

(2008) 08 P&H CK 0172

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 3869 of 1997

Punjab State Industrial
Development Corporation Ltd.

APPELLANT

Vs

The Appellate Authority for
Industrial and Financial
Reconstruction and Others

RESPONDENT

Date of Decision: Aug. 13, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- Constitution of India, 1950 - Article 32
- Financial Corporation Act, 1985 - Section 18, 21(1), 29
- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 25
- State Financial Corporations Act, 1951 - Section 29

Citation: (2009) 1 ILR (P&H) 80 : (2010) 5 RCR(Civil) 243

Hon'ble Judges: Ajay Tewari, J

Bench: Single Bench

Advocate: Arun Walia, for the Appellant; M.S. Bedi, for Respondent No. 4, Ashwani Talwar, for Respondent No. 5, Rahul Sharma and Parshant Batish, for D.V. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Ajay Tewari, J.

This petition has been filed by the Punjab State Industrial Development Corporation (for short PSIDC) challenging the order dated 24th September, 1996, whereby the Appellate Authority for Industrial and Financial Reconstruction (for short AAIFR) has allowed the appeal of Respondent No. 5 against an order dated 13th March, 1996 passed by the Board of Industrial and Financial Reconstruction (BIFR) dated 13th March, 1996 holding that the reference preferred by Respondent No. 5 was not

maintainable.

2. The case set up by the Petitioner is that after the aforementioned order dated 13th March, 1996, the Respondent No. 5 had filed CWP No. 8496 of 1996 for the following reliefs:

(a) Quash the Advertisement of sale Annexure P-1,

(b) To open the locks put on the unit of Punjab Nitrates Ltd. and to restrain the Respondents from interfering in the functioning of the company in any way till pendency of reference/appeal before AIFR u/s 25 of SICA,

(c) To exempt the necessity of filing certified copies of the Annexure.

(d) To award the costs of the petition

3. In the said case a Division Bench of this Court noticed as follows:

It is so pleaded and argued by the learned Counsel representing the Petitioner and it may be mentioned that it is his sole contention that after the matter was referred to BIFR, Respondents herein were legally debarred from taking any action including the one contemplated by them i.e. sale of the unit which has been endeavoured to be done by issuing advertisement Annexure P-1.

4. Ultimately this Court held as follows:

It has been specifically pleaded that reference before the BIFR was filed on 20th October, 1995 a month after the possession of the assets of the company was taken over by the Corporation. With a view to support this assertion made in the written statement Mr. Sethi, learned Counsel representing Respondent No. 1 has taken us through order Annexure R-2 passed by BIFR, paragraph 10 whereof reads as under:

Reacting to the submissions of Shri Jagdish Gupta, company's representative pointed out certain factual inaccuracies therein. He submitted that they had filed a reference with BIFR on 27th September, 1995 and in the month of October, 1995 certain additional information was submitted.

No replication has been filed to controvert the plea of the Financial Corporation with regard to date of filing reference with BIFR. That apart, it has been the company's case before the BIFR that reference was filed on 27th September, 1995. It was not disputed during the course of arguments that by applying Section 29 of the Financial Corporation Act, possession of the unit was taken on 20th September, 1995."

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A bar created u/s 21(1) of the 1985 Act cannot be invoked whatever be the stage and we are of the clear view that if action is taken prior to making of a reference, Section 22(1) of the Act cannot be pressed into service. We are also in agreement with the

contention raised by the learned Counsel representing the Respondents that the Petitioner who was removed by the company to be the Managing Director could not maintain writ in his individual capacity.

5. Consequently this Court dismissed the writ petition by order dated 2nd August, 1996.

6. Before the filing of the said writ petition No. 8946 of 1996 Respondent No. 5 had also preferred an appeal against the aforesaid order dated 13th March, 1996. It was this appeal which has been allowed by the impugned order wherein it has been held on fact that the reference was sought by the Respondent No. 5 before the action u/s 29 of the State Financial Corporations Act, 1951 could be initiated by the Petitioner and thus the finding of the BIFR that the action u/s 29 was prior to the seeking of reference was incorrect.

7. The question which has been raised by the counsel for the Petitioner is that once a Division Bench of this Court had given a finding whether right or wrong--that the reference was sought by the Respondent No. 5 after the action had been initiated u/s 29 by the Petitioner, the said finding would operate as res judicata in the subsequently decided appeal. It is further argued by the counsel for the Petitioner that the only course open to the Respondent No. 5 would have been to challenge the order of this Court in appropriate proceedings, but the findings recorded by this Court could not be set at naught by the AAIFR.

8. Learned Counsel for the Respondent has not disputed the fact that this Court had given a positive finding regarding the maintainability of the reference sought by the Respondent No. 5. However, he submits that within a period of 46 days of the order of this Court the appeal filed by the said Respondent came to be allowed and it was for this reason that no appeal against the order of this Court was required to be filed. He has further argued that after the passing of the impugned order and in pursuance thereto the entire matter was, in fact, remanded to the BIFR and that on 10th March, 1997 the Petitioner appeared before the Board when the Board recorded its satisfaction to take the measures specified u/s 18 of the Act in relation to the company. He further states that having participated in the said proceedings the Petitioner is estopped from challenging the same. In any case he adds that the Petitioner has not disclosed to this Court about the passing of the aforesaid order dated 10th March, 1997 and is thus guilty of concealment. He further states that by the passing of the order dated 10th March, 1997 the impugned order stood implemented and, therefore, this writ petition is not maintainable.

9. In my opinion this petition must succeed. Before proceeding further it would be profitable to reproduce Section 11 of the CPC which is as under:

Res judicata.--No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them

claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.--The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.--For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.--Any matter which might and ought to have been made ground defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.--Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.--Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.--The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.--An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]

10. Apropos the above, facts revealed in this case are that the Division Bench of this Court had categorically held on merits that the reference sought by the Respondent No. 5 before the BIFR was not maintainable. In the face of that decision no other Court or authority could take a contrary view of the matter. Reference may be made in this regard to [Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another](#), wherein their Lordships of the Supreme Court held as under:

It is well-known that the doctrine of res judicata is codified in Section 11 of CPC but it is not exhaustive.

Section 11 generally comes into play in relation to civil suits. But apart from the codified law the doctrine of res judicata or the principle of res judicata has been applied since long in various other kinds of proceedings and situations by Courts in England, India and other countries. The rule of constructive res judicata is engrafted in Explanation IV of Section 11 of the CPC and in many other situations also principles not only of direct res judicata but of constructive res judicata are also applied. If by any judgment or order any matter in issue has been directly and explicitly decided the decision operate as res judicata and bars the trial of an identical issue in a subsequent proceeding, between the same parties. The principle of res judicata also comes into play when by the judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication ; then also the principle of res judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided.

11. The second judgment on the point is Teja Singh v. The Union Territory of Chandigarh and Ors. 1982 PLR 160, wherein a Division Bench of this Court held as follows:

Thus it is quite evident that the principles of res judicata are attracted only when a writ petition is dismissed after contest by passing a speaking order as in that event the decision would operate as res judicata in any other proceeding such as suit or a petition under Article 32 etc.

12. Apart from this learned Counsel for the Petitioner has brought to my notice order passed by a Division Bench of this Court in an earlier case filed by the Respondent No. 5 bearing CWP No. 20186 of 2006 titled as Bal Krishan Gupta v. Punjab Financial Corporation and Ors., wherein this Court held as follows:

Petitioner is in the habit of filing writ petitions in this Court. One such writ petition CWP No. 1838 of 2002, filed by the Petitioner camp up for hearing before this Court on February 4, 2002 and the following order was passed:

This is a petition for issuance of a writ of Certiorari quashing the sale of unit of the Petitioner pursuant to advertisement Annexure P-1.

After arguing the case for some time, Shri Arun Bansal requested that his client may be allowed to withdraw the writ petition with liberty to avail other remedies.

The request of the learned Counsel is accepted and the writ petition is dismissed as withdrawn with liberty in terms of the prayer made.

Thereafter, the Petitioner kept mum and did nothing to agitate his rights. He did not initiate any proceedings against the Respondent Corporation to show that he was not under an obligation to pay the amount in dispute. Now, when again, mortgaged property in Possession of Respondent No. 1 has been notified for sale, he has filed this writ petition on these very grounds, which he had agitated in CWP No. 1838 of 2002. Counsel for the Petitioner has failed to convince us as to on what ground interference can be made and the Respondent corporation can be restrained from selling the property in dispute, which is in their possession for the last more than ten years.

Numbers of attempts to delay the proceedings seem to have been made. Dismissed.