the same, the tenant has preferred an appeal in R.C.A.No.931 of 1992.

6. Learned Rent Control Appellate Authority has also confirmed the order of the Rent Controller and dismissed the appeal. He has also further observed that "whether the revision petitioner is a sick industry or not could be decided on letting in necessary evidence before the Rent Controller". Aggrieved by the said order, the tenant has preferred this Civil Revision Petition.

7. Though the revision petitioner has raised several grounds in the Civil Revision Petition, now he confined his argument only to the observations made by the Rent Control Appellate Authority to the effect that "after letting in evidence, the Rent Controller could decide whether the revision petitioner could be treated as a sick industry or not". As far as other contention of the petitioner that the Rent Controller cannot proceed with the trial, cannot be sustained.

8. Learned advocate for the respondent/landlord would submit that the plea taken by the revision petitioner that the trial of the eviction proceedings cannot be proceeded with, is not correct. Incidentally, he also relied upon the judgment rendered by the Apex Court in the case of Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, wherein the Apex Court dealt with similar question and it has held that Section 22(1) providing for suspension of legal proceedings against a sick industrial company does not cover a proceeding instituted by a landlord of a sick industrial company for the eviction of the company from premises let out to it. It has also observed that the following proceedings only are automatically suspended u/s 22(1) of the Act.(1) Proceedings for winding up of the industrial company; (2) Proceedings for execution, distress or the like against the properties of the sick industrial company; and(3) Proceedings for the appointment of receiver. It has further held as follows:

"The second category contemplates proceedings for execution, distress or the like against any other properties of the industrial company. The words "or the like" have to be construed with reference to the preceding words, namely, "for execution, distress" which means that the proceedings which are contemplated in this category are proceedings whereby recovery of dues is sought to be made by way of execution, distress or similar process against the property of the company. Proceedings for eviction instituted by a landlord against a tenant who happens to be a sick industrial company, cannot in our opinion, be regarded as

falling in this category. We may, in this context, point out that, as indicated in the preamble , the Act has been enacted to make special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined. The provision regarding suspension of legal proceedings contained in section 22(1) seeks to advance the object of the Act by ensuring that a proceeding having an effect on the working or the finances of a sick industrial company shall not be instituted or continued during the period the matter is under consideration, before the Board or the Appellate Authority or a sanctioned scheme is under implementation without the consent of the Board or the Appellate Authority. It could not be the intention of Parliament in enacting the said provision to aggravate the financial difficulties of a sick industrial company while the said matters were pending before the Board of the Appellate Authority by enabling a sick industrial company to continue to incur further liabilities during this period. This would be the consequence if sub Section (1) of Section 22 is construed to bring about suspension of proceedings for eviction instituted by landlord against a sick industrial company which has ceased to enjoy the protection of the relevant rent law on account of default in payment of rent. It would also mean that the landlord of such a company must continue to suffer a loss by permitting the tenant(sick industrial company) to occupy the premises even though it is not in a position to pay the rent. Such an intention cannot be imputed to Parliament . 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."

In view of the same, the contention raised by the learned advocate for the petitioner that the entire eviction proceedings have got to be stayed, is not at all sustainable and the same is rejected.

9. As far as the second aspect of the order is concerned, that "after letting in evidence, the Rent Controller would come to the conclusion whether the revision petitioner is a sick industrial company or not", it has to be decided only by the machinery constituted under the Sick Industrial Company Act (Special Provisions Act 1985) and it would not fall within the ambit of the Rent Controller. It is argued on behalf of the petitioner, when a special machinery is constituted under the Special Act to find out whether an industry is a sick industry or not, any order that would be passed by the Rent Controller would prejudice the right of the Revision petitioner. I see some force in the said argument. Therefore, the observation of the Rent Control Appellate Authority that the question "whether the revision petitioner company is a sick industrial Company or not would be decided by the Rent Controller after letting in evidence", is liable to be set aside and the same is, hereby set aside.

10. In the result, the Civil Revision Petition is dismissed. However, the

observation made by the Rent Control Appellate Authority, as indicated above, is set aside. No costs. Consequently, C.M.P.10573/96 is closed.