5 रु. कोर्ट फी Rs.5 COURT FEE भारत INDIA पाँच रुपये FIVE RUPEES

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IN THE HIGH COURT OF JUDICATURE, AT BILASPUR, (C.G.)

M. A. No.- ----92---- 2014

Single Bench

Appellant: ~~Appellant:~~ Applicant Bengal Nagpur Cotton Mills, A unit of National Textile Corporation Ltd.
Through its Officer on Specialduty,
S.K.Verma S/o Late Shri Brijkishor Verma
Aged about 56 years
Resident of : BNC Mills Campus, Baldeo Bag,
Rajnandgaon (C.G.)

92/14
B.P. 9/10/14

Versus

Respondent Nagar Palik Nigam, Rajnandgaon, through its Commissioner, Rajnandgaon P.S. Kotwali, Dist: Rajnandgaon (C.G.).

Appeal under Order 43 Rule 1 (r) of the Code of Civil Procedure

(Against the order dated 21.07...

AFR / NFR

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HIGH COURT OF CHHATTISGARH

Single Bench: Hon'ble Shri Justice P.Sam Koshy

Miscellaneous Appeal No.92 of 2014

Bengal Nagpur Cotton Mills
versus
Nagar Palik Nigam, Rajnandgaon

J U D G M E N T

Post for 24-12-2014

Sd/-
P. Sam Koshy
Judge

HIGH COURT OF CHHATTISGARH

Single Bench:Hon'ble Shri Justice P.Sam Koshy

Miscellaneous Appeal No.92 of 2014

Appellant	Bengal Nagpur Cotton Mills
versus	
Respondent	Nagar Palik Nigam, Rajnandgaon

Appeal under Order 43 Rule 1 of the Code of Civil Procedure

Appearance:
Shri B.P.Gupta, counsel for the appellant.
Shri Sourabh Sharma, counsel for the respondent.

JUDGMENT

(Delivered on 24 December, 2014)

(1) The present is a miscellaneous appeal preferred by the appellant challenging the order dated 24-07-2014 passed by the Additional District Judge (FTC), Rajnandgaon in Civil Appeal No.4/2010.

(2) The facts leading to the filing of the present miscellaneous appeal is that the appellant/plaintiff had filed a case before the Board of Industrial Financial Reconstruction (in short "the BIFR"), which was registered as Case No.501/1993 and the matter was decided thereafter on 12-02-2002. The BIFR, vide its said judgment, permitted the closure of the plant with some conditions like relaxation to the appellant/Mill on the payment of interest and damages on electricity, water and municipal dues and accepted the payment of the due amount under these heads for the period 2001-02. Subsequently, the Municipal Corporation, ignoring the order passed by the BIFR, issued a letter dated 13-09-2002 raising a claim against the appellant with a direction to clear the dues within fifteen days, failing which, appropriate recovery proceedings would be initiated. This demand was for the period 1997-98 to 2002-03. Later on, in December, 2004, again a demand notice was raised for payment of an amount of Rs.1,16,53,956/-. On raising both these demand notices, the appellant/company gave a specific reply intimating that since as per the order of the BIFR dated 12-02-2002, there is an exemption from payment of these dues, therefore, the appellant/company cannot be compelled to pay the tax.

(3) Later on, as per the directives of the BIFR, tenders were floated for auctioning of 5.81 acres of land on "as is where is basis". Meanwhile, on 18-07-2005, the Municipal Corporation again issued a notice demanding the appellant/company for payment of the above-stated dues, to which also the appellant/company replied and tried to bring to the Municipal Corporation's notice about the orders

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passed by the BIFR and the provisions of the Sick Industries Companies Act (SICA). Further, another notice was issued by the Municipal Corporation, Rajnandgaon that since there is a default on the part of the appellant/company for not depositing the demand of statutory taxes payable by the appellant/company and the Corporation further had intimated the appellant/company that since the demand notice is not being honoured, the land of the appellant/Mill shall be got acquired. This notice dated 18-07-2005 led to the filing of the writ petition by the appellant/company. Meanwhile, on the basis of the tenders floated earlier, the land measuring 5.81 acres was auctioned and the auction-purchaser was M/s Indian Poultry Farm, Rajnandgaon. This action on the part of the authorities in demanding the clearance of the property tax and other statutory dues was put to challenge in a writ petition filed by the appellant/company which was registered as Writ Petition No.5666/2005. The said writ petition was ultimately disposed of by the High Court on 14-01-2009 and in the process, the auction-sale was confirmed in favour of the highest bidder, i.e., M/s Indian Poultry Farm. Against the said disposal of the writ petition, the Municipal Corporation filed a review petition, being Review

Petition No.13/2009. The review petition also finally stood disposed of on 01-08-2009 whereby liberty was granted to the Municipal Corporation to take recourse of appropriate forum for the recovery of the amount from the appellant/National Textile Corporation (NTC) in accordance with law.

(4) Subsequently, the respondent/Municipal Corporation again issued a recovery and demand notice dated 13-09-2009 amounting to Rs.2,00,18,364/-. This demand notice was also duly replied by the appellant/company on 28-10-2009. This repeated demand of property tax and other dues being demanded by the respondent/Corporation against the appellant/company was put to challenge by the appellant/company before the District Judge by way of an appeal under Section 149 of the Chhattisgarh Municipal Corporation Act, 1949 (for short "the Act, 1949"). The Court on registering the said appeal and on taking cognizance of the same proceeded to decide the case on merits and the said case was still pending before the District Court at Rajnandgaon. The said case was registered as Civil Appeal No.4/2010. However, pending the civil appeal before the District Court, the Municipal Corporation again issued a notice of attachment of the property of the appellant/company and the notice was published in a daily newspaper. Immediately on getting the information about the paper-publication, the appellant/company wrote a letter dated 21-07-2014 to the Commissioner, Municipal Corporation, Rajnandgaon objecting the decision of notice of attachment of the appellant's property. Immediately on receiving the notice of attachment issued by the respondent/Corporation, the appellant/company moved an application before the District Court in the pending Civil Appeal No.4/2010 under Order 39 Rules 1 and 2 of the Code of Civil Procedure seeking for an order of restrain against the respondent from the payment of dues as demanded by the respondent/Corporation. Thereafter, the respondent/Corporation also entered appearance and submitted their reply.

(5) However, the Court below, vide the impugned order, has rejected the appellant's application under Order 39 Rules 1 and 2 of the CPC for grant of temporary injunction holding that the appellant has neither made out a *prima facie* good case nor balance of convenience is in favour of the appellant and if an interim order is granted then the respondent/Corporation would be put to irreparable loss. It is this judgment which has been assailed by the appellant through the instant miscellaneous appeal under Order 43 Rule 1(r) of the CPC.

(6) The counsel for the appellant submits that the Court below has not properly appreciated the contention put-forth by the appellant/company before the District Judge seeking for a temporary injunction. According to the counsel for the appellant, it is a case where, in fact, all the three ingredients required for the purpose of grant of temporary injunction stood in favour of the appellant/company but has been wrongly interpreted in different manner contrary to the provisions of law. According to the counsel for the appellant, *prima facie* since the appellant/company is a sick industry and the fact that the trial under Section 149 of the Act, 1949 is already pending consideration, the Court ought to have restrained proceedings further with the move of attachment. Similarly, the counsel for the appellant further submits that taking into consideration the fact there is a clause in the order of the BIFR itself exempting the appellant/company from making payment of certain dues like property tax etc., it establishes the fact that the balance of convenience is also in favour of the appellant/company and, therefore, for all practical purposes, the appellant/company should have been granted the advantage of temporary injunction, failing which, the appellant/company would be put to irreparable loss.

(7) The counsel for the respondent/Corporation opposes the application for grant of temporary injunction and submits that there was a specific provision enabling the Corporation to raise demand notice during the pendency of the appeal, therefore, the miscellaneous appeal is liable to rejected. The counsel for the respondent/Corporation referred to the provisions of Section 149(6) of the Act, 1949. The counsel further took the Court through the provisions of the Act, 1949 wherein it is categorically envisaged that the suit is specifically barred. Further, the counsel for the Corporation submits that the main grievance of the appellant in the instant case is that of the order of attachment initiated by the Corporation is not sustainable, therefore, according to the counsel for the respondent/Corporation since it is an order of attachment which is under challenge then for all practical purposes the appellant/company could not have pursued the remedy by filing the appeal, rather according to the counsel for the respondent/Corporation in fact the appeal itself is not maintainable inasmuch as the appellant ought to have preferred an appeal under Section 184 of the Act, 1949 before the competent appellate authority constituted under Section 403 of the Act, 1949. The counsel for the respondent/Corporation referred to Section 184 of the Act, 1949 and submitted that the said section clearly envisages that any person aggrieved by the notice of demand under Section 174(1) of the Act, 1949 can prefer an appeal to the appellate committee constituted by the Corporation. According to the counsel for the respondent/Corporation, the instant appeal is not sustainable on account of the fact that the Act, 1949 itself does not provide for challenging the action of notice of demand in a Court of law. The counsel for the respondent/Corporation further submitted that the only reason for which the appellant has not availed the remedy under Section 184 of the Act, 1949 is for the reason that the proviso clause of Section 184 of the Act, 1949 specifically envisages that the person challenging the notice under Section 184 of the Act, 1949 has to deposit the entire amount and, therefore, in order to avoid the depositing of the assessed amount the appellant herein has preferred the proceedings before the District Judge which is not maintainable and, therefore, the present miscellaneous appeal

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also deserves to be rejected on this ground.

(8) The counsel for the respondent/Corporation further, relying upon the order dated 12-02-2002 passed by the BIFR, stated that if the entire order is perused it would clearly reflect that there was no exemption whatsoever granted to the appellant from complying with the statutory dues payable by the appellant/company and, therefore, the statutory dues payable under the Act, 1949 has to be complied with. In addition, the High Court in the earlier round of litigation, i.e., Review Petition No.13/2009 decided by this Court on 8-8-2009, while deciding the said review petition, had categorically held that the appellant is liable to settle dues in accordance with law by making payment of the same at the request. Hence, under the given facts and circumstances of the case, the counsel for the respondent/Corporation prays for rejection of the miscellaneous appeal.

(9) Having considered the rival contentions put-forth by the counsel on either side, this Court is of the opinion that if we see the provisions of Section 184 of the Act, 1949, it would clearly reveal that there was a statutory alternative efficacious remedy available to the appellant and the appellant having not availed the said remedy and at the same time directly approaching the Court of law, the same may not be tenable at all.

(10) Further, if we peruse the order passed by the BIFR also, it would reveal that the only exemption which has been provided by the BIFR was the waiving of interest and damages on the electricity, water and municipal dues. Thus, when the order of the BIFR in Clause F5 which is a part of the order dated 12-02-2002 passed by the BIFR is seen it would show that the only waiver was for the interest and damages on the electricity, water and municipal dues. This itself establishes the fact that the appellant was in fact liable to pay the principal amount towards the electricity, water and municipal dues. The said order of BIFR nowhere does envisage the aspect of the appellant/company being totally exempted from payment of the dues against these heads. Whereas, on the contrary, if we read Clause F5, it clearly stipulates that the waiver was only for the payment of interest and damages and there was no waiver for depositing of the principal amount, therefore, the very factual aspect put-forth by the appellant in the instant miscellaneous appeal that of waiver is not acceptable as the waiver in fact is only for the interest and damages and not for the principal amount which otherwise becomes mandatory to be paid by the appellant/company.

(11) Thus, from the foregoing reasons, it can be safely held that there was no stay of recovery of the property tax etc. even at a later stage obtained by the appellant/company. Thus, the appellant/company cannot be given the advantage of total waiver of payment of electricity, water and municipal dues. As such, the impugned order passed by the Court below cannot be held to be bad in law or arbitrary.

(12) With the aforesaid observations, this Court is of the opinion that there is no substantial ground raised by the appellant for not complying with the notice issued by the Municipal Corporation calling for the interference by the High Court in the order passed by the Court below or warranting any interference with the impugned order. Therefore, the instant miscellaneous appeal being devoid of merit, the same is rejected. It is also made clear that the interim order granted by this Court earlier shall also stand vacated.

Sd/-
P. Sam Koshy
Judge