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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**WRIT PETITION NO. 2317 OF 2022**

Metal Box India Ltd. …. Petitioner.
V/s
M/s. S.F. Engineer ….. Respondent.
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Mr. Girish Godbole a/w Shruti Tulpule i/b Dastur Kalambi & Associates for the Petitioner.
Mr. Surel Shah a/w Dr. Abhinav Chandrachud i/b Amit S. Mehta a/w Omkar Dalvi & Vinayak Shukla for the Respondent.
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**CORAM: NITIN W. SAMBRE, J.**

**DATE : 16th September, 2022**

**P. C.:**

**1]** Petitioner-tenant is questioning the order dated 23.03.2021 passed below Exhibit-7 in Appeal No. 231 of 2016 arising out of T.E. & R. Suit No.153/165 of 2001 (Metal Box India Ltd. Vs. M/s. S.F. Engineer) whereby prayer of the Petitioner/Appellant in the Appeal moved under the provisions of Order 41 Rule 5 of the Code of Civil Procedure inter alia seeking stay to the operation and execution of the impugned decree dated 28.03.2016 passed in aforesaid suit by the Small Causes Court at Mumbai came to be allowed, subject to payment of compensation of Rs 5,00,000/- per month, excluding contractual rent in respect of the suit premises from the date of decree i.e. 28.03.2016 with further directions to deposit arrears of compensation in lump sum in six equal installments payable on/or before 10th day of each calendar month. It is also directed to deposit compensation amount per month as directed and to file undertaking not to create third party rights in the suit premises till disposal of Appeal. Petitioner is also questioning the orders dated 08.02.2022 passed below Exhibits-38 and 39 whereby prayer for review of the aforesaid orders came to be rejected.

**2]** Facts necessary for deciding present Petition are as under:-

**3]** Petitioner was a tenant of suit premises being Flat No.201 admeasuring 1805 square feet (carpet) and Flat No. 204 admeasuring 1810 square feet (carpet), total area admeasuring 3615 square feet (carpet) with two enclosed Garages being Garage Nos. 7 and 8 admeasuring 171.25 square feet each aggregating to 342.5 square feet (hereinafter referred to as “the suit premises”).

Aforesaid suit premises are situated at Pochkhanwala Road, Worli Mumbai 400025 in the building known as 'Marlow' on plot No.62-B. The suit premises are owned by the Respondent-landlord who is Plaintiff in T.E. & R. Suit No.153/165 of 2001 (M/s. S.F. Engineer Vs. Metal Box India Ltd.) The said suit came to be decreed on 28.03.2016 by Trial Court by observing that Small Causes Court has jurisdiction to entertain, try and decide the suit and Respondent/Plaintiff has validly terminated tenancy as per the provisions of Section 106 of Transfer of Property Act. Petitioner/Defendant was further directed to handover vacant possession of the suit premises with money decree on the issue of arrears of rent. Small Causes Court has further answered issue Nos. 2A, 2B and 2C in the negative, which read thus:-

> "2A. Whether the defendant Company which was not enjoying the protection of MRCA 1999 as on date of filing of this suit i.e. dated 01/03/2001 can subsequently get protection on account of reduction of its share capital below 1 crore and whether under Section 3(1)(b) of said Act ceases to apply on account of such reduction?
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> "2B. Whether the order dated 04.12.2007 passed by Appellate Authority for

> Industrial and Financial Reconstruction in proceedings instituted by defendant No.1 under the Sick Industrial Companies Act, 1985 is not binding on the plaintiff?
>
> "2C. Whether the plaintiff proves that, defendant no.1 has played fraud and by suppression obtained order dated 04.12.2007 from the Appellate Authority for Industrial and Financial Reconstruction under The Sick Industrial Companies Act, 1985 and it operates retrospectively in this suit w.e.f. 10.06.1996 ?

**4]** Petitioner, feeling aggrieved, preferred aforesaid Appeal being Appeal No. 231 of 2016 before the Appellate Bench of the Small Causes Court in which impugned orders referred to above are passed.

**5]** Mr. Godbole, learned Counsel for the Petitioner while questioning the order impugned whereby conditional stay is ordered in favour of the Petitioner, would urge that Petitioner, a public limited company, has suffered erosion of its net worth completely and after suspending operation of manufacturing in 1987, vide order dated 27.05.1988 was declared as a Sick Unit in BIFR Case No. 34 of 1988.

Pursuant to the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter shall be referred to as "SICA Act, 1985") ICICI Limited was appointed as an Operating Agency so as to formulate the Scheme for Rehabilitation. Rehabilitation Scheme formulated by Operating Agency was sanctioned by BIFR on 10.06.1996 which was modified by AAIFR by order dated 18.08.2000. Revival Scheme was accordingly prepared on 03.10.2000 by the Operating Agency and same was under implementation as the Delhi High Court on 16.07.2001 passed an order upholding Revival Scheme dated 03.10.2000 prepared by Operating Agency (ICICI). After the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (hereinafter shall be referred to as "SICA Repeal Act, 2003" for the sake of brevity) was enacted on 01.01.2004 and same was given effect to from 01.12.2016, it appears that Revival Scheme was reviewed which was questioned by the Petitioner in Appeal No. 267/2006 in which Misc. Application No.67 of 2007 was moved, seeking permission for reduction of paid-up share capital. It is claimed that paid-up share capital was reduced to Rs 23,03,000/- and the Scheme dated 10.6.1996 as modified by AAIFR in August, 2000 prepared by Operating Agency on 3.10.2000 and made operative by the Order of Delhi High Court dated 16.07.2001 was updated by the AAIFR by its Order dated 4.12.2007. The implementation of aforesaid Scheme, which was updated was extended by BIFR till 30.06.2018. On 28.05.2016 after Insolvency and Bankruptcy Code, 2016 (hereinafter shall be referred to as “IBC, 2016” for the sake of brevity) came into force vide Notification dated 01.12.2016, SICA Repeal Act, 2003 was given effect to. It is claimed by Mr. Godbole that implementation of the updated Revival Scheme was extended till 31.03.2022 which is further extended till 31.3.2027.

**6]** In this backdrop, contentions of Mr. Godbole are, once paid-up capital of the Petitioner-Company is brought below Rs 1 crore, the suit in question is not maintainable. That being so, decree ought to have been stayed by the Appellate Court in its entirety for want of jurisdiction of the Small Causes Court to entertain and decide the suit. According to Mr. Godbole, Petitioner is a sick Company for which updated Revival Scheme is being implemented which is in operation till 31.03.2027. Appellate Court in the aforesaid backdrop should have given consideration to the aforesaid special circumstances, particularly having regard to the precarious financial condition of the Petitioner-Company. As such, he would urge that Appellate Court ought not to have imposed unrealistic financial burden on the Petitioner-Company as pre-condition to stay the decree. Same is causing substantial financial hardship to the Petitioner making the implementation of revival scheme impossible.

**7]** Further contention of Mr. Godbole is, SICA Repeal Act, 2003 was brought into force with effect from 01.12.2016 which is subsequent to the promulgation of IBC, 2016 and in such an eventuality sub-clause (b) of Section 4 of SICA Repeal Act, 2003 saves the Scheme sanctioned under sub-section (4) of Section 18 of the SICA Repeal Act, 2003. As such, Petitioner is entitled for benefit of the same. His further contentions are, Revival Scheme which was endorsed by Appellate Authority and granted extension up to 31.03.2027 shall be deemed to be an approved Resolution under Section 31(1) of the IBC, 2016. In such an eventuality, his contentions are, Decree ought not to have been conditionally stayed by the Appellate Court. He would also invite attention of this Court to the very object of the provisions of Section 22 of the SICA, 1985, which provides for suspension of legal proceedings etc., particularly when such proceedings are having effect on finances or working of the Company. In this background, he would urge that the Apex Court in the matter of *Raheja Universal Ltd. Vs. NRC Ltd. & Ors.*, reported in **(2012) 4 SCC 148** has observed that no impediment should be caused to the smooth execution of the Scheme for revival of sick industrial company and as such there should have been the blanket stay to the impugned order passed by the Small Causes Court.

**8]** While countering aforesaid submissions, Counsel for the Respondent-decree holder would urge that Defendant has already suffered decree way back in 2016 as their paid-up share capital exceeded Rs 1 crore under Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 which permits maintainability of the suit in question. According to him, Appellate Court was justified in exercising its jurisdiction pursuant to the provisions of Order 41 Rule 5 of the Code of Civil Procedure having regard to the law laid down by the Apex Court in the matter of *Atma Ram Properties (P) Ltd vs. Federal Motors (P) Ltd*, reported in **(2005) 1 SCC 705**. According to him, Respondent-landlord is deprived of fruits of decree since last more than seven years without there being any receipt of compensation. It is claimed that even maintenance amount is not paid by the Petitioner. It is brought to our notice that suit was decreed after 16 years. According to the Counsel for Respondent-decree holder, compensation fixed by the Appellate Court is on lowest pedestal, as could be verified from the report of valuer produced on record. As such, orders impugned are neither perverse nor arbitrary and the discretion exercised by the Appellate Court is just and proper. It is further claimed that SICA Appellate Bench or competent court has never passed order restraining Small Causes Court or Appellate Court from continuing with the proceedings nor there is any order of stay to the proceedings in question from any Tribunal or Authority. It is claimed that the Apex Court in *Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras* reported in **(1992) 3 SCC 1** has made it clear that Section 22 of SICA, 1985 will not operate as an embargo on the right of the Respondent to claim relief of eviction. According to him, in view of reliance placed by the Petitioner on Notification dated 24.05.2017 being the Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017, the Scheme sanctioned under the provisions of SICA , 1985 would constitute “approved resolution plan” under IBC, 2016. As such, according to him, there cannot be any question of moratorium by virtue of provisions of Section 14 of the IBC, 2016. In this backdrop, it is claimed that Court below was justified in passing the order impugned and as such, sought dismissal of the Petition.

**9]** This Court has appreciated rival claims. After Rent Act came into force in 2000, proceedings were taken out for termination of tenancy and accordingly suit in question came to be decreed after appreciating Written Statement of the Petitioner. In the intervening period i.e. during the pendency of the suit, Petitioner made request before the Appellate Authority for industrial and financial reconstruction for reduction in existing paid-up share capital of Metal Box by 99% on equity capital and 99% on the preference share capital in terms of Section 18(2)(f) of SICA, 1985 which was allowed on 4.12.2007. Accordingly, it is claimed that Plaint was duly amended. Accordingly, issue was framed by the Small Causes Court as is apparent from Issue Nos. 2A, 2B and 2C. After Small Causes Court decreed the suit, Petitioner applied for grant of interim relief under Order 41 Rule 5 of the Code of Civil Procedure. It was brought to the notice of the Appellate Court by the Petitioner that Petitioner is entitled for blanket protection in view of Revival Scheme which is to be implemented upto 31.03.2027 pursuant to the provisions of SICA, 1985 and also IBC, 2016. During the hearing of said Application, it was brought to the notice of the Appellate Court by the Respondent that maintenance of Rs 43,76,000/- was incurred by the Respondent from 2001 to 2016, Valuer's Report justifying rent which is claimed by the Respondent having regard to carpet area of Flats and Garages as referred to in the beginning of this order. Accordingly, Appellate Court passed an order on 23.03.2021 granting prayer of the Petitioner for stay, however directed the Petitioner to pay compensation of Rs 5 lakhs per month as against much higher market rent of the suit property having regard to its carpet area, location and covered Garage facility.

**10]** Petitioner has sought review of the said order dated 23.03.2021 which came to be rejected by the impugned order, so also application for intervention.

**11]** Fact remains that similar issue was contested by the Petitioner as regards its entitlement for protection on account of reduction of share capital below Rs 1 crore vide Issue No.2A, Order dated 04.12.2007 passed by the Appellate Authority for Industrial and Financial Reconstruction under SICA, 1985 vide Issue No.2B and alleged suppression by Respondent/Defendant vide issue No.2C.

**12]** This Court is required to be conscious to the fact that this Court is only dealing with the impugned order to the extent as to whether such impugned order amounts to putting the Petitioner to unreasonable condition which goes contrary to the provisions of Order 41 Rule 5 of the Code of Civil Procedure. No doubt, Appellate Court has every power to put a party to reasonable condition, who is seeking stay to the decree. In the case in hand, stay is sought to the execution of decree which has an element of money decree. Conditions which are incorporated by the Appellate Court by directing the Petitioner to pay amount of Rs 5,00,000/- towards the compensation for each calendar month appear to be quite reasonable, having regard to location of the property in one of the prime areas of Mumbai, carpet area of the property including covered Garages. The fact that Petitioner has not paid maintenance for quite a long period of time i.e. from 2001 and enjoying the property free of cost must have been prevailed before the Appellate Court.

**13]** The issues which are sought to be canvassed by Mr. Godbole are already dealt with by the Small Causes Court while deciding Issue Nos. 2A, 2B and 2C and these issues are already subject matter of consideration before the Appellate Court in Appeal in which orders impugned are passed. For the purpose of deciding present Writ Petition in the matter of challenge raised by the Petitioner by relying on the provisions of SICA Act and IBC, 2016 what is to be noted is, whether reasons furnished by the Small Causes Court in its judgment which is a subject matter of challenge in Appeal are sound and based on legal provisions. I have perused the reasoning from paras 24 to 27. Small Causes Court has already considered effect of Section 22 of the SICA , 1985 and the effect of the Apex Court Judgment in Chamundi Mopeds (supra) and has proceeded to negate the claim of the Petitioner by decreeing the suit.

**14]** Reasons furnished by the Court below appear to be sound for the purpose of deciding present Writ Petition. Appellate Court shall be dealing with the above referred submissions while deciding the Appeal on merit, without being influenced by the findings recorded in the present order.

**15]** In this backdrop, Petitioner, in my opinion, has failed to demonstrate as to how order of revival passed under Section 18 of SICA, 1985 or Rehabilitation Scheme which is to be implemented till 31.03.2027 will encroach upon legal rights of the Respondent of claiming lawful possession under the Rent Act from the Petitioner. Petitioner, in my opinion, has failed to demonstrate that order impugned suffers from violation of any of its legal right either under SICA, 1985 or order of revival which is to be implemented till 31.03.2027. I am, therefore, of the view that the order impugned passed by the Appellate Court putting the Petitioner to reasonable conditions is quite justified. That being so, no case for grant of relief under extraordinary and supervisory jurisdiction of this Court is made out. Petition as such fails and same stands dismissed.

**16]** Hearing of the Appeal being Appeal No. 231 of 2016 preferred by the Petitioner and pending before the Appellate Bench of the Small Causes Court is expedited. It is directed that hearing of the said Appeal be concluded within a period of one year.

**17]** Petition is accordingly disposed of in the above terms.

**[ NITIN W. SAMBRE, J. ]**