

(2001) 04 BOM CK 0074

Bombay High Court

Case No: Summons for Judgment No. 675 of 1999 in Summary Suit No. 1576 of 1999

Gargi Huttenes Albertus (P.) Ltd.

APPELLANT

Vs

New Standard Engg. Co. Ltd.

RESPONDENT

Date of Decision: April 23, 2001

Acts Referred:

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

Citation: (2002) 2 ALLMR 396 : (2002) 1 BOMLR 838 : (2002) 3 MhLj 169

Hon'ble Judges: D.Y. Chandrachud, J

Bench: Single Bench

Advocate: H.V. Chande, for the Appellant; M.G. Mimani, for the Respondent

Judgement

D.Y. Chandrachud, J.

The claim in the summary suit is based on goods sold, supplied and delivered by the plaintiff to the defendant under an invoice dated 27-1-1996. The total amount which is due and payable to the plaintiff under the invoice is Rs. 33,792. The plaintiff is entitled to an interest at the rate of 21 per cent per annum under the terms of the invoices. The claim in the suit is for an amount of Rs. 54,489 comprised of the principal amount due under the invoices as aforesaid and interest of Rs. 20,697. The plaintiff had addressed a notice of demand on 11-2-1999 to which there was no reply.

2. The only defence which was taken in the present case at the hearing for summons for judgment is that a reference under the Sick Industrial Companies (Special Provisions) Act, 1985 ("the Act") was filed in respect of the defendant and that a scheme came to be sanctioned. Now, it is common ground between the learned counsel appearing on behalf of the plaintiff and the defendant that the reference in the present case was made some time in the year 1988 and the scheme came to be sanctioned by the BIFR on 2-7-1991. In the present case, the liability of the defendant arises in respect of goods sold, supplied and delivered in 1996 which was

much after the scheme was sanctioned. This point assumes some significance in the present case because the liability is not one which arises prior to the date of the sanctioned scheme. In fact, the sanctioned scheme would not make any reference to the outstanding dues of the plaintiff for the simple reason that these have arisen after the scheme was sanctioned.

3. The question as to whether the provisions of Section 22 of the Act can at all be attracted to a case such as the present though the liability arises in respect of transactions entered into by the company after the date of the sanction of the scheme has been considered by the Supreme Court in [Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others](#), . Before the Supreme Court the submission on behalf of the revenue authority which had claimed the outstanding arrears of sales-tax was that the provisions of Section 22 and the embargo thereunder can only be in respect of the dues towards sales-tax which were included in the sanctioned scheme. Since in the case before the Supreme Court the dues related to the period after the sanction of the scheme which was under implementation, the contention was that the bar under Section. 22 is not attracted. This submission was dealt with in the following observations of the Supreme Court, it was held as follows :

"10. On a fair reading of the provisions contained in chapter III of Act 1/1986 and in particular Sections 15 to 22, we are of the opinion that the plea put forward by the revenue is reasonable and fair in all the circumstances of the case. . . . The language of Section 22 of the Act is certainly wide. But, in the totality of the circumstances, 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 enquiry 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. Such amounts like sales tax, etc., which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other 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." (p. 2032) "

4. The Judgment of the Supreme Court provides a complete answer to the defence in the present case. The liability which has arisen is in respect of goods which were sold, supplied and delivered after the date of the sanctioned scheme. This liability is

not reckoned and included in the sanctioned scheme. The company has purchased goods after the scheme was sanctioned and is liable to pay for the goods. The Supreme Court has clearly held that in such a case the bar u/s 22 would not apply and it would be quite unreasonable and unfair to allow the company, after the date of the sanctioned scheme to purchase goods from suppliers without being required to pay for the goods purchased.

5. This was the only point which was urged at the hearing of the summons for judgment. The learned counsel for the plaintiff has tendered the original documents together with a list which are taken on record and marked as Exh-A collectively. The plaintiff is entitled to a decree as prayed for. The suit is, accordingly, decreed. The plaintiff would be entitled to further interest at the rate of 12 per cent per annum on the principal amount of Rs. 33,792 from the date of the institution of the suit until payment or realisation and to the costs of the suit.