HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION Nos. 13073, 13080 AND 13180 OF 2010

COMMON ORDER:

The petitioners pray for writ of certiorari to call for the records leading up to and inclusive of orders dated 01.09.2009 in CTA No.33 of 2006 against ARC No.5 of 1997 and CTA No.35 of 2006 against ARC No. 6 of 1997 and quash the orders, as illegal and arbitrary.

The issue arises under the A.P. Cooperative Societies Act, 1964 (for short 'the Act'). The averments necessary for disposal of the writ petitions are as follows:

The 1st respondent raised claim under Section 61 of the Act against the writ petitioners. The 1st respondent prayed for passing of award with interest from 01.01.1997 till the date of realization.

With the assistance of learned counsel appearing for the parties, I have perused the award of 2nd respondent dated 31.01.2006 and the judgment dated 01.09.2009 in CTA Nos.33 and 35 of 2006. The circumstances including the contentions and rival contentions of the parties are not in dispute and no exception to the findings of fact recorded by the Tribunal and the 2nd respondent is pointed out.

Learned counsel appearing for the petitioners, however, by placing reliance upon the statement of account etc. tried to persuade this Court that the 2nd respondent failed to properly reconcile the details given by the petitioners and the net amount determined by the 2nd respondent is unsustainable in law and fact. It is to be noted that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot re-appreciate or re-examine the evidence placed by the parties before the authorities. It is not the case of petitioners that there is perversity in appreciating the evidence and that the documents relied upon by the petitioners are improperly construed. The findings of fact recorded by the 2nd respondent read as follows:

> "This Court is convinced that the defendant 1 & 2 have failed to comply the agreement entered into and pay amount towards supply of cotton. Therefore, the defendant 1 & 2 are liable to pay the due amount to the plaintiff.
>
> The supplies made by the plaintiff to the defendant 1 & 2 and the refund of amount received by the plaintiff and the interest payable by the defendant 1 & 2 of the belated payment is worked out as under:
>
> The statement showing the particulars of M/s.Azamzahi Mills, Warangal.

Date	Particulars	supplied Amount	Interest	repayment	Balance Int.	Balance Pri.	
20.2.02	Bill No.421	584313-35				381393.85	For 100 bales
5-5-92	Bill No.433 For 50 bales	296471-85				80868-20	
27-4-92	Int. upto 27-04-92		23864-37		28864-77	880865.20	
27-4-92	Received DD No.8513, Dt. 24-4-92			250000		650726-57	
17-12-94	Int. from 28-1-92 @ 22%		46431.88		404319-81	65720-57	
19-8-95	Int. from 18-2-94 @ 22%		164226-65		101226-65	65972-57	
19-8-95	Received DD 89794			200000	292047-46	650729	
23-9-95	Int. from 20-8-95		14110-95		14110-95	651729-52	
23-9-95	Rec. DD 396395			200000	306158-41	659729-37	
25.11.95	Int. from 24-9-96		26058-88		26058-88	659729-57	
25.11.95	Rec.DD No. 852839				200000	591946-86	

Now therefore for the aforesaid reasons and by virtue of power vested in me U/Sec.651 of the APCS Act 7 of 1964 as delegated to the vide GO Ms.No.769 F&A (Coop. IV) Department dated 26-10-1977. I Sri T.Venkata Reddy Deputy Registrar/Enforcement Officers, A.P.MARKEFED do hereby order that the defendant 1 & 2 shall pay an amount of Rs.5,91,945-86 and interest @ 22% on the principal amount from 26.11.95 to till the date of realization of the decretal amount. The above amount is recoverable from the defendant 1 & 2 jointly and severally no costs."

The Tribunal recorded the following findings:

" It is the stand of the defendants that the defendant's industry was declared as sick industry and the proceedings are pending before BIFR. As seen from the BIFR proceedings the plaintiff is not a party to the proceedings. It is true that 2nd defendant has approached the BIFR and the orders are obtained. Even as seen from the written arguments it is the stand of the appellant that BIFR orders were passed on 12.01.1993 declaring the industries as sick industries in proceedings of 534/92. As seen from the proceedings dated 19.5.2006 the Hon'ble Board has already passed the orders formulating the scheme. As on today absolutely there is no record placed before this court that the matter is still pending with BIFR. The protection order under Sick Industries Act may be extended only when the matter is pending before BIFR. The present plaintiff is not a party to the proceedings before BIFR and apart from it there is no order of the stay of any proceedings and order clearly indicates scheme period is extended 31.3.2008 only.

From the beginning the defendants are harping upon the issue that BIFR proceeding is pending, so the claim is not maintainable. The basic contention of the defendants is case No.534/92 before BIFR. It is appropriate to mention the crucial averments of the orders.

" In this case an application purported to be under section 22(3) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to the Act has been submitted behalf of M/s National Textile Corporation (APKKM) Ltd. Wherein a prayer has been made for the board passing an order declaring u/s. 22(3) of the Act with respect to the applicant company that the Regional Provident Fund Commissioner. Income Tax Authorities. Sales Tax Authorities. Regional Authorities of ESI situated in the states of Andhra Pradesh, Karnataka, Kerala and Maharashtra may be restrained from attaching the bank accounts and/or movable/immovable accessories to recover the dues of P.F/ESI etc. and also from continuing the penal proceedings and prosecution maintain against the company. The main grounds in support of the application that the company has submitted that the affairs of the company mills/offices will be jeopardized and the application would be put in an embarrassing position by the various statutory authorities such as ESI, RPF Commissioner and Income Tax Authorities in Andhra Pradesh, Karnataka, Kerala and Maharastra and defeat the objective of avoiding litigation between PSUs and Govt. Departments.

After considering the request made by the company this bench declares with respect to National Textile Corporation (APKKM) Ltd., that the operation of any of the contracts assurances of the property, agreements, settlements, awards, standing orders or other instruments in force to which the National Textile Corporation (APKKM) Ltd is a party in respect of Regional Director of ESI. Regional Provident Fund Commissioner. Income Tax Authorities situated in the States of Andhra Pradesh, Karnataka, Kerala and Maharastra shall remain suspended and that all or any of the rights privileges obligations and liabilities accruing or arising there under shall remain suspended for a period of one year with effect from the date of this order:

A perusal of the orders indicates that 2nd defendant has approached the BIFR with a specific request to restrain the certain statutory authorities to proceed against it. Order was also passed suspending claims of various statutory bodies against defendant No.1 fixing for a period for one year. The 1st appellant is not a party to the proceedings before BIFR and no relief sought for against him. The defendants have not placed any record to show that suspension orders BIFR are still in force. So considering the present set of circumstances it cannot be said plaintiff cannot raise his claim against the defendants.

The learned counsel for the appellant relied upon the decision reported in 1990(2) Supreme Court Cases 440. Their Lordships observed that when board declared the industry as sick industry, Gram Panchayat cannot initiate the proceedings for recovery of the tax. But the present case instituted by A.P. State Cooperative Marketing Federation Ltd., which is promoted for betterment of the industries. The defendants have approached the BIFR with specific request on particular aspect and scheme was

> formulated. It is not known whether the period was extended or not. So the decision relied upon has no application to the present facts of the case. The learned arbitrator has rightly considered all the points and accepted the claim of the plaintiff. There are no reasons to interfere with his findings."

Learned counsel appearing for petitioners could not show illegality in the findings recorded in the orders impugned in the writ petitions. The award of rate of interest at 22% per annum from 26.11.1995 till the date of repayment is challenged as exorbitant unavailable and having regard to the fact that the petitioners were sanctioned scheme by BIFR, this Court considers awarding reasonable interest on the principal amount awarded by the Tribunal and 2nd respondent. It is not in dispute that the petitioners have continued to do business as per scheme sanctioned by BIFR and the scheme was operational till 2011.

I have perused the material available on record and having regard to the peculiar facts and circumstances of this case, the findings on the principal amount payable by petitioners as determined by the Tribunal and the 2nd respondent are confirmed. The Awards are modified to the limited extent of changing interest to 12% per annum on the principal amount from 26.11.1995 till the date of realisation.

The writ petitions are allowed- in- part as indicated above. No order as to costs.

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S.V.BHATT, J

Date:30.03.2016
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