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

REVIEW PETITION NO. 10 OF 2016
IN
SUIT NO. 3895 OF 2000
WITH
SUIT NO.3895 OF 2000

Indbank Merchant Banking Services Ltd. … Petitioner/Plaintiff
Vs.

M/s. Banka (India) Ltd. & Anr. … Respondents/Defendants
….

Mr. Firoz Bharucha i/b JMB Partners for the Petitioner/Plaintiff.
None for the Respondents/Defendants.
…

CORAM : A.A. SAYED, J.
DATE : 21 DECEMBER 2016

P.C.:

1 The Review Petition impugns the order passed by me on 6 July 2012 dismissing the suit filed by the Review Petitioner/Original Plaintiff-Bank as time barred.

2 Learned Counsel for the Petitioner-Bank has invited my attention to the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and in particular Section 22(1), (5) and Section 26. They read as follows:

> *"**22. Suspension of legal proceedings, contracts etc.** - (1) Where is 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, 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 shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the appellant authority.

(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.

26. Bar of jurisdiction.- *No order passed or proposal made under this Act shall be appealable except as provided therein and no Civil Court shall have jurisdiction in respect of any matter which the Appellate Authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

3 Learned Counsel has also relied upon the judgment of the Supreme Court in the case of **Gram Panchayat and Another Vs.**

Shree Vallabh Glasses Works Limited and Others, (1990) 2 SCC 440, and in particular paragraphs 10 and 11 thereof, which read thus;

> "10. In the light of the steps taken by the Board under Section 16 and 17 of the Act, no proceedings for execution distress or the like proceedings against any of the properties of the company shall lie or be proceeded further except with the consent of the Board. Indeed, there would be automatic suspension of such proceedings against the company's properties. As soon as the inquiry under Section 16 is ordered by the Board, the various proceedings set out under sub-section (1) of Section 22 would be deemed to have been suspended.
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> 11. It may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the company for the recovery of their dues/outstanding/overdues or arrears by whatever name it is called. The Board at its discretion may accord its approval for proceeding against the company. If the approval is not granted, the remedy is not extinguished. It is only postponed. Sub-section (5) of Section 22 provides for exclusion of the period during which the remedy is suspended while computing the period of limitation for recovering the dues."

4 Learned Counsel then invited my attention to the 3-Judge Bench judgment of the Supreme Court in **Raheja Universal Limited Vs. NRC Limited and Others, (2012) 4 SCC 148.** Paragraphs 58, 78 & 79 of the said judgment read thus:

"58. Section 22 is the reservoir of the statutory powers empowering BIFR to determine a scheme, right from its presentation till its complete implementation in accordance with law, free of interjections and interference from other judicial processes. Section 22(1) deals with the execution, distress or the like proceedings against the company's properties, including appointment of a Receiver. It also specifically provides that even a winding-up petition would not be instituted and no other proceedings shall lie or proceed further, except with the consent of BIFR.

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. "

5 In **Ghanshyam Sarda vs. Shiv Shankar Tradiing Company and Others, (2015) 1 SCC 298,** the Supreme Court has observed in paragraph 32 as follows:

"32. Insofar as the recovery of money is concerned, the matter is completely covered by Section 22(1) of the Act. The language employed in Section 22(1) of the Act refers to the entirety of the period beginning from the inquiry under Section 16 till the implementation of sanctioned scheme for revival. Section 22(1) bars any suit for recovery of money or for the enforcement of any security against the industrial company without the express consent of the Board. Reference in Section 22(1) is to "an industrial company" and not to "the sick industrial company" as found in latter sub-sections of the same section. This also throws light that the bar is during the period contemplated in said Section 22(1). Such bar is period-specific and sub-section (5) of Section 22 entitles exclusion of such period while computing limitation. During the entirety of that period the Act grants protection to the company and leaves it to the discretion of BIFR whether to permit filing and maintaining of suit or other proceedings.

In the present case BIFR was considering Draft Rehabilitation Scheme which is a stage under Section 18(3) and is completely covered by the period under Section 22 of the Act. The suit in the instant case as framed for recovery of money filed without the consent of BIFR was not competent and maintainable."

6 In view of the provisions of sections 22 and 26 and the exposition of law laid down by the Supreme Court (which was not considered in the impugned order dated 6 July 2012 dismissing the suit on the ground of limitation), the impugned order is required to be recalled inasmuch the Respondent Company/Original Defendant No.1 Company had preferred a reference to BIFR on 6 July 1999 and the said reference was dismissed on 22 May 2000 and this period would have to be excluded in revoking the period of limitation and consequently, the claim of the Petitioner would be within the period of limitation. Accordingly, the impugned order is recalled and the suit is heard on merits.

7 I have heard the learned Counsel for the Plaintiff-Bank (Petitioner in Review Petition) on merits of the suit. The suit is filed by the Plaintiff-Bank essentially to recover a sum of Rs.66,12,724-88 ps. and a further sum of Rs.12,05,045-04 ps. with interest on the said amounts.

8 The Plaintiff-Bank had sanctioned Higher Purchase Finance to the extent of Rs. 50 lacs in the name of the Defendants on 18 December, 1995, for the purpose of purchasing plant and machinery and office equipments and the payments made by the Plaintiff-Bank directly in the name of the supplier.

9 The Higher Purchase disbursements were made by the Plaintiff-Bank on 10 January 1996 and 30 March 1996. The Plaintiff-Bank is maintaining two separate Accounts being A/c No. I and A/c No. II. According to the Plaintiff-Bank as regard Account No.I the first installment of Rs.5,07,608/- was due from 10 January 1996 and the remaining 32 installments of Rs.1,26,902/- were due from 10 February 1996 till 10 September 1998. The first installment in respect of Account No.II for Rs.1,16,260/- was due on 30 March 1996 and remaining 32 installments of Rs.29,065/- were due from 10 May 1996 till 10 December 1998.

10 The Plaintiff-Bank claims that the Defendants committed defaults and despite repeatedly calling upon the Defendants to pay the amount of over-due installments with further interest, the Defendants failed to make payment. The Plaintiff-Bank by their Advocate's letter dated 7 August 2000 also had called upon the Defendants to make payments.

11 According to the Plaintiff-Bank a sum of Rs.66,12,724-88 ps. were due and payable by the Defendants in Account No.I of the Hire Purchase agreement with further interest thereon at the rate of 30% per annum compoundable monthly from the date of filing of the suit till payment and/or realization. So far as the Account No.II of the Hire Purchase Agreement is concerned, according to the Plaintiff-Bank, the Defendants is liable to pay a sum of Rs.12,05,045-04 ps. with further interest thereon at the rate of 30% per annum compoundable monthly from the date of filing of the suit till payment and/or realization. It is averred in the Plaint that the Defendants had preferred the reference to BIFR on 6 July 1999 and the said reference has been dismissed on 22 May 2000.

12 The Defendants though served, had failed to file Written Statement. The claim of the Plaintiff-Bank has gone uncontroverted.

13 The Plaintiff-Bank has filed an Affidavit of evidence dated 29 June 2012, Further Affidavit of evidence dated 29 November 2016, Compilation of documents and further Compilation of documents respectively marked as 'W', 'X', 'Y' (collectively) and 'Z' (collectively) on the basis whereof the claim of the Petitioner-Bank stands proved. The Plaintiff-Bank has made out a case for the grant of reliefs and is entitled

to a decree under Order VIII Rule 10 of the Code of Civil Procedure, 1908.

14 In the circumstances, the suit is decreed in terms of prayer clauses (a) and (b) with further interest (simple) on the decretal amount at the rate of 12% per annum from the date of filing of the suit till payment or realization.

15 The Court is informed that Court Receiver, High Court, Mumbai, has been appointed in respect of the Hire Purchase Securities by an order dated 28 September 2000 of this Court in Notice of Motion No.2803/2000 with further direction to appoint the Defendants as agent of the Court Receiver. The Court Receiver shall be continued till the execution of the decree subject to payment of his cost and charges.

16. The Review Petition is allowed and disposed of accordingly.

(A.A. SAYED, J.)