Case No. 96

(1995 I) CTC 206
IN THE HIGH COURT OF MADRAS

Srinivasan and S.S. Subramani JJ
O.S.A.No.24 of 1995
Dated 25-01-1995

Shri Anantha Udyog Private Limited, by its Managing Director,
24, Luz Avenue, Madras-4. ...Appellants

Vs

Cholamandalam Investment & Finance Company Ltd, rep. by its Company Secretary,
Tiam House, 28, Rajaji Salai, Madras-1. ...Respondent

Section 22 of SICA - Hire Purchase agreement - Hirer concern become sick - suit for recovery filed - interim application for seizure and sale of machinery - Hirer is not the owner of the machinery as per HP agreement - Hence not covered by Section 22 of SICA - Application maintainable.

CASES REFERRED

1965 (1) SCJ 541 (7)
AIR 1960 SC 1178 (7)
AIR 1992 SC 1439 (8)
1993 (2) SCC 144 (9)
1994 (79) Com. Cases 811 (11)

Mr. Mohan Parasaran for M/s P. Seshadri, N. Vijayakanth & Krishnakumari, Advocates for the Appellant;
Mr. C.A. Sundaram, Advocate for the repondent.

ORDER

Srinivasan J

The respondent has entered caveat through counsel and with the consent of learned counsel on both sides, the appeal is taken up for final hearing.

2. The appellants instituted a proceeding under the Sick Industrial Companies (Special Provisions) Act 1985 (herein after referred to as the 'Act') before B.I.F.R to declare itself as sick industrial company. That proceeding was dismissed on 17.03.1994

on the footing that the first appellant was not an industrial company. The respondent filed C.S.No.410 of 1994 in the Original Side of this, Court for recovery of a sum Rs.11,18,813.11 with subsequent interest. The suit was based on Hire Purchase agreements, between the respondent and the appellants dated 28.05.1990 and later dated. Pending the suit, the respondent filed an application on O.A.No.2307 of 1994 for seizure and sale of the machineries which are the subject matter of the Hire Purchase agreement. Order was passed on 17.09.1994 after contest in favour of the respondent by the Judge on the Original Side. That order was not challenged by the Appellant by an appeal.

3. The appellant however filed an appeal against the order of B.I.F.R. before the Appellate Authority for Industrial and Financial Reconstruction known as A.A.I.F.R. on 28.11.1994. Pending the said appeal, the appellants filed an application on the Original Side on O.A.No.21 of 1995 for stay of all further proceedings in the suit till the disposal of the appeal before A.A.I.F.R. That application was contested by the respondent and the learned single Judge has dismissed the same holding that the provisions of Section 22 of the Act will not apply. Aggrieved by the said order, the appellant has preferred this appeal.

4. The contention of the appellant is that under Section 22 of the Act, there is statutory suspension of all legal proceedings and enforcement of contracts etc., if a proceeding and enforcement of contracts etc. If a proceedings is initiated under the provisions of the Act before the Authority concerned and is pending.

Section 22(1) of the Act reads as follows:-

"Where in respect of an industrial company, an inquiry under section 16 is pending of any Scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 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 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".

5. It is argued by learned counsel for the appellants that the suit being one for recovery of money it will fall squarely with the scope of Section 22 of the Act and the learned single judge is in error in taking the view the Section will not apply.

6. Per contra, learned counsel for the respondent contends that Section 22 of the Act will come into play only after a proceeding is taken against the properties of the industrial company. According to learned counsel, in the present case, the properties are covered by the Hire purchase Agreements and they do not belong to the industrial company. Reference is made to relevant clause in the Hire Purchase Agreement. Clause 2(a) of the Agreement states expressly that the properties shall remain the absolute property of the company until the payments mentioned therein were made completely. Clause 22 if the Agreement provides that "the goods indicated in the First Schedule of this Agreement will become property of the Hirer, upon the Hirer fulfilling the terms and condition contained in this agreement and obtained a confirmation writing to that effect from the Company".

It is therefore contended that as the first appellant has not satisfied the conditions prescribed in the Hire Purchase Agreement, it cannot claim to be the owner of the properties set out in the Schedule to the Agreement and consequently, the proceeding for seizure and sale of the same cannot be stopped on the ground that Section 22 of the Act prevents proceedings against the properties of the company.

7. Learned counsel refers to the Judgment of the Supreme Court in *M/s K.L. Johar & Co. v. Deputy Commercial Tax officer* (1965 (1) S.C.J) page 541. While referring to a Hire Purchase Agreement, the court pointed out that the ownership of the property will pass on only on the fulfilment of the conditions and terms of the agreement and the case arose with reference to the provisions of the Sales Tax Act. The court held that as the taxable event is the sale of goods, the tax can only be levied when the options exercised. Therefore, eventhough eventually most case of hire-purchase may result in sales by the exercise of the option and the fulfillment of the terms of the agreement, tax is not exigible at the time when the hire-purchase agreement is made; it can only be exigible when the option has been exercised and all the terms of the agreement fulfilled and the sale actually takes place. The same proposition is reiterated in *Sundaram Finance Ltd v. State of Kerala* (A.I.R. 1996 S.C. 1178)

8. Reliance is also placed on the judgment of the Supreme Court in Sri Chamundi Mopeds Limited v. Church of S.I.T Association (A.I.R. 1992 S.C/. 1439). In fact, learned single Judge has referred to this judgment in his order. In that case, the court considered the effect of Section 22 of the Act with reference to proceedings for eviction filed against the sick industrial company. The court held that eviction proceedings are not covered by the Section. The court pointed out that the proceedings which is barred by the Section is only a proceedings against the property of the sick industrial company and in the case of tenancy the landlord is the owner of the property and the sick industry, which is only a tenant, is not the owner of the property. The court said that even though the leasehold interest of the lessee in the premises leased out to him is property which can be transferred and the said interest can also be attached and sold by way of execution in satisfaction of a decree, it is not the property of the lessee as contemplated by Section 22 of the Act.

9. Learned counsel for the appellant placed reliance on the observation made by the Supreme Court in Maharashtra Tubes Limited v. State Industrial & Investment Corporation of Maharashtra Limited and another (1993 2 S.C.C 144). The question there was whether the Acts are Special Enactments and whether the maxim *'generalia specialibus non derogant'* is applicable. While dealing with that aspect of the matter, the court referred to the language of Section 22 and said that Section 22(1) shom of the irrelevant part provides that where an appeal under section 25 relating to an industrial company is pending, then, 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 of 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 characteristic till the B.I.F.R finally disposes of the reference made under Section 15 of the said enactment. The legislature has advisedly used an omnibus expression 'the like' as it could not have conceived of all possible coercive measures that could not have conceived of all possible coercive measures that may be taken against a sick undertaking. The action contemplated by section 29 of the 1951 Act is undoubtedly a coercive measure directed at the take over of the management and property of the industrial concern and confers a further right on the Financial Corporation to transfer by way of lease or

sale the properties of the said concern and any such transfer effected by the Financial Corporation would vest in the transferee all rights in or to the transferred property as if the transfer was made by the owner of the property.

10. But it is to be noted that the court has taken care to mention that the proceedings must be inrelation to the property of the sick industrial company. The observation of the Supreme Court in that case do not help the appellant herein in any manner.

11. Our attention is drawn to the judgment of the Bombay High Court in Industrial Developments Bank of India v. Nira Pulp and Paper Mills Limited and other (1994 (79) Company Cases) page 811). The court held that when a receiver has been appointed in a suit, and the property is in custodia legis it cannot be treated as the property of the sick industrial company.

The case does not in any way help the appellant herein. It has no relevance in the present case.

12. Thus it is clear that the property which is sought to be seizure by the respondent pursuant to the order made in Application No. 2307 of 1994 in not the property of the appellant and it will not fall within the scope of Section 22(1) of the Act. The Language of the Section is very clear and the proceedings which are stayed and suspended are only the proceedings against any of the properties of the industrial company.

13. We have already pointed out that the order passed in Application No. 2307 of 1994 has become final as the appellants did not challenges the same. It is not open to the appellants to challenge its correctness in the present proceedings by asking for stay of all proceedings in the suit.

14. Learned counsel for the respondent has made it clear that the further proceedings in the suit have to be stayed in view of Section 22 of the Act as the suit is for recovery of money. Hence all further proceedings in the suit will stand stayed hereinafter. But the proceedings to enforce the order made in Application No. 2307 of 1994 is not stayed and it will not be covered by this order of stay. It is open to the respondent to enforce the order already passed by the court in Application No. 2307 of 1994

15. In the result, the appeal is allowed in part as indicated above. No order as to costs.