

**(1997) 05 DEL CK 0078**

**Delhi High Court**

**Case No:** Civil Revision Appeal No. 117 of 1997

Sirmor Sudburg Auto Ltd.

APPELLANT

Vs

Kuldip Singh Lamba

RESPONDENT

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**Date of Decision:** May 29, 1997

**Acts Referred:**

- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 22(1)

**Citation:** (1997) 4 AD 364 : (1997) 2 BC 386 : (1998) 91 CompCas 727 : (1997) 67 DLT 870 : (1997) 42 DRJ 421

**Hon'ble Judges:** R.C. Lahoti, J

**Bench:** Single Bench

**Advocate:** Sunil Goyal, Janak Sharma, R.K. Agarwal and Sanjay Dua, for the Appellant;

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### **Judgement**

R.C. Lahoti, J.

(1) The petitioner is aggrieved by the impugned order dated 8.11.96 passed by the trial Court rejecting his application u/s 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter Sica, for short) paying for stay of the suit.

(2) The petitioner company took the premises belonging to the plaintiff-respondent for three years under a lease agreement dated 16-4-1992. On 2-8-1993, the petitioner company has been declared a sick company and proceedings under Sections 16 and 17 of Sica are going on against it. On 22-12-1995, the plaintiff-respondent has filed a suit seeking a decree for recovery of possession over the premises held by the petitioner company and a decree for arrears of rent to the tune of Rs. 1,77,840.00 on account of arrears of rent for the period November, 1994 to November, 1995 calculated at the rate of Rs. 13680.00 per month. the tenancy of the petitioner company as terminated with the end of November, 1995. Mesne profits and damages at the rate of Rs. 90.00 per sq ft have been asked for from 1-12-1995 to 15-12-1995 amounting to Rs. 38475.00 Along with a relief for further damages/manse profits and interest on the said amount.

(3) Section 22(1) of Sica provides 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 shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

(4) Sica was amended by Act No. 12 of 1994 which came into force on 1.2.94. Several provisions of Sica have been amended. For the purpose of the case at hand, what is relevant is the amendment made in sub section (1) of S. 22. By Section 12(a) of the Amendment Act, the following words have been added after the words "appointment of a receiver in respect thereof in the text of the principal Act-

"And no suit for recovery of money or for 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."

(5) The question arising for decision is whether the suit of the nature filed by the plaintiff attracts the applicability of S. 22(1) of Sica (as amended).

(6) In [Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras](#), , unamended Section 22(1) of Sica came up for consideration of their Lordships. The appellant company had taken premises of the respondent No. 1 on a monthly rent of Rs. 21159.00 . The appellant company committed a default in payment of rent and as on March 31, 1987 a sum of Rs. 2,45,534 was payable as rent to the respondents. Legal notice dated 1.4.87 was served. On 26.2.88, the respondents filed a petition seeking eviction of the Company on the ground of arrears of rent. Prayer by the company for stay under S. 22 of Sica was refused. The question posed before their Lordships was - "Are the proceedings instituted by landlord for eviction of a tenant who is a sick company from the premises at issue required to be suspended under S. 22(1) of the Act." Their Lordships have held "The following proceedings are automatically suspended under S. 22(1) of the Act:

1)Proceedings for winding up of the industrial company;

2)Proceedings for execution, distress or the like against the properties of the sick industrial company: and

### 3) Proceedings for the appointment of receiver."

"Eviction proceedings initiated by a landlord against a tenant company would not fall in categories (1) and (3) referred to above. The question is whether they fall in category (2). It has been urged by the learned counsel for the appellant company that such proceedings fall in category (2) since they are proceedings against the property of the sick industrial company. The submission is that the leasehold right of the appellant company in the premises leased out to it is property and since the eviction proceedings would result in the appellant company being deprived of the said property the said proceedings would be covered by category (2). We are unable to agree. The second category contemplates proceedings for execution, distress or the like against any other properties of the industrial company. The words or the like have to be construed with reference to the preceding words, namely, for execution, distress which means that the proceedings which are contemplated in this category are proceedings whereby recovery of dues is sought to be made by way of execution distress or similar process against the property of the company. Proceedings for eviction instituted by a landlord against a tenant who happens to be a sick industrial company, cannot in our opinion, be regarded as falling in the category. We may, in this context, point out that, as indicated in the Preamble, the Act has been enacted to make special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect such companies and the expeditious enforcement of the measures so determined. The provisions regarding suspension of legal proceedings contained in Section 22(1) seeks to advance the object of the Act by ensuring that a proceedings having an effect on the working or the finances of a sick industrial company shall not be instituted or continued during the period the matter is under consideration before the board of the Appellate Authority or a sanctioned scheme is under implementation without the consent of the Board of the Appellate Authority. It could not be the intention of Parliament in enacting the said provision to aggravate the financial difficulties of a sick industrial company while the said matters were pending before the Board of the Appellate Authority by enabling a sick industrial company to continue to incur further liabilities during this period.

This would be the consequence if sub-section (1) of S. 22 is construed to bring about suspension of proceedings for eviction instituted by landlord against a sick industrial company which has ceased to enjoy the protection of the relevant rent law on account of default in payment of rent. It would also mean that the landlord of such a company must continue to suffer a loss by permitting the tenant (a sick industrial company) to occupy the premises even though it is not in a position to pay the rent. Such an intention cannot be imputed to Parliament. We are, Therefore, of the view that Section 22(1) does not cover a proceeding instituted by a landlord of a sick industrial company for the eviction of the company premises let to

it." (11-12)

(7) In Pearey Lal and Sons (P) Ltd v. Modi Spg & Wvg Co 1994(2) C L.J. 261, the High Court of Delhi was seized of a suit for recovery of possession and damages filed by the plaintiff against the defendant. The defendant was in arrears of rent for the period 1.8.88 to 28.2.89. It was declared a sick company under S. 16 of Sica on 15.6.90. The Court directed the defendant to deposit arrears of rent and on failure to comply with the order in spite of opportunities having been allowed, directed the defense to be struck off. This Court ruled relying on the law laid down by the Supreme Court in the case of M/ Shree Chamundi Mopeds Ltd (supra), the proceedings were not liable to be suspended u/s 22(1) of the Act.

(8) Faced with the two decisions above said, the learned counsel, for the petitioner heavily relied on [Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another](#) . The question arising for decision before their Lordships was whether the proceedings under Sections 29 and/or 31 of the State Financial Corporation Act, 1951 were liable to be stayed in view of the bar created by Section 22 of SICA. One of the contentions raised was that S. 22(1) uses the expression "proceedings" and not legal proceedings though the expression used in the marginal note is legal proceedings and hence S. 22(1) was not applicable to the impugned proceedings as they were mere proceedings and not legal proceedings. Their Lordships held that word "proceedings" in S. 22(1) cannot be given narrow or limited meaning so as to confine it to "legal proceedings" as such a narrow meaning would run contrary to law and would frustrate the purpose of S. 22(1) of Sica Interpreting the expression "to the like", their Lordships held :

"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 Bifir finally dispose of the reference made u/s 15 of the said enactment. The legislature has advisedly used an omnibus, expression "or like" as it could not have conceived of all possible coercive measures that may be taken against a sick undertaking." [PARA 10]

(9) The learned counsel for the petitioner submitted that in view of the law laid down by the Supreme Court the word proceedings has to be liberally construed so as to advance the object and purpose sought to be achieved by S. 22(1) of SICA. He further submitted that in view of 1993 Amendment a suit for recovery of money is clearly covered by S. 22(1) of Sica and inasmuch as the plaintiff-respondent is seeking recovery of arrears of rent - and damages/manse profits, it is a suit for recovery of money and hence liable to be stayed.

(10) In view of the law laid down by the Supreme Court in the case of Shree Chamundi Mopeds Ltd and the view taken by this Court in the case of Pearey Lal & Sons (P) Ltd I have no hesitation in mind in holding that so far as the relief of

eviction is concerned the suit is not liable to be stayed. In spite of the word 'proceedings' being given a liberal meaning, it would not cover proceedings for eviction of the tenant, though it may be a sick company for it is neither a proceeding for winding up of the company nor for execution, distress or the like.

(11) The only question which remains to be examined is whether a suit for recovery of arrears of rent damages and mesne profits is a suit for the recovery of money within the meaning of the expression as inserted by the 1993 Amendment Act. In as much as a decree for recovery of arrears of rent damages and mesne profits would result in financial liability cast on the defendant, a suit for recovery thereof is a suit for recovery of money attracting applicability of Section 22(1) of the Act.

(12) Still question would arise what the defendant-objector has to show in order to successfully make out a case u/s 22(1) of the Act. The question was examined very recently by their Lordships of the Supreme Court in Deputy Commercial Tax Officer Vs. Corromandal Pharmaceuticals, 1997 Iii Ad Sc 713. The petitioner company was an assessed to sales tax assessed for the years 1992-93 and 1993-94 by orders dated 3.1.94 and in 1995 respectively. A scheme under Sica was sanctioned by the Bifr on 19.11.90. Recovery proceeding for the sales tax were assailed and stay was sought u/s 22 of the Act. The revenue contended that as the arrears of sales tax in question were related to the period after sanctioned scheme was brought under implementation, Section 22 of the Act was inapplicable and could apply only in respect of sales tax dues included in the sanctioned scheme. Their Lordships upheld the contention of the revenue and formed an opinion that Section 22(1) should be read down. Their Lordships held:-

"Instep for execution, distress or the like against the properties of the industrial company other of similar as steps should not be pursued which will cause delay or impediment in the implementation of the sanctioned scheme. In order to safeguard such state of affairs, an embargo, or bar is placed u/s 22 of the Act against any step for execution, distress or the like or other similar proceedings against the company without the consent of the Board or, as the case may be, the appellate authority. The language of Section 22 of the Act is certainly wide. But, in the totality of the circumstance, the safeguard is only against the impediment, that is likely to be caused in the implementation of the scheme. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section 22 of the Act, So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is started, till after the implementation of the scheme or the disposal of an appeal u/s 25 of the Act, it will be reasonable to hold that the bar or embargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme."

"Another construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and

withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against spirit of the statute in a business sense, should be avoided."

(13) It follows from the law laid down by the Supreme Court in Corromandal Pharmaceuticals case (supra) that to be entitled to stay of the legal proceedings u/s 22 of the Act a mere pendency of the enquiry would not suffice; the dues must be reckoned or included in the sanctioned scheme. Section 22(1) is also not attracted to the dues incurred after the date of the sanctioned scheme.

(14) For the foregoing reasons, the revision is allowed in part. The impugned order in so far as it refuses to stay the suit for the relief of ejectment is maintained. The matter as to stay of the suit for the relief of recovery of money is sent back for consideration afresh by the trial Court consistently with the observations made hereinabove. No order as to the costs.

(15) The parties through their respective counsel are directed to appear before the trial Court on 14th July, 1997.