



2023-D80:7361-D8



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

% **Date of decision: 06 October 2023**

+ **FAO(OS) (COMM) 342/2019**

CHHATTISGARH DISTILLERIES LTD. Appellant

Through: Appearance not given.

versus

PERCEPT ADVERTISING LIMITED Respondent

Through: Mr. Venancio D'Costa, Ms.
Astha Ojha and Ms. Gauri
Goel, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This is an appeal preferred by the appellant/defendant under Section 104 read with Order XLIII Rule 1 of the Code of Civil Procedure, 1908¹ read with Section 10 of the Delhi High Court Act, 1966 assailing impugned order dated 08 August 2019 passed by the learned Single Judge of this Court in CS (OS) 1252/1999 whereby the application filed by the appellant/defendant under Order IX Rule 13 of the CPC was dismissed.

2. Shorn of unnecessary details, the respondent/plaintiff was engaged as an advertising agent and consultant for advertising, publicity and promotion by appellant/defendant vide appointment letter dated 01 December 1994. During the course of such

¹ CPC



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engagement, various invoices were raised on the appellant/defendant. While some payments were made, others remained outstanding. The respondent/plaintiff filed a suit for recovery for an amount of Rs. 2,07,68,394/- on 28 May 1999 bearing No. CS(OS) 1252/1999. Summons to appear in this suit were served upon the appellant/defendant by way of publication and admittedly appearance was put on its behalf on 28 November 2000 and 15 February 2001. However, due to non-appearance of counsel on behalf of appellant/defendant, the suit proceeded *ex parte* against the appellant/defendant vide order dated 28 January 2002 and eventually judgment/decree was passed on 27 May 2009. An application bearing I.A. No. 6300/2019 under Order IX Rule 13 CPC was filed by the appellant/defendant on 25 April 2019 *inter alia* submitting that it was unaware of the suit proceedings and came to know about passing of the impugned judgment/decree upon receiving show cause notice dated 17 November 2018 in Execution Petition No. 61/2016. Herein, it was the appellant/defendant's submission that an inquiry had been initiated under the provisions of the Sick Industrial Companies Act, 1981² in reference bearing No.162/1998 registered with the Board of Industrial and Financial Reconstruction³ on 18 September 1998 to declare it a 'sick company' which remained pending up until 18 September 2014. Thus, it was agitated that the suit by respondent/claimant and the consequent decree were in contravention of Section 22 of the SICA.

² SICA

³ BIFR



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3. Learned Single Judge addressed the issue of whether the proceedings were *non est* on the date of filing of the suit due to registration of the appellant/defendant under the provisions of SICA. Relying on decisions of this Court in the case of **Saketh India Limited v. W. Diamond India Limited**⁴; **M/s. Ralson Industries Ltd. (now Known as Da Rubber Industries Ltd.) v. M/s Adhunik Transport Organisation Ltd**⁵ and **Raheja Universal Limited v. NRC Limited and Ors.**⁶, the learned Single Judge held that the suit for recovery filed by the respondent against the appellant company which had been registered under the Provisions of SICA was not *ipso facto* rendered as not maintainable since the suit was for recovery and the purview of Section 22(1) of SICA is confined to proceedings in the nature of execution, distress or the like, therefore it would not be hit by Section 22(1) of SICA. Consequently, mere filing of the suit for recovery was not fatal for the exercise of jurisdiction by this Court. It was further observed that the appellant/defendant was declared to be no longer a sick industrial company in terms of Section 3 (1)(o) SICA vide order dated 18 September 2014 . Thus, it had come out of the purview of the said Act and no explanation or reasons had been afforded on behalf of appellant/defendant so as to justify delay in approaching the Court. It was further held that a mere blame game by leveling allegations against its counsel by appellant/defendant does not suffice as a justification, for which reference was made to decision

⁴ 2010 SCC OnLine Del 1786

⁵ 2013 SCC OnLine Del 28

⁶(2012) 4 SCC 148



in **Moddus Media Pvt Ltd. v. M/s. Scone Exhibition Pvt. Ltd.**⁷ and accordingly the application was dismissed holding as under:

“12. It is further significant to note that Plaintiff on becoming aware of the reference before BIFR, filed an application before BIFR on 23rd July, 2012, seeking its permission to execute the decree. The Defendant was provided an opportunity to file a reply to the said application, however, the same was not filed. Plaintiff was impleaded in the said proceedings before BIFR on 12th December, 2012. Defendant came out of purview of the Act on 18th September, 2014. This clearly shows the Judgment Debtor was aware of the decree passed by this court since 2012. After coming out of the purview of SICA, from 2014 to 2019 the Judgment Debtor remained silent. The conduct of the Defendant is completely laid-back and lackadaisical. The explanation offered by it for seeking setting aside of ex part decree smacks of gross negligence on the part of the Judgment Debtor. Thus, there is no merit in the application. The same is dismissed with cost of Rs. 25,000/- to be deposited with the Delhi High Court Staff Welfare Fund.”

GROUND OF APPEAL:

4. The impugned order is assailed in the present appeal on the reasoning that the appellant/defendant should not be penalized for the negligence of its counsel; and that the respondent/plaintiff despite being aware of the reference under the SICA did not apprise the Court of such proceedings; and that the impugned judgment/decreed dated 27 May 2009 has been passed without the Court having jurisdiction.
5. Advance notice of the present appeal was issued to the respondent/plaintiff and appearance has been put.

DECISION:

6. Having heard the submissions advanced by the learned counsel for the rival parties and on perusal of the record, we find that the

⁷ 2017 SCC OnLine Del 8491



present appeal is bereft of any merits. Evidently, an appearance had been put on behalf of the appellant/defendant on the service of summons by publication, however not only was the written statement not filed but the Court was also not apprised about the registration of the reference or pendency of the proceedings before BIFR. Thus, there was no due diligence on the part of the appellant/defendant in contesting the proceedings.

7. Be that as it may, insofar as the proceedings in the nature of recovery suit being hit by Section 22 of the SICA, it would be relevant to reproduce Section 22 of the SICA, which reads as under:

“22. Suspension of legal proceedings, contracts, etc.—(1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 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 (and no suit for the 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) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

(2) Where the management of the sick industrial company is taken over or changed (in pursuance of any scheme sanctioned under Section 18) notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law—

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;



(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) (Where an inquiry under Section 16 is pending or any scheme referred to in Section 17 is under preparation or during the period) of consideration of any scheme under Section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board: Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly,—

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect—

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.



(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.”

8. It is well settled that there was legal duty cast upon the appellant/defendant to bring it to the notice of the Court that it had qualified for the protection under the SICA, and this obligation was not discharged. There is no gainsaying that the aforesaid provision has been interpreted in umpteen number of cases decided by the Apex Court as well as this Court. In the cited case of ***Saketh India Limited (supra)***, it was observed that the phrase “recovery of money” must be construed *ejusdem generis* and accordingly recovery proceedings in the nature of execution or any other coercive enforcement that has been ordained to be not maintainable. There is nothing in the said provision so as to hold the legal proceedings to be not maintainable, or liable to be halted, even if the debt sought to be proved in the plaint has not been admitted. Furthermore, it was observed that there can be no logic in denying legal recourse to a party for proving its debt. The said decision was relied upon by this Court again in the decision of ***M/s. Ralson Industries Ltd. (now known as Da Rubber Industries Ltd) (supra)***, wherein it was categorically held that the proceedings that can be halted by invoking Section 22 of the SICA should be in the nature of execution, distress or the like.

9. Avoiding a long academic discussion, the aforesaid proposition of law has since been finally settled by the Supreme Court in ***Raheja Universal Limited (supra)*** wherein it was held:



“77. Section 22 of SICA 1985 is very significant and of wide ramifications and application. More often than not, the jurisdiction of BIFR is being invoked, necessitated by varied actions of third parties against the sick industrial company. The proceedings, taken by way of execution, distress or the like, may have the effect of destabilising the finalisation and/or implementation of the scheme of revival under consideration of BIFR. It appears that, the legislature intended to ensure that no impediments are created to obstruct the finalisation of the scheme by the specialised body. To protect the industrial growth and to ensure revival, this preventive provision has been enacted. The provision has an overriding effect as it contains non obstante clauses not only vis-à-vis the Companies Act but even qua any other law, even the memorandum and articles of association of the industrial company and/or any other instrument having effect under any other Act or law. These proceedings cannot be permitted to be taken out or continued without the consent of BIFR or AAIFR, as the case may be.

78. The expression “no proceedings” that finds place in Section 22(1) is of wide spectrum but is certainly not free of exceptions. The framers of law have given a definite meaning to the expression “proceedings” appearing under Section 22(1) of SICA 1985. These proceedings are for 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.

79. The expression “the like” has to be read ejusdem generis to the term “proceedings”. The words “execution, distress or the like” have a definite connotation. These proceedings can have the effect of nullifying or obstructing the sanctioning or implementation of the revival scheme, as contemplated under the provisions of SICA 1985. This is what is required to be avoided for effective implementation of the scheme. The other facet of the same section is that, no suit for recovery of money, or for enforcement of any security against the industrial company, or any guarantee in respect of any loan or advance granted to the industrial company shall lie, or be proceeded with further without the consent of BIFR. In other words, a suit for recovery and/or for the stated kind of reliefs cannot lie or be proceeded with further without the leave of BIFR. Again, the intention is to protect the properties/assets of the sick industrial company, which is the subject-matter of the scheme.”

10. Learned Single Judge rightly found that appellant/defendant merely took a lame excuse, most conveniently blaming its



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previous counsel but then it is also borne out from the record that the respondent/plaintiff on becoming aware of the reference before the BIFR, filed an application before the BIFR on 23 July 2012, seeking its permission to execute the decree. Although the appellant/defendant was provided with an opportunity to file a reply to the said application, it was not filed so much so that the respondent/plaintiff was impleaded in the said proceedings before the BIFR on 12 December 2012 and admittedly the appellant/defendant came out of purview of SICA on 18 September 2014. And yet no legal proceedings were initiated by the appellant/defendant up until 2019.

11. In view of the foregoing discussion, we find that the learned Single Judge has committed no illegality, perversity or adopted an incorrect approach in passing the impugned order dated 27 May 2009.

12. Accordingly, the present appeal is dismissed. In view of peculiar facts and circumstances, no costs are imposed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

October 06, 2023

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Signature Not Verified

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KUMAR VATS
Signing Date: 12.10.2023
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