Equivalent Citation: [2003 (96) FLR 277], (2003) I LLJ 435 Bom

IN THE HIGH COURT OF BOMBAY

O.O.C.J. Summons for Judgment Nos. 1015, 1016/2000 in Summary Suit Nos. 6994, 6995/2000

Decided On: 24.09.2002

Appellants: **Sumer Investments and Finance Company**
Vs.
Respondent: **Parasrampuria Industries Ltd. and Anr.**

Hon'ble Judges:
R.J. Kochar, J.

Counsels:
For Appellant/Petitioner/Plaintiff: V.N. Kantawala, Adv., i/b., Y.P. Yagnik, Adv.

For Respondents/Defendant: Nelson Rajan, Adv.

Subject: Labour and Industrial

Catch Words

Mentioned IN

Acts/Rules/Orders:
Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 22 and 25

Cases Referred:
Industrial Development Bank of India v. Surekha Coated Tubes and Sheets Ltd., 1996 Comp. Cases 594

Citing Reference:

Industrial Development Bank of India v. Surekha Coated Tubes and Sheets Ltd	Discussed

JUDGMENT

R.J. Kochar, J.

1. The plaintiffs have prayed for a decree against the defendants in both the above suits as stated in their respective prayer clauses and details given in the particulars of claim respectively.

2. On receipt of the writ of summons, the defendants have entered their appearance to contest the suits. The plaintiffs, thereafter, filed the present summons for judgment in both the above suits. The plaintiffs have filed affidavits in support of the summons for judgments verifying the contents of the plaint. According to the plaintiffs, the suit claims are based on bill of exchange and the amounts are

to be liquidated and ascertained amount and that the defendants have no defence of whatsoever nature. The plaintiffs have, therefore, prayed for the decree.

3. The defendants have filed affidavits-in-reply to oppose the summons for judgment in the suits. The main contention of the defendants is the shield under Section 22 of the Sick Industrial Companies (Special Provisions) Act (for short the SICA). According to them, their cases are pending before the BIFR and AAIFR and, therefore, the defendants have prayed for stay of the present proceedings.

4. Since I am required to decide the common question of law, I am not mentioning the factual aspects of the dispute between the parties. It is the case of the defendant No. 1 that it had filed a reference under Section 15 of the SICA in the year 2000 before the BIFR. There is no dispute that the said reference was rejected on July 2, 2002. According to the defendant No. 1 it has filed an appeal on July 10, 2002 being the Appeal No. 2615 of 2002 against the order of the BIFR rejecting the reference. The appeal is filed under Section 25 of the SICA and the same is pending hearing and decision.

5. In respect of defendant No. 2, it had filed its first reference on November 11, 1997. By an order dated March 17, 1999, the BIFR declared the defendant No. 2 as sick industrial company. It further appears that the said order of the BIFR was reversed in appeal by the AAIFR on April 12, 2001 holding that it was a sick industrial company. It further appears from the averments in the affidavit filed on behalf of defendant No. 2 that on April 25, 2001 it has filed a second reference under Section 15 of the SICA pleading again the same ground of erosion of the net worth of the company as it had sustained further losses. The second reference is pending hearing. The aforesaid are the undisputed facts on the basis on which both the learned counsel have made their submissions on the question of applicability of Section 22 of the SICA.

6. Shri Kantawalla, the learned counsel for the plaintiffs has strongly opposed grant of prayers of stay of the proceedings in the present suit. According to him, Section 22 is not attracted in the case of pendency of appeal under Section 25 of the Act when the BIFR had rejected the first reference. The learned counsel has also urged that Section 22 cannot be brought into play in the case of a sick industrial company which filed a second reference under Section 15 on the very same ground of erosion of its net worth by pleading the very same cause for further loss in its business. Shri. Kantawala has strongly submitted that the whole attempt on the part of the defendants is to stall the proceedings for years together and to dodge payments to the legitimate creditors. Shri Kantawala relied upon the judgments of learned single Judge of the Delhi High Court, Y.K. sABARWAL, J. as he then was, in the case of Industrial Development Bank of India v. Surekha Coated Tubes and Sheets Ltd., reported in 1996 85 Comp. Cas. 594. Shri Kantawala has relied upon the following observations made by the learned single Judge as follows:

"Next, Mr. Rawal contends that, in any case, Section 22 of the Act would apply as an appeal under Section 25 of the Act is now pending. The submission of learned counsel is that Section 22 stipulates that where an appeal under Section 25 is pending winding up proceedings cannot be proceeded with. There is a fallacy in this argument as well. If the argument of Mr. Rawal is accepted that would mean that although Section 22 would not apply when only reference under Section 15 is pending but it would apply on dismissal of the said reference in case an appeal under Section 25 is filed against the order rejecting the reference. That cannot be the intention of the Legislature. The plain meaning of Section 22 to the extent relevant for the present purpose is that where an inquiry under Section 16 is pending or any scheme referred to under Section 16 is under preparation or consideration or a sanctioned scheme is under implementation and in connection with the said aspects where an appeal under Section 25 relating to an industrial company is pending, then Section 22 would come into play. Section 22 will not come into operation where an inquiry under Section 16 has not commenced and where the reference under Section 15 itself has been rejected. Further Section 22, to the extent applicable here, provides that where an appeal under Section 25 relating to an industrial company is pending there would be cessation of proceedings of winding up etc. The term "industrial company" and "industrial undertakings" have been defined in Section 3(e) and (f) of the Act respectively. It is

not disputed that to come within the definition of the term "industrial company" it is necessary that the company shall have 50 or more workers. In the present case, by the order dated August 18, 1993, the BIFR has held that the company could not convincingly establish that 50 or more workers are engaged in any manufacturing process in the company. In that view, the applicant company would not be an "industrial company" within the meaning of the Act and as such too, Section 22 of the Act will have no applicability. It is not for this Court to go into the question whether the applicant company had in fact 50 workers or less or whether the order dated August 18, 1993 was correctly passed or not since that order is the subject matter of appeal pending before the appellate authority under the Act."

7. Shri Nelson Rajan, the learned advocate for the defendants with equal vehemence submitted that there is no limit or restrictions for filing any number of references under Section 15 of the Act. He has, therefore, contended that the second reference filed by the defendant No. 2 was entertained by the BIFR and the same is pending decision. In view of Section 22, therefore, no suit can be proceeded with when the BIFR is seized of second reference. The learned advocate submits that Section 22 merely refers to the pendency of the reference under Section 15 or a scheme under the Act. There is no bar for attraction of Section 22 even if a second or third reference is filed by the industrial company. He has also pointed out that BIFR did not refuse to register the second reference on the ground that first reference was rejected by the appeal court, therefore, the company was not estopped from filing the second reference. As the defendant No. 1 has filed appeal under Section 25 of the Act, before AAIFR against the order of the BIFR rejecting its reference under Section 15, therefore, even during the pendency of such appeal Section 22 is attracted, submits the learned advocate for both the defendants.

8. There is no doubt that there is no bar or specific restriction on any party to approach the BIFR on any particular occasion under Section 15 of the Act. Section 22 is the protective umbrella or a shield for the sick industrial companies which are seeking declaration of sickness from BIFR. Until the decision by the BIFR, the said provision mandates that no other proceedings shall be proceeded with before any Court as prescribed therein. The proceedings under the BIFR are of civil nature. They are termed as judicial proceedings and the procedure is also prescribed under Sections 13 and 14 of the Act. A number of powers of a civil Court are vested in the Board as well as the appellate authority. According to me, therefore, all the principles which are applicable to civil litigation will have to be applied in the proceedings initiated under this Act. We also have to read the doctrine of res judicata in the present enactment. In any civil proceeding no party can repeatedly approach the civil Court even after failing in its suit. If a suit is dismissed on merits, the party has to approach the higher Courts in accordance with the law applicable to the proceedings. A plaintiff cannot approach the same civil Court by filing a second suit when his first suit was dismissed on merits. The doctrine of res judicata is based on sound public policy. It cannot be submitted that the same sound public policy is lacking in the provisions of the present Act. It is, therefore, not possible for me to accept the contention on behalf of the defendants that there is no bar on any company to go on filing reference one after another under Section 15 though such reference gets rejected one after other. To read the provisions of the Act in such a manner would be to mock at the Legislature. Such interpretation of the provisions of this Act would lead to absurd results and the provisions of law cannot be interpreted in the manner which would lead to absurdity. There is absolutely no departure much less radical departure from the civil principles of civil jurisprudence in the present enactment which is aimed in public interest to protect genuinely sick and potential sick companies. The provisions of this Act are not meant for such companies which are out to abuse the process of the present enactments to stall the claims of the creditors by taking undue advantage of Section 22 of the Act. I am, therefore, of clear and considered opinion that no second reference is contemplated for the same reasons and on the same ground to seek declaration of sickness under the provisions of this Act. Once the BIFR/AAIFR has considered the claim of sickness and has rejected the same, no second reference can be filed and no second reference can be said to be maintainable. To allow such reference would be to act against the sound public policies. To do so would be to encourage dishonest companies which do not want to pay to their creditors under the shield of Section 22 of the SICA. In the first reference if such a company has failed to satisfy either the BIFR or the AAIFR that it should be declared as a sick industrial company that is the end of the matter at that stage. No party can be allowed to repeat the same exercise and try to seek protection under Section 22 of the Act.

9. The first reference has to be the last reference under the same circumstances. In the present case, though the BIFR had declared the defendant No. 2 as sick industrial company, the AAIFR had reversed the said decision. In these circumstances, the second reference filed by the defendant No. 2 pleading further loss would also be not maintainable at all. Even assuming that second reference is held to be maintainable, such a company cannot be extended the protection of Section 22 in its second reference. We have to read the first reference under Section 22 as the last reference and no multiplicity of the reference is contemplated under Section 22 of the Act. It is, therefore, not possible for me to accept the contention on behalf of the defendant No. 2 that the present proceedings should not be proceeded with as its second reference is pending before the BIFR. The present summonses for judgments, therefore, will have to be proceeded with in accordance with law.

10. In the case of defendant No. 1, its appeal is pending before the AAIFR against the order of the BIFR rejecting the reference under Section 15 of the SICA, the case of the defendant No. 1 in respect of sick industrial company was not accepted by the BIFR and it had rejected the reference. The defendant No. 1 has filed an appeal under Section 25 of the Act before AAIFR. On this point Shri Kantawala has rightly relied upon the judgment of the Delhi High Court (supra). As held by Delhi High Court, Section 22 will not come into operation during the pendency of the appeal. I am in respectful agreement with the same. I, therefore, hold that the pendency of the appeal filed by the defendant No. 1 under Section 25 of the Act will not come to the rescue of the defendant No. 1 under Section 22 of the Act to stay the present proceedings.

11. In the aforesaid circumstances, it is not possible for me to accept the contention on behalf of the defendant Nos. 1 and 2 to stay the proceedings under Section 22 of the Act and not to proceed with the summonses for judgments and the suit. The proceedings to be proceeded with.

12. From the averments in the plaint the suit claim appears to have arisen from the transactions of bill of exchange drawn by the defendant No. 2 and accepted by the defendant No. 1 in favour of the plaintiffs. It appears that the said bill of exchange was dishonoured as the cheque given to honour the said bill of exchange was dishonoured giving rise to the present suit. The plaintiffs have filed an affidavit in support of the summons for judgment verifying the facts stated in the plaint. According to the plaintiffs, the suit claim has arisen from the bill of exchange and the dishonoured cheques, the suit claim, therefore, is ascertained and liquidated claim as contemplated under order XXXVII Rule 2 of the C.P.C. According to the plaintiffs, the defendants have no defence of any nature entitling them to get a decree in their favour. The defendants have not filed affidavit in reply disclosing the facts which would entitle them to get leave to defend the suit. Except praying for stay of the proceedings under Section 22 of SICA there is no reply on merits of the claim.

13. In the aforesaid circumstances, the summonses for judgments deserve to be made absolute as prayed for. The suit is accordingly decreed. Original documents are taken on record and marked 'X' for identification. The same are permitted to be taken back on the advocate for the plaintiffs furnishing certified true copies of the same.

14. Refund of institution fees as per rules. Certified copy of the order and decree both are expedited.

15. Office to issue execution before sealing of the decree after the learned advocate for the plaintiffs would furnish draft of the decree within a period of three months.

16. All concerned to act on an ordinary copy of this order duly authenticated by the Associate of this Court.