

## State Industrial and Investment Corporation of Maharashtra Limited Vs Gangaram Agarwal and Another

**Court:** Bombay High Court

**Date of Decision:** March 19, 1990

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 37 Rule 1, Order 37 Rule 2  
Sick Industrial Companies (Special Provisions) Act, 1985 â€” Section 17(3)

**Citation:** (1990) 2 BomCR 105

**Hon'ble Judges:** H. Suresh, J

**Bench:** Single Bench

**Advocate:** T.N. Subramaniam, instructed by Purnanand and Co, for the Appellant; M.H. Shah, S. Rahimtoola and V. Advani, instructed by Law Charter, for the Respondent

### Judgement

H. Suresh, J.

1 In this summons for judgment, Mr. Subramaniam relying on several judgments (some of them from the Division Bench of our own High Court)

submitted that there is no defence available to the defendants and that, therefore, the summons for judgment should be made absolute. He also

relied on the deed of guarantee which he submitted is clear in terms, as far as the liabilities of the present defendants are concerned and that their

liabilities are totally independent of the liabilities of the company in question.

2. The Company has become a sick industry within the meaning of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter

referred to as the SICA). The defendants as directors of the Company submit that the Board for Industrial & Financial Reconstruction (hereinafter

referred to as the BIFR) is holding an inquiry and there is likelihood of a scheme being evolved to rehabilitate the Company. Mr. Subramaniam

says that his suit is against the guarantors, the directors of the Company and not against the Company, and that the defendants contention is no

answer to the suit.

3. If I can wholly ignore the object and the provisions of SICA, perhaps, Mr. Subramaniam's submissions may sound unanswerable. But I think, in

the present context when financial institutions such as Nationalised Banks, Finance Corporations or SICOM file suits as against industries,

companies and their directors for recovery of the amounts advanced by them, the Courts cannot just treat them as simple money suits by money-

lender as against their borrowers. The Courts in such cases, may be required to take into account various recent statutory developments and guide

lines enunciated by various Government and semi-government agencies. The very purpose of nationalisation of Banks or of incorporation of these

financial institutions is to render financial assistance in manufacture and production of goods, all with a view to develop and sustain, a proper

developed economy. Similarly when an industry fails, it is not just liquidation that is warranted, for, in many cases, liquidation has the enemy effect

of weakening the society itself with no guarantee of any return for the financial institutions. It is precisely, for these reasons, the legislatures in their

wisdom have brought in such statutory measures as the SICA and the Bombay Relief Undertakings (Special Provisions) Act, 1958, etc. The

object of such laws is to resuscitate, revive and rehabilitate potentially viable industries and to suggest such ameliorative and recuperatory measures

in which the financial institutions and all concerned will have to take part. The courts cannot be so archaic as to ignore these statutory

developments.

4. In the present case what happened was that the Company went to the BIFR after becoming "sick" within the meaning of the SICA and the case

was registered as Case No. 37 of 1989. The BIFR took up the matter for investigation. The defendants have produced before me a copy of the

minutes of the meeting held on August 28, 1989. In that meeting the defendants, the representatives of various financial institutions such as Punjab

National Bank, the present plaintiffs, Bank of Maharashtra, and the representatives of the Government of Maharashtra were present. The BIFR

considered various aspects and directed the present plaintiffs SICOM to submit a status report on the Company incorporating the SICOM's view

regarding "long term viability of the Company". It appears that the meeting was thereafter adjourned. One does not know whether such a status

report, as directed, was prepared or not. But there was a further meeting on January 25, 1990. That report mentions that the BIFR has appointed

Punjab National Bank as an operating agency u/s 17(3) of the SICA to prepare "rehabilitation package in consultation with the Company, the

Bank of Maharashtra, the SICOM and the State Government" and submit it to the BIFR within twelve weeks.

5. In other words, the BIFR is seriously considering as to how this company can be rehabilitated and make it function. The present defendants are

the Directors and they are actively involved in the rehabilitation of the Company. If the same is rehabilitated and the Directors are given a free

hand, perhaps, in all probability, the Company can be revived and the problems of all concerned with regard to this industry will be solved and

perhaps the monies advanced by various financial institutions can also be returned, and in such a case there may not be any question of passing a

decree at all.

6. The BIFR is still considering whether this company can be revived. If the Company is revived as I stated above, all problems can be solved. If

ultimately the BIFR thinks that this Company cannot be revived and the Company has to be wound up as provided in the Act itself, it is open to

this Court or any other Court as directed by the BIFR to do so. In that event the deed of guarantee stands invoked and it is open to the plaintiffs to

get suitable orders in the summons for judgment.

7. It is true that in very many summary suits one of the modes of giving conditional leave to defend is to direct the defendants to deposit a certain

amount. But that is not the only mode of granting leave to defend. There are various other conditions which can be thought of. In a given case the

summons may even be post-poned to a fairly long period, to enable the defendants to have a more just and equitable solution of the matter. It is

time that the Courts realise that the ordinary mechanism of civil procedural law, is no cure-all for the many complex and complicated situations that

arise in a modern economy.

8. In the circumstances the proper order would be to adjourn this summons for judgement till June 25, 1990.

9. At this stage Mr. Subramaniam points out that there is no restraint on the defendants and they might dispose of their individual properties which

might cause considerable prejudice to the plaintiffs. In this view of the matter, with a view to safeguard the interests of the plaintiffs I direct the

defendants as follows:

The defendants shall file an affidavit disclosing their personal, individual assets and properties which they own and such an affidavit should be filed

within two weeks from today. The affidavit shall also contain a categorical undertaking that they will not dispose of or create any third party rights

or alienate the said property till the summons for judgment is decided one way or the other. However, as regards the property comprising of

stock-in-trade, they are entitled to deal with the same, in the ordinary course of business.