

(1997) 09 CAL CK 0014
In the Calcutta High Court
Case No : C.O. No. 1691 of 1997

Tyre Corporation of India Limited

APPELLANT

Vs

Debendra Nath Bhattacharjee and Another

RESPONDENT

Date of Decision : 15-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 26
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(1)

Citation : AIR 1998 Cal 218

Hon'ble Judges : Samaresh Banerjea, J

Bench : Single Bench

Advocate : B.B. Bhaduri and P.K. Bhowmik, for the Appellant; Mrinal Kanti Roy, Susanta Kr. Palodhi and Radha Rani Roy, for the Respondent

Final Decision : Allowed

Judgement

Samaresh Banerjea, J.—This is an application under An. 227 of the Constitution challenging the order No. 63 dated April 28, 1997 passed by the learned Judge, Second Court, City Civil Court, Calcutta, in Commercial Execution Case No. 24 of 1989 issuing prohibitory order upon garnishee.

2. The opposite party No. 1 obtained a decree for money in Commercial Suit No. 8 of 1984 on 19th of Sept. 1985 against IncheK Tyres Limited and National Rubber Manufacturers Limited and thereafter in that execution case the present petitioner Tyre Corporation of India Limited was added as (sic) present Corporation after nationalisation of the aforesaid IncheK Tyre and National Rubber Manufacturers Limited is the successor of the aforesaid two companies, in the aforesaid Execution case, being Commercial Case No. 8 of 1984, the present petitioner made an application on 15th of March, 1995 for suspension of the Execution case, inter alia, on the ground that the petitioner company had been declared sick unit within the meaning of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the "said Act") and has been referred to the Board for Industrial and Financial Reconstruction (hereinafter

referred to as "the BIFR") and as an enquiry before the said Board is pending u/s 16 of the said Act, under the provisions of Section 22(1) of the said Act the proceedings for an execution cannot continue. It appears that the said application was rejected by the learned Judge by an order passed on 18th of Feb, 1997 when none appeared on behalf of the judgment debtor/present petitioner. It appears from a copy of the order dated 18th Feb. 1997 passed by the learned Judge, produced before this Court that the said application was rejected on the ground that the present petitioner is no more interested in the said application. Thereafter by the impugned order being No. 63 dated April 28, 1997 the learned Judge has issued a prohibitory order of attachment of the Bank Account of the present petitioner lying with the Allahabad Bank, Chowringhee Road Branch and the said order was once again reissued on 10th June, 1997.

3. The learned Counsel appearing on behalf of the petitioner has assailed the aforesaid order contending, inter alia, that since enquiry against the present petitioner company is pending before the BIFR and under the provisions of Section 22(1) of the said Act neither the execution proceedings can go on nor the Court could have granted any such prohibitory order against the present petitioner, particularly when, the decree-holder did not obtain any consent from the Board.

4. Mr. Bhaduri, appearing on behalf of the petitioner, in this connection, has relied on the decisions of the Supreme Court in the case of Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, wherein it was held, inter alia, the Supreme Court that where an enquiry is pending u/s 16 or 17 against a company, there should be cessation of coercive activities and the type mentioned in Section 22(1) of the Act against the said company. Reliance has also been placed on a Division Bench judgment of this Court in the case of Ruldu Ram Vs. State of Punjab, has been submitted by Mr. Bhaduri relying on the aforesaid decision that in view of the specific bar laid down in the aforesaid provisions u/s 22(1) of the said Act, the learned Judge certainly could not reissue such a prohibitory order of attachment of the Bank A/c. of the petitioner company inasmuch as the same is very much in the nature of a proceeding for distress against the property of the petitioner company, namely, the aforesaid Bank A/c. and therefore, the entire action of the executing court was without jurisdiction.

5. Mr. Mrinal Kanti Roy, learned Counsel appearing on behalf of the petitioner has not disputed the fact that if the matter comes within the provisions of Section 22(1) of the said Act, the proceedings for execution cannot continue and no order of distress can be passed but his only submission is, admittedly, the opposite party having obtained the decree in the concerned commercial suit before coming into operation of the said Act, the provisions of the said Act would not be applicable in the instant case.

6. After considering the contention of the respective parties, I am, however, unable to accept the contention of Mr. Roy that the provisions of Section 22(1)

will not be applicable in the instant case. It is not really necessary for this Court to go into the question in details whether the provisions of the Act will have prospective or retrospective effect or if retrospective to what extent inasmuch as it appears to this court that even if the provisions of the Act can be held to be prospective, even then in the instant case, the same will be applicable. Admittedly, the decree was obtained by the opposite party on 19th of Sept. 3995. Provisions of the Act, no doubt, have come into operation subsequent to passing of the said decree. Section 1 Sub-section (3) of the said Act provides that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the commencement of that provision.

7. It appears although provisions of the Act excepting Sections 15 to 34 were made effective with effect from 12th January, 1987 vide Notification No. GSR 24(E) dated 12th January, 1987 and Sections 15 to 34 were made applicable with effect from 15th May, 1997 vide Notification No. S.O.444 (W) dated 18th April, 1997. Sections 15 to 21 of the said Act, therefore, came into operation with effect from 15th May, 1987. Therefore, admittedly, by the time the petitioner filed the Execution case, in the year 1989, the provisions of Sections 15 to 22 of the said Act have very much come into operation. The execution case, it appears, was filed in 1989 by which time Sections 15 to 22 have already came into operation and in view of the language of Section 22, in my view, the provisions of the said Act including Section 22 would be very much applicable in case of all such execution cases which have been started after coming into operation of the Act or were pending on that day even though the decree might have been obtained prior to coming into operation of the same. The very language of Section 22 of Sub-section (1) will make the same clear.

8. Section 22(1) of the Act, provides, inter alia, "where in respect of an industrial company an enquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation of consideration or a sanctioned scheme is under implementation or where an appeal u/s 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.

(Emphasis mine).

9. Such being the provisions of the said Section, therefore, even if a decree was obtained prior to the coming into operation of the said Act no proceedings shall lie after coming into operation of the Act or shall be proceeded with further with the consent of the Board when an enquiry is pending against the concerned company or a scheme is being considered. In the instant case, not only an enquiry is pending, it is also brought to the notice of the Court that the Board is considering about framing of a scheme and in fact a scheme has already been submitted before the Board. In such view of the matter even though the decree might have obtained earlier and prior to coming into operation of the Act the decree-holder could not have filed the Execution case for executing the decree after coming into operation of the said Act against the judgment debtor nor the same could have been proceeded with, admittedly when, no consent was obtained from the Board in respect thereof. Executing Court, therefore, neither could have rejected the application of the petitioner when such fact was brought to the notice of the Court allowing the execution case to proceed nor could have passed such prohibitory order attaching the Bank A/c. of the company. Such order is certainly an order of distress against the property of the present petitioner and the same is expressly prohibited u/s 22(1) of the said Act which does have an overriding effect over all other Acts.

10. As held by the Supreme Court in the aforesaid case of Maharashtra Tubes Limited v. State Industrial and Investment Corporation of Maharashtra Ltd. (AIR 1993 SCW 991) (supra) u/s 22(1) of the said Act notwithstanding anything contained in any 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 appointment of a Receiver in respect thereof shall lie or be proceeded with further, except with the consent of the BIFR or, as the case may be, the appellate authority. The purpose and object of this provision is clearly to await the outcome of the reference made to the BIFR for the revival and rehabilitation of the sick industrial company. The words "or the like" which follow the words "execution" and distress are clearly intended to convey that the properties of the sick industrial company shall not be made the subject-matter of coercive action of similar quality and characteristics till the BIFR finally disposes of the reference made u/s 15 of the said Act, It was further held by the Supreme Court that the legislature has advisedly used an omnibus expression "the like" as it could not have conceived of all possible coercive measures that may be taken against a sick undertaking.

11. In the instant case, the impugned order passed by the Executing Court issuing such prohibitory order attaching the Bank A/c. of the company certainly amounts to coercive action taken against the properties of petitioner company which is sick industrial company and against whom such coercive action could not have been taken without the consent of the Board u/s 22 of the said Act.

12. For the reasons stated above, the present revisional application succeeds. The order dated, 28th April, 1997 as also Feb. 18, 1997 passed in Commercial

Execution case No. 24 of 1989 by the learned Judge, Second Bench, City Civil Court, Calcutta directing attachment of the Bank A/c. of the petitioner are hereby set aside. It is further directed that the Commercial Execution Case No. 24 of 1989 pending before the City Civil Court shall not be proceeded with any further except with the consent of the BIFR.

13. There will be no order as to costs.