

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2016

Pronounced on : 26.08.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP(PD)No.636 of 2012

and

M.P.No.1 of 2012

M/s.Kanagadhara Spinning Mills Private Limited,
Rep. By its Director – M.A.Ananda Kumar
Railway Station Road,
Gudiyattam.

.. Petitioner

Versus

M/s.T.V.S.Finance and Service Ltd.,
Rep. By Sai Kumar,
Having Office at Jayalakshmi Estate,
Haddows Road,
Chennai – 600 035.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order and Decree made in I.A.No.53 of 2010 in O.S.No.68 of 2007 on the file of the Principal District Judge, Vellore, Vellore District, dated 23.11.2011.

For Petitioner : Mr.S.Thiruvengkatasamy
for M/s.K.A.Ravindran

For Respondent : M/s.Jijaa
for M/s.Anand, Abdul and
Vinodh Associates

ORDER

Heard the submissions of Mr.Thiruvengkatasamy for M/s.K.A.Ravindran, learned counsel appearing for the Revision Petitioner and M/s.Jijaa for M/s.Anand, Abdul and Vinodh Associates, learned counsel appearing for the respondent.

2.The challenge in the present Civil Revision Petition is against the order passed by the Principal District Judge, Vellore District in I.A.No.53 of 2010 in O.S.No.68 of 2007. The petitioner has preferred the said Interlocutory Application praying that all the proceedings in the Suit shall be stayed since Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1995 (SICA) mandates that a Suit shall be stayed if a proceeding is pending before the BIFR.

3.The petitioner has submitted that the respondent has filed a Suit for recovery of money and other reliefs in O.S.No.68 of 2007 before Principal District Judge, Vellore and it is the case of the

petitioner that he has never borrowed money from the respondent and there is no privity of contract. It has also been contended by the petitioner that the Suit is barred by limitation. The petitioner has registered a reference under Section 15 of the Sick Industrial Companies Act with Board of Industrial and Financial Reconstruction, New Delhi and the reference is pending under Case No.28 of 2002.

4.However, in the counter that was filed before the District Court, the respondent has contended that the reference filed by the petitioner before the BIFR was dismissed and the Appeal preferred before the AIFR is also disposed and the matter is remanded back to the BIFR. The District Court after considering the rival submissions of both parties has concluded that there is no proof of pendency of proceedings before the BIFR and also noting that the petitioner cannot be construed as owner of the properties has dismissed the I.A.

5.The learned District Judge while passing the impugned order has taken note of the two orders passed by this Court in ***M/s.Sivananda Steels Limited vs. M/s.India Cements Capital Finance Limited*** reported in ***2004 (1) CTC 346*** and ***Sri Ananta Udyog Private Limited vs. Cholamandalam Investment and***

Finance Company Limited reported in ***1995 (1) CTC 206***.

6.The petitioner has now produced a communication letter dated 23.06.2016 stating that the matter is still pending before the BIFR (BIFR Case No.290/2002) and the matter was last listed on 03.01.2013 and the proceedings of the BIFR been stayed by this Court, the records of the BIFR has been sent to this Court and the matter has not taken any further course and stating this, the petitioner would submit that considering the pendency of the proceedings before the BIFR, the Civil Revision Petition will have to be necessarily allowed.

7.Now, the only point that arises for consideration is that in light of Section 22 of the SICA, whether the Suit has to be stayed or not?

8.For the sake of convenience, Section 22 of SICA is extracted hereunder:

"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....”

9.I have given my anxious consideration to the submissions made by the learned counsel for the petitioner. The purpose of Section 22 is to ensure that no Litigation with respect to any Industrial Company should be entertained during the pendency of a reference or inquiry being done under any of the provisions of the SICA since the same would create great difficulty in carrying out the inquiry into determining whether the Company is a sick industry or not and in turn would render the objective of the said legislation which is to determine the sick and potential sick industrial companies and carry out the remedial measures in an expeditious manner infructuous. Hence, it is the duty of the Courts to be circumspect in deciding matters pertaining to Section 22 of the SICA so as to ensure

that the same is not standing in the way of the measures to be taken by the BIFR.

10.It is also relevant to point out that a perusal of the records would reveal that the respondent has filed O.S.No.4813 of 2007 for permanent injunction before the II Assistant Judge, City Civil Court, Chennai and the Court has dismissed the Suit by clearly holding that Section 22 (1) of the SICA clearly protects the petitioner company and the plaintiffs suit and prayer can be construed only as a way to circumvent law. In the said order, the Court has taken notice of the judgment in ***Jai Raj vs. B.Champalal Jain*** in **2004 (3) LW 768** in which this Court has held that once when a Company is registered with BIFR, all the proceedings filed against the said company or its guarantors shall be stayed forthwith and shall not be proceeded with without the consent of the BIFR. After dismissal of this Suit, the Appeal preferred by the respondent in A.S.No.266 of 2009 was also dismissed by order dated 30.04.2010.

11.The attempt made by the respondent to invoke the jurisdiction of the Civil Court has already been negated and this fact has not properly been considered by the District Court while passing the impugned order in I.A.No.53 of 2010. The Supreme Court and

this Court, in a long line of decisions, while considering the scope of Section 22, has time and again reiterated that Section 22 of the SICA is a special provision and would have an overriding effect over other statutory provisions and any judgment rendered by a Court whose jurisdiction has been ousted as per Section 22 of SICA would only be *Coram non judis*. I am afraid that these above aspects have not been considered in a proper perspective by the District Court while passing the impugned order. The fact that there is pendency of proceeding before the BIFR is undisputed and hence, as per Section 22 of SICA, the petitioner is entitled for seeking a stay of all proceedings in the Civil Suit.

12.For the reasons stated above, the impugned order passed by the learned District Judge is set aside and the present Civil Revision Petition is allowed and the proceedings in O.S.No.68 of 2007 on the file of the Principal District Judge, Vellore District shall remain stayed till the reference before the BIFR is disposed or appropriate orders in this regard is passed by the BIFR.

13.Hence, the Civil Revision Petition is allowed with the above

terms. No costs. Consequently, connected miscellaneous petition is closed.

26.08.2016

vs

Index:Yes.
Internet:Yes.

To

The Principal District Judge,
Vellore,
Vellore District.

M.V.MURALIDARAN, J.

**PRE-DELIVERY ORDER MADE IN
CRP(PD)No.636 of 2012
and
M.P.No.1 of 2012**

26.08.2016