IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2025

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THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

WP No.1665 of 2019

M/s.Annam Steels Pvt Ltd
Rep by its Director C.Vijay Kumar
3/3 Second lane
T.H.Road, Washermenpet
Chennai-21 : Petitioner

Versus

1.Industrial Development Bank of India Limited
Rep by its chairman and Managing director
IDBI TOWER, Caffee parade
Mumbai- 400 005

2.Industrial Development Bank of India limited
Rep by General manger
No 115 Anna salai
Saidapet Chennai-15

3.M/s.Origin Agrostar Limited
(formerly known ss DSQ BIOTECH LTD)
No.15 Third cross street
West CIT NAGAR
Nandanam, Chennai-35

4.State Industries Promotion Corporation of
Tamil Nadu Ltd
No.19-A Marshalls Road
Egmore chennai-8

5.The Official Liquidator
O/o. the Official Liquidator,
High Court, Madras, Corporate Bhawan,
29, Rajaji Salai, Chennai-1 : Respondents

(R5 is impleaded vide order in
WMP No.11106 of 2019 dt. 28.08.2019)

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the first respondent to return to the petitioner the auction amount of Rs 5.02 crores received pursuant to the sale certificate in certificate of Immovable property (No 18/2011(issued by the Chennai Debts Recovery Tribunal -2 Chennai-2)

For Petitioner(s):
Mr.R.N.Amarnath

For Respondent(s):
Mr.E.Balamurali, for
M/s.Shivakumar and Suresh for R1 and R2
Mr.Abhishek Murthy for R4
Mr.S.Gopalakrishnan for R5
R3-Not ready in notice

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

Considering the nature of disputes raised in the affidavit dated 09.10.2018, we find that serious disputed questions of fact arise. Therefore, we dispose of the petition with liberty to petitioner to take such steps as advised, in accordance with law, including filing of suit.

2. Time spent from the date the petition was received by Court i.e. 09.10.2018 until today shall be excluded while computing limitation.

3. We find support for this view in paragraphs 12, 13, 16, 17 and 18 of the judgment of a Coordinate Bench of the Bombay High Court in ***Maharashtra State Farming Corporation Ltd. v. Belapur Sugar and Allied Industries Ltd.***[1], which read as under:

> *"12. Is the defence of the company claiming rent of their properties in possession of the Corporation from the year 1964 legally sustainable? It is not in dispute that the claim of rent is unconnected with the claim of the Corporation against the Company for non-payment of the sugarcane supplied during the seasons 1985-1986 and 1986-1987. The legal position is well settled that a plea in the nature of equitable set off is not available when the cross demands do not arise out of the same transaction. The law recognises the right of equitable set off*

1 (2004) 3 Bom 480

provided the claim arises out of the same transaction which is the foundation of plaintiff's claim and so long as it has not become time barred; the underlying principle being that it would be inequitable to drive the defendant to separate suit for the purpose. In the present case, the condition precedent from claiming equitable set off is not made out and cannot be said to be available as the cross demands do not arise out of the same transaction. The learned counsel for the company sought to urge that insofar as the proceedings for winding up of the company is concerned, if a plea of equitable set off is raised by the company, that would furnish the reasonable excuse for non-payment and the company cannot be said to have neglected to pay the debt due to the petitioner despite service of the statutory notice. He placed reliance on C.A. Galiakotwala and Co. Pvt. Ltd., 1984 Vol. 55 Company Cases 746. The learned counsel for the Company would also urge that section 3 of the Limitation Act only bars the remedy but does not destroy the right and therefore, it is lawful for the company to adjust even time barred claim of rent against the Corporation and thus, there was valid defence in opposition to the petition for winding up of the company. In this regard, the learned counsel placed reliance on the judgment of the Supreme Court in Punjab National Bank v. Surendara Prasad Sinha, AIR 1992 SC 1815.

13. When the claim of equitable set off does not arise out of the same transaction on which the Corporation's claim is founded, the prerequisite condition of equitable set off is not made out and such plea cannot be considered to be the plea of valid set off; much less in the facts and circumstances of the present case the plea of equitable set off can be said to be a bona fide defence to constitute reasonable excuse for non-payment by the company in opposition to the petition for winding up. In this view of the matter the observation made by the learned Company Judge that the company has a plausible defence insofar as their counter-claim of rental charges for three years prior to the filing of the company petition was not justified. However, the fact of the matter is that the learned Company Judge has held in an unequivocal terms that the company has no valid defence against the Corporation in respect of the claim of Rs. 59,73,348.75 and Rs. 22,35,251.28. As regards the Corporation's claim in the sum of Rs. 11,32,974.97 in respect of the sugarcane supplied for the season 1985-1986, the learned Company Judge cannot be said to have erred in observing that there was genuine dispute. The learned Company Judge in his order observed thus—

"It is the specific case of the Company that they had paid the

said amount to the petitioners under two separate cheques. It is not disputed by the petitioners that they had received the payment towards their bills dated December 16, 1986 and December 30, 1986. However, the petitioners say that the said amount was appropriated by them towards their earlier bills and this was done with the consent of Mr. Maheshwari, Director of the Respondent Company. On perusal of the correspondence between the parties, it is clearly seen that by their letter dated January 20, 1987, the Respondent Company categorically disputed the case of adjustment sought to be made out by the petitioners. It was specifically averred in the said letter that Mr. Maheshwari has never agreed to such adjustment. In my opinion, the dispute raised by the petitioners in that behalf cannot be said to be frivolous or without any substance."

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16. In Rameshwarlal, the Supreme Court held thus—

"2. It is not necessary for us to go into the question of the legality of the order of the High Court in refusing to grant the relief. It is axiomatic that the exercise of the power under Article 226 being discretionary, the learned Single Judge as well as the Division Bench have not exercised the same to direct the respondent to pay the alleged arrears of salary alleged to be due and payable to the petitioner. Under these circumstances, the only remedy open to the petitioner is to avail of the action in the suit. Since the limitation has run out to file a civil suit by now, which was not so on the date of the filing of the writ petition, the Civil Court is required to exclude, under section 14 of the Limitation Act, 1963, the entire time taken by the High Court in disposing of the matter from the date of the institution of the writ petition.

3. Normally for application of section 14, the Court dealing with the matter in the first instance, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in the Civil Court, the petitioner cannot be left remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bona fide, needs to be excluded. The petitioner is permitted to issue notice to the Municipality within four weeks from today. After expiry thereof, he could file suit within two months thereafter. The *trial Court would consider and dispose of the matter in accordance with law on merits."*

17. We are of the view that the Corporation having pursued winding up petitions and appeals before this Court diligently and bona fide, the time taken in the said proceedings needs to be excluded.

18. Resultantly we dispose of the four appeals by the following order: The Maharashtra State Farming Corporation Ltd. is granted two months time to file the suit for recovery of the due amount against the Company viz. Belapur Sugar and Allied Industries Ltd. The time taken by the Maharashtra State Farming Corporation Ltd. in prosecuting the winding up petition and the appeals before this Court shall be excluded under section 14 of the Limitation Act, 1963. The company, if advised and legally available, may also pursue appropriate remedy for its claim against the Corporation. Obviously claim of the parties shall be considered in accordance with law. For a period of two months, the Government guarantee furnished by the Maharashtra State Farming Corporation Ltd. shall remain operative and thereafter, the said Government guarantee shall stand discharged unless ordered otherwise."

4. Therefore, the time taken by petitioner in prosecuting this writ petition shall be excluded under Section 14 of the Limitation Act, 1963.

5. All rights and contentions otherwise available are kept open.

6. There shall be no order as to costs.

(K.R.SHRIRAM, CJ.) **(SENTHILKUMAR RAMAMOORTHY, J.)**

02.01.2025

Index : Yes/No

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To

1.Chairman and Managing director
Industrial Development Bank of India Limited
IDBI TOWER, Caffee parade
Mumbai- 400 005

2.General Manager
Industrial development Bank of India limited
No 115 Anna salai
Saidapet Chennai-15

3.State Industries Promotion Corporation of
Tamil Nadu Ltd
No.19-A Marshalls Road
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4.The Official Liquidator
O/o. the Official Liquidator,
High Court, Madras, Corporate Bhawan,
29, Rajaji Salai, Chennai-1

THE HON'BLE CHIEF JUSTICE
AND

SENTHILKUMAR RAMAMOORTHY, J.

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