

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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FAO(OS) 50/2009

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Date of decision: 10th February, 2010

STICHTING DOEN-POSTCODE LOTERIJ

..... Appellant

Through: Mr. D.S. Chadha, Advocate

Versus

**M/S VIN POLY RECYCLERS PVT.
LTD. & ORS.**

..... Respondents

Through: Mr. Ramjana Roy with Mr. Shailesh
Suman, Advocates

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. This appeal has been preferred by the plaintiff in the suit before the learned Single Judge, against the order dated 12th December, 2008 staying further proceedings in the suit under Section 22 of The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The suit was instituted under Order 37 of the CPC for recovery of money. The respondent/ defendant applied for leave to defend. Arguments on the application for leave to defend were addressed by the counsel for the parties and order thereon reserved. It was at this stage, that the respondent/defendant made a reference to the BIFR and the reference of the

respondent/defendant was registered and the bar of Section 22 of the SICA invoked. The only contention of the counsel for the appellant/plaintiff before the learned Single Judge and before us is that since nothing remained to be “proceeded with” in the suit, Section 22 did not apply and the learned Single Judge ought to have pronounced the orders / judgment on the application of the respondent/defendant for leave to defend. The contention of the counsel for the appellant/plaintiff is that there is no hiatus between the reserving and pronouncing of the judgment and the delay in pronouncing the judgment after hearing arguments is owing to the own reasons of the Court and once the arguments have been heard, the pronouncement of the judgment could not be stayed under Section 22 (supra). The judgment of the Supreme Court in *Arjun Singh v. Mohindra Kumar* AIR 1964 SC 993 forms the backbone of the contention of the counsel for the appellant/plaintiff.

2. The learned Single Judge however held that the position under Section 22 of the SICA was different from the position before the Supreme Court in *Arjun Singh’s* case (supra). It was held that Section 22 read with Section 32 of SICA mandates that SICA would prevail over other laws; that exceptions are provided but CPC is not an exception to the said general rule. It was further held that registration of the reference under Section 15/16 of the SICA results in denudation of court’s jurisdiction at least till such time the concerned party/plaintiff or someone else seeks approval under Section 22.

3. The judgment in *Arjun Singh’s* case (supra) was concerned with Order 9 Rule 7 of the CPC which permits a defendant to apply for having an order proceeding ex parte against him set aside if the Court has “adjourned the hearing of the suit ex parte” and the defendant “at or before such hearing” appears and assigns good cause for previous non appearance. It was in that context held, that if the hearing is completed and/or if adjournment is not for hearing and the Court

has only adjourned the matter for pronouncing the order/judgment that the defendant is not entitled to apply under Order 9 Rule 7 of the CPC. However, Section 22 of SICA does not use the expression 'hearing'. It provides that "no suit for recovery of money shall lie or be proceeded with further" Thus, the bar is to the very institution of the suit, if the suit had not been instituted prior to the applicability of Section 22 and if the suit has already been instituted before Section 22 comes into play, the bar is to the suit being proceeded with further. Put in other words, whether it can be said that nothing remains to be proceeded with further after arguments have been heard and order/judgment reserved.

4. The counsel for the appellant / plaintiff would contend so. He has in this regard relied upon:-

- (i) ***Pujya Sindhi Panchayat v. Prof. C.L. Mishra*** AIR 2002 Rajasthan 274 (DB) where an application under Order 1 Rule 10 of the CPC moved after the judgment was reserved was held to be not maintainable for the reason that when the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that order 20 Rule 1 permits judgment to be delivered after an interval after the hearing is completed. It was further held that after the judgment is reserved, there remains no stage in the case and there is no hiatus between the two stages of reservation and pronouncement of judgment;
- (ii) ***Yash Mehra v. Arundhati Mehra*** 132 (2006) DLT 166 where the Single Judge of this Court rejected an application withdrawing consent, in a petition for dissolution of marriage by mutual consent, moved after the statements had been recorded and the orders reserved, holding that all that remained to be done for the Court is

to pronounce judgment in the matter and it was not permissible at this stage to withdraw the consent;

- (iii) ***V.S. Saini v. DCM Ltd.*** AIR 2004 Delhi 219 where another Single Judge of this Court held that there is no hiatus between refusal of leave to defend and the passing of a judgment/decree in the suit.

5. Per contra, the counsel for the respondent/defendant has inter alia referred to:-

- (i) ***Surendra Singh v. The State of Uttar Pradesh*** AIR 1954 SC 194 holding that pronouncement and delivery of judgment in open Court is a judicial act which must be performed in a judicial way; up to the moment the judgment is delivered Judges have the right to change their mind;
- (ii) ***Chandgi v. Mehar Chand*** AIR 1998 P&H 197 where the Single Judge of that Court held, an application under Order 18 Rule 17 A of the CPC permitted to be filed “at a later stage”, to be maintainable even if the judgment had been reserved. It was held that pronouncement of judgment is also a stage of the suit and final culmination of judicial proceedings would take place only upon the pronouncement of judgment and the Court becomes functus officio only on pronouncement of judgment. The contention that pronouncement of judgment is not a recognized stage of proceeding in a suit was negated;
- (iii) ***Narendrasingh Sengar v. Shrimati Maltidevi*** AIR 1993 MP 248 where also an application for amendment of written statement was held maintainable after the orders had been reserved in the suit for the

reason that it was permitted to be filed “at any stage” of the proceedings and pronouncement of judgment is a stage of the proceedings;

(iv) ***Badri Prasad Soni v. S. Kripal Singh*** AIR 1981 MP 228 to the same effect holding that “proceeding” is till the court is in seisin and till the Court has pronounced the judgment, it cannot be said that the proceedings before it are over;

(v) ***Ajit Kumar Saha v. Ashit Kumar Saha*** AIR 2003 Calcutta 148 to the same effect.

6. The bar in Section 22, is to the suit being proceeded with further. ***Black’s Law Dictionary, 6th Edition*** defines “proceeding” inter alia as regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of the judgment. This definition has been approved by the Supreme Court, though in a different context, in ***Secretary Govt. of Madras Vs. Zenith Lamp and Electrical Ltd.*** (1973) 1 SCC 162. The proceedings of a suit embrace all matters that occur in its progress judicially. Order 20 Rule 1 (1) CPC provides that the Court, after the case has been heard, shall pronounce judgment in an open court, either at once, or as soon thereafter as may be practicable on some future day and when judgment is to be pronounced on some future day notice thereof shall be given to the parties. Sub Rule (3) further provides that the judgment may be pronounced by dictation in open court. Rule (3) provides that the judgment shall be dated and signed by the Judge in open court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to. From the said provisions it follows that if the judgment is not pronounced on the same day as the hearing, not only does the Judge have to dictate / prepare the judgment but to also give notice of the date of pronouncement

and to sign and pronounce the same in the open Court. The judgment when not pronounced on the date of hearing, bears the date of the pronouncement and the pronouncement does not date back to the date of hearing.

7. From the aforesaid requirements of law, it follows that it is not as if nothing is required to be done when the judgment is reserved. The steps aforesaid are required to be taken. Under the procedure followed by the High Court, after the judgment has been prepared, notice of the date of the pronouncement thereof is given by notifying the suit / lis in the daily cause list of the Court. The instructions issued by this Court to the Civil Courts in Delhi as well as or 20 Rule 5 A CPC also requires the Judge, to in appealable cases where the parties are not represented by their pleaders, to inform the parties present in court on the date of pronouncement of judgment, to which court an appeal lies and the period of limitation for filing such appeal and to also place on record the information so given to the party.

8. We cannot but wonder, whether all the aforesaid steps required by law to be taken in the event of the judgment being reserved would not fall in “proceedings”. The literal meaning of the language of Section 22 of the Act is that the status as prevailing on the date of applicability of Section 22 is to remain unless the permission of BIFR to proceed further is obtained. It would have been open to the counsel for the appellant /plaintiff to contend that such bar would not affect pronouncement of the judgment only if no further proceedings were required to be undertaken by the court thereafter and only if the action of the Court of pronouncement of judgment was to relate back to the date of hearing. However, it is not so in law. In the existing state of affairs, to differentiate between the proceedings required to be taken for pronouncement of the judgment and the proceeding required to be undertaken for taking any other steps in the suit has no rational nexus. The purport of Section 22 was to protect a sick company from the

legal proceedings of the nature mentioned in Section 22. Prior to amendment thereof, suits were not included and the bar applied only to execution proceedings. However, after the amendment in the year 1994, the legislature deemed it appropriate to bar the institution of as well as proceeding further with all the suits against such sick companies. If it were to be held that the judgment could be pronounced, then we see no reason why other proceedings in the suit, save a coercive proceedings qua the assets of the sick company, could also not be proceeded with further.

9. The counsel for the appellant/plaintiff has also invited our attention to Section 33 of the CPC to contend that after hearing, it is the obligation of the Court to pronounce the judgment. He contends that Section 33 of the CPC will overrule Section 32 of SICA. We are unable to accept the aforesaid argument. Section 33 of the CPC is in existence since much prior to the promulgation of SICA and the non-obstante clause in Section 22 will cover Section 33 of the CPC also. If the contention of the counsel for the appellant were to be accepted, then even an appellate/revision/writ court would not be entitled to stay pronouncement of judgment in a suit / proceeding before the Court below after the orders have been reserved. Such interpretation cannot be permitted in law.

10. There is no merit in the appeal. The appeal is dismissed. However, in the facts no order as to costs.

CHIEF JUSTICE

**RAJIV SAHAI ENDLAW
(JUDGE)**

February 10, 2010

gSR