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(2011) 03 P&H CK 0379

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1856 of 2011 (O and M)

Perhlad Rai Gupta	APPELLANT
Vs	
Amit Singh and Others	RESPONDENT

Date of Decision: March 21, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Companies Act, 1956 - Section 16, 17, 18, 25
- Constitution of India, 1950 - Article 227
- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 22, 26

Citation: (2011) 163 PLR 86

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

C.M. No. 7317-CII of 2011

1. Application is allowed subject to all just exceptions.

Civil Revision No. 1856 of 2011

2. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 3.3.2011, Annexure P6, passed by learned Civil Judge, Senior Division, Hisar, vide which application filed by Petitioner under Order VII Rule 11 of the CPC (hereinafter to be referred as `the Code") for rejection of the plaint has been dismissed.

3. I have heard learned Counsel for the Petitioner and have gone through the whole record carefully including the impugned order passed by learned trial Court.

4. Facts relevant for the decision of present revision petition are that Respondent No. 1-Plaintiff, Amir Singh, filed the present suit against present Petitioner and Respondents No. 2 and 3 for permanent injunction restraining them from interfering in his possession or from dispossessing him forcibly from any portion of House No. 90-91, Green Park, Hisar, Haryana, in which Plaintiff alongwith other members of the family is presently residing. Injunction is also sought restraining them from demolishing any portion of the said house.

5. It has been contended by learned Counsel for the Petitioner that jurisdiction of this Court to try the present suit is barred by Sections 22 and 26 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter to be referred as `the Act''). It has been contended that Petitioner is one of the Directors of M/s Kapil Roller Flour Mills Limited, Hisar, having its registered office at Kothi No. 90-91, Hisar. It is further contended that the said entire kothi was mortgaged with Punjab National Bank, Hisar, by M/s Kapil Roller Flour Mills Limited, Hisar, and, however, the company has been declared sick by Board of Industrial and Financial Reconstruction Regulations, 1987 (hereinafter to be referred as `the BIFR'') under the Act and its operative agency has been appointed as Punjab National Bank and that the matter relating to assets of M/s Kapil Roller Flour Mills Limited is pending with BIFR. It is also contended that Petitioner-Defendant No. 1 also filed a revision before this Court regarding possession of the suit property.

6. The application was opposed by Respondent-Plaintiff and the same was declined by learned trial Court vide impugned order, by observing as under:

It is seen that the present application under Order 7 Rule 11 CPC has been filed by the applicant after the written statement was filed by the Defendant and part arguments on stay application had been heard and as such, the same should have been filed in time and otherwise also, even if matters relating to assets of Kapil Flour Mills are pending with BIFR, as the same has been declared sick by BIFR, the Civil suit in which the interest of third party is involved is maintainable as only in the matters which are inter-se applicant and BIFR, the civil Court has no jurisdiction but the civil dispute in which the other party are also involved, the civil suit is maintainable. As such, the application being devoid of merit is hereby dismissed.

7. Perusal of plaint filed by Respondent-Plaintiff, Amir Singh, Annexure P2, shows that he has claimed right of possession in the property in dispute as a tenant under present Petitioner on monthly rent of Rs. 5,000/-, hence, he has been continuing in possession of the same as tenant. Admittedly, he is not a party to the proceedings before BIFR under the Act and the proceedings, if any, between present Petitioner and the Punjab National Bank, Hisar, before BIFR cannot be said to be binding upon Respondent No. 1-Plaintiff. He is a third party. He is having right to protect his interest by filing a separate suit against present Petitioner. Hence, it cannot be said that Sections 22 and 26 of the Act debar the present Respondent No. 1-Plaintiff from filing the present suit.

8. It is pertinent to reproduce Sections 22 and 26 of the Act, which read as under:

22. Suspension of legal proceedings, contracts, etc.-(1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or 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 advanced 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.

(2) Where the management of the sick industrial company is taken over or changed in pursuance of any scheme sanctioned u/s 18, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) Where an enquiry u/s 16 is pending or any scheme referred to in Section 17 is under preparation or during the period of consideration of any scheme u/s 18 or where any such scheme is sanctioned there under, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising there under before the said date, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by the Board: Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4) Any declaration made under Sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any

decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly,-

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect

(i) any right privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

26. Bar of jurisdiction.-No order passed or proposal made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

9. A bare perusal of the aforesaid provisions show that jurisdiction of this Court is not barred to entertain the suit filed by present Respondent No. 1-Plaintiff, Annexure P2.

10. In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in passing the impugned order and that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

11. Moreover, law is well settled in Surya Dev Rai v. Ram Chander Rai and Ors. 2004(1) RCR 147 that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross failure of justice has occasioned thereby.

12. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.