

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.4175 OF 2016

DATED : 09.09.2016

Between :

M/s.Hindustan Domestic Oil & Gas Company,
(Bombay) Ltd., Mumbai, rep., by its Chairman
and Managing Director, 316, Bhaveshwar Arcade,
Opp : Shreya Cinema, L.B.S.Marg, Gatkopar (W),
Mumbai – 400086.

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Petitioner

And

Thamma Venkata Krishna Reddy,
S/o.Late T.Appi Reddy, Aged about 37 yrs,
Prop. Sri Siva Rama Krishna Gas Agency,
Kollipara Village and Mandal,
Guntur District.

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Respondent



This court made the following :

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ORDER :

The suit filed by the plaintiff in O.S.No.115 of 2004 was decreed on 17.04.2006. Alleging non compliance of the decree passed in favour of the plaintiff, the decree holder filed E.P.No.18 of 2008. When the E.P. was taken up for consideration, petitioner herein who is the judgment debtor took a plea that the petitioner-company is a sick industry and proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'the Act, 1985'), are pending before the appellate authority under the Act, 1985, and thus no proceedings are maintainable before the Civil Court and thus, the petitioner need not comply the decree and therefore, the question of making any payment to the decree holder would not arise.

2. Rejecting the said contention the order of attachment was issued, assailed in this revision petition.

3. Heard Sri Pawan Kumar Agarwal, learned counsel for the petitioner.

4. Learned counsel for the petitioner submits that petitioner filed application under the Act, 1985 to declare the petitioner-company as a sick industry and to initiate proceedings under the Act, 1985. The Board for Industrial and Financial Reconstruction (BIFR) rejected the application holding that the petitioner company cannot be classified as a sick industry and therefore, proceedings under the Act, 1985 are not maintainable. Aggrieved by the order

dated 02.06.2003, petitioner filed appeal before the appellate authority and the said appeal is pending. He would therefore submit that in accordance with the provisions contained in Section 25 of the Act, 1985, once appeal is pending before the appellate authority, no coercive steps can be taken against the petitioner. He would therefore submit that the trial Court erred in not appreciating the said contention and issued attachment order.

5. It appears that BIFR rejected the claim of the petitioner to treat its company as a sick industry and proceedings be initiated under the Act, 1985. Though learned counsel for the petitioner claims that appeal is filed and the same is pending, no material is placed on record to show that such appeal is pending. Even according to the petitioner appeal was filed in the year 2003 itself. Ordinarily no such appeal would have been pending for more than 13 years. Thus, even assuming what is contended by the petitioner is true, unless petitioner shows material that appeal is pending, even this ground cannot be urged. As fairly submitted, no material was produced before the Court below to show that appeal is pending.

6. Application of the provisions of Act, 1985 can be invoked, only, if the petitioner industry is governed by the provisions of the Act, 1985. Admittedly, the BIFR declared the petitioner company as not covered by the provisions of the Act 1985. Only if the petitioner succeeds in convincing the appellate authority, in reversing the decision of the original authority and only if proceedings are set in motion under the Act, 1985 may be petitioner can get shelter under the provisions of the Act, 1985.

Since the original authority declared that the petitioner industry cannot be declared as a sick industry, and is not governed by the provisions of the Act, 1985, merely because the petitioner files an appeal and assuming such appeal is pending even after 13 years, the proceedings initiated by the Court below cannot be nullified. It is also appropriate to notice that the decree was passed on 17.04.2006 and admittedly the decree has become final as no appeal was preferred. As long as the decree is in force, the judgment debtor cannot dodge to comply with the decree and cannot take such pleas as raised herein, for frustrating the decree granted in favour of the plaintiff for more than 10 years. Hence, I see no merit in the revision.

7. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

9th September, 2016
Rds

P.NAVEEN RAO,J