IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3033 OF 2000

Mr. Pradip R Shah … Plaintiff
Vs.
Sivanandha Pipe Fittings Ltd. … Defendant

Mr. Pradip Shah, plaintiff present in person.
Mr. O S Kutty, Adv. a/w. Ms. Rajalakshmy for defendants.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 7th January, 2015.

P.C. :

1. This suit has been filed for recovery of the price of goods sold and delivered by the plaintiff showing the principal amount of Rs.84.91 lacs and interest amount of Rs.21.95 lacs. However, the defendant company filed a reference before BIFR. A Draft Rehabilitation Scheme (DRS) was tendered to the BIFR by the secured creditor, the Indian Bank. The plaintiff, of course, is one of the unsecured creditors. In the DRS the pressing creditors such as the plaintiff were to be cleared as and when the long pending receivables were realised. The plaintiff relies upon the DRS. Based upon the DRS the BIFR heard the Indian Bank as secured creditor, the plaintiff as also the other creditors. The BIFR ultimately passed its order on 10th August, 2005. In the order this aspect has not been accepted. In the order the plaintiff was to be paid off Rs.81 lacs in full and final settlement by installments.

2. The defendant has shown amount of Rs.81 lacs paid to the plaintiff in three installments. The defendant contends that the suit has become infructuous. The plaintiff contends that as per the DRS

his claim for the remainder of the amount remains and the suit is required to be adjudicated for that amount. That amount would be approximately Rs.3 lacs plus interest amount claimed by the plaintiff. However, the order of the BIFR does not show the acceptance of that amount and that amount is consequently rejected.

3. The plaintiff filed appeal before the AAIFR being No.143 of 2005. The appellate authority considered the provision of Rs.81 lacs which had to be paid in a phased manner over a period of three years to the plaintiff. The appellate authority also considered that the interest of the plaintiff as pressing creditors was adequately taken care of in the sanctioned scheme. Hence appeal was dismissed.

4. The plaintiff filed another appeal being No.48 of 2008. That appeal was in the nature of the review petition. That appeal considered the order passed in the earlier appeal relating to the provision of Rs.81 lacs to be paid in the phased manner to the plaintiff. That appeal has also been dismissed.

5. The order of the AAIFR have not been challenged in any Writ Petition filed by the plaintiff.

6. The reliance of the plaintiff upon DRS is completely misplaced.

7. Since the proprietor of the plaintiff appears in person he has been explained by the Court that the DRS is merely a draft scheme submitted to the BIFR. It may be accepted or rejected partly

or fully. It is only the order of the BIFR that would prevail. That order has been considered in two appeals. They came to be final. Hence nothing survives in the suit. The suit is disposed of as infructuous in view of the plaintiff having been paid Rs.81 lacs out of total claim of Rs.1.06 Crores in this suit as per the order of the BIFR.

8. Suit is disposed of accordingly.

(ROSHAN DALVI, J.)