

Sahyadri Solvex Private Ltd. and G.C. Shivakumar Vs State Bank of India, Bangalore City Branch

Court: Madras High Court

Date of Decision: April 4, 2008

Acts Referred: Constitution of India, 1950 " Article 227

Sick Industrial Companies (Special Provisions) Act, 1985 " Section 15, 15(1), 22, 25

Citation: (2008) 143 CompCas 28 : (2008) 2 LW 1125 : (2008) 5 MhLj 1462

Hon'ble Judges: S.J. Mukhopadhaya, J; R. Subbiah, J

Bench: Division Bench

Advocate: R. Thiagarajan, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

These revisions petitions, under Article 227, have been preferred by M/s. Sahyadri Solvex Private Ltd., a

company registered under the Companies Act, 1956, (hereinafter referred to as "company") against common order dated 10th March, 2008,

passed by the Debts Recovery Appellate Tribunal, Chennai (hereinafter referred to as "DRAT") in Review Diary Nos.328-A and 328-B,

whereby and whereunder the prayer of the petitioner-company to review its earlier order dated 21st March, 2007 passed in I.N. Nos.156 &

157/07 has been rejected. The main plea taken by the petitioner in these cases is that the original suit preferred by the State Bank of India

(hereinafter referred to as the "Bank") was not maintainable in view of Section 22 of the Sick Industrial Companies (Special Provisions) Act,

(hereinafter referred to as "SICA").

2. The brief facts of the case is that the petitioner-company made reference u/s 15(1) of SICA to the Board for Industrial and Financial

Reconstruction (hereinafter referred to as "BIFR") on the ground that it has become a sick industrial company. It was registered as reference case

No. 104/93. The BIFR, by its order dated 9th March, 1994, ultimately rejected the said reference as not maintainable. Thereafter, the

respondent-bank, from whom the company had taken loan, filed a suit in O.S. No. 103/94 on 6th July, 1994, for recovery of a sum of Rs.

2,29,22,942/= with future interest and costs before the Principal Civil Judge at Shimoga. On the other hand, the petitioner-company preferred an

appeal u/s 25 before the Appellate Authority for Industrial and Financial Reconstruction (hereinafter referred to as "AAIFR") in appeal No. 76/94,

which was also dismissed on 2nd April, 1996. In the meantime, the Debts Recovery Tribunal, Bangalore, having constituted with effect from 30th

Nov., 1994, the suit was transferred, however, it was not taken up because of pendency of appeal before AAIFR. The bank filed application to

proceed with the suit, which was heard on merit and finally decided by Debts Recovery Tribunal, Bangalore, by its order dated 2nd Dec., 2007.

In the said proceeding, the petitioner company filed applications to dismiss the suit on the ground of pendency of reference before BIFR and

appeal, but they were dismissed. These orders were also challenged before the DRAT in proceeding in I.N. Nos. 156 and 157/07, which were

heard and dismissed by order dated 21st March, 2007. The review application, thereafter, preferred was rejected by the impugned order.

3. Learned Counsel appearing on behalf of the petitioner-company referred to Section 22 of SICA and submitted that the suit itself being not

maintainable, the Tribunal should have dismissed the suit. He placed reliance on Supreme Court decisions in Zenith Steel Tubes & Industries Ltd.

and Anr. v. SICOM Ltd. reported in 2008 (1) SCC 553, Kailash Nath Agarwal and Others Vs. Pradeshia Industrial and Investment

Corporation of U.P. Ltd. and Another, and M/S Patheja Bros. Forgings and Stamping and Another Vs. I.C.I.C.I. Ltd. and Others, .

4. We have heard the learned Counsel for the petitioner, perused the impugned order passed by DRAT and the materials on record.

5. It will be evident that the reference preferred by the petitioner-company u/s 15, being reference case No. 104/93, was rejected by BIFR on 9th

March, 1994 on the ground that it was not maintainable. It is only thereafter the suit was preferred by the bank. Reference u/s 15 being not

maintainable, Section 22 was never attracted. After dismissal of the said reference the suit having filed, it cannot be held to be not maintainable. So

far as appeal u/s 25 is concerned, the petitioner cannot take advantage of the same. First of all, the reference u/s 15 was not maintainable, which

was affirmed in appeal by AAIFR and thus the petitioner company was not entitled to any protection u/s 22. Secondly, the suit having already filed

after the dismissal, at best the suit could not have been proceeded with further till disposal of the appeal by AAIFR. In the present case, the suit

did not proceed during the pendency of the appeal and it is only after the rejection of appeal by AAIFR, the suit was heard and decreed. In the

aforesaid background, the plea as taken by the petitioner cannot be accepted nor the petitioner can take advantage of the decisions of the

Supreme Court as referred to above.

6. There being no merit, both the revision petitions are dismissed. Consequently, connected miscellaneous petition is also dismissed. But there shall

be no order as to costs.