Bombay High Court Madalsa International Ltd. & ... vs Central Bank Of India on 11 December, 1997 Equivalent citations: 1998 (4) BomCR 124, 2000 99 CompCas 153 Bom Author: V Tipnis Bench: V Tipnis, M R Desai ORDER V.P. Tipnis, J. 1. Central Bank of India filed a suit being Suit No. 278 of 1995 against the (1) Madalsa International Ltd. a company incorporated under the Companies Act, 1956, (2) Deepak Bhandari and (3) Hotel Emerald Pvt. Ltd. a company incorporated under the Companies Act, 1956 for recovery of large amount of more than Rs. 5 crores. Ultimately the parties reached a settlement and a decree on admission was passed on 16-4-1996 for a reduced amount of Rs. 1.34.94.692/-. The decree also provided that the decree shall not be executed and shall be marked as satisfied on the defendants jointly and severally paying the decretal amount as mentioned under Clause (2) of the said decree on admission. It provided payment of a sum of Rs. 75, lacs within two months from the date of execution of the terms and the balance was to be paid in 9 monthly instalments each for minimum amount of Rs. 50 lacs, the first of which shall be paid on or before 30th June, 1996 and each subsequent instalments on or before the last day of each succeeding month so that the entitle balance decretal amount shall be paid on or before 31st March, 1997. Under the very consent decree Hotel Emerald Private Limited defendant No. 3, created mortgage in favour of the plaintiffs to secure the dues under the decree. It was contemplated that before the mortgage is created the plaintiffs Advocates will have to be satisfied as to the defendant No. 3's marketable title to the said property and property being free from encumbrances. The defendant No. 3 Hotel Emerald Private Limited gave an undertaking to this Court to create mortgage as agreed. The decree also mentions regarding several undertakings by defendant Nos. 1 to 3 for creating the mortgages in respect of the property mentioned therein and also make out marketable title to the properties so agreed to be mortgaged. In the event of default it was provided that the plaintiff shall be at liberty to forthwith execute the decree and claim the entire decretal amount. The terms inter alia also contemplated sale of the properties described in Exhibits A and B by sale in execution in the event of defendants Nos. 1 to 3 committing any default in payment of any instalments as provided in clause (2) of the decree or in case of breach of any other terms and conditions of the decree. Clause 8 which is relevant is as under : "In the event of defendants committing any default in the payment of the instalments as specified in clause 2 above and/or breach of any other terms hereof, the Court Receiver High Court Bombay shall forthwith stand appointed as Receiver in respect of the stocks of good and book debts described in Exhibits A-4, A-5, A-7, D-7 and D-8 to the plaint and the properties described in annexure A and B hereto without any further orders from this Hon'ble Court with full power to take possession of said securities, forcibly if necessary and to sell the same in execution by public auction or private treaty and to hand over the net sale proceeds and/or realisation thereof to plaintiffs after deducting his cost, charges and expenses." 2. After the decree was passed, absolutely no payment was made and as such terms of the decree were breached by the defendants and the plaintiff moved the Receiver to take steps as were contemplated under Clause (8) of the decree i.e. to take forcible possession of

the properties of which he was appointed Receiver. 3. Thereafter the defendants took out the Chamber Summons No. 428 of 1997 praying that the execution of the aforesaid decree be stayed against all the defendants and in particular against defendants Nos. 2 and 3. 4. Before the learned Judge it was contended that the defendant No. 1 has filed a Reference with the Board of Industrial and Financial Reconstruction (for short BIFR) on 19.3.1997 and since the defendants Nos. 2 and 3 are guarantors, they are also entitled to protection under section 22(2) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short SICA 1985) and the decree cannot be executed against their estate without obtaining permission of BIFR. The plaintiffs have contended that under the provisions of section 22 of the SICA 1985, the guarantors cannot plead that the proceedings against them have to be suspended. Submissions were made before the learned Judge and authorities were cited on interpretation of section 22 and as to whether the guarantors are also protected under the provisions of said section. The second submission on behalf of the plaintiffs was that mere filing of the Reference under the S1CA 1985 does not amount to an inquiry and as such no impediment is created by the provisions of section 22 and SiCA 1985 as contended by the defendants. The learned Judge elaborately considered the scheme of SICA 1985 referring in detail to various sections of the said Act as also decisions of Andhra Pradesh High Court reported in Sponge Iron India Limited v. Neelima Steels Limited, 1991 Bank.J. 204 (A.P.) : 68 Company Cases 201, Calcutta High Court reported in Bengal Lamps Limited v. Furmanite Nicos Limited 72 Company Cases 146 and Allahabad High Court reported in Industrial Finance Corporation of India and another v. Maharashtra Steel Limited & others and observed that the learned Judge was in agreement with the view of the Calcutta High Court and was unable to subscribe to the view of the Andhra Pradesh High Court. The learned Judge also referred to the observations of another learned Single Judge of this Court and ultimately came to the conclusion that no inquiry could be said to be pending under section 16 of the SICA 1985 and therefore section 22 of the SICA 1985 cannot be said to be attracted in the facts and circumstances of the case. In view of the said finding the learned Judge felt it unnecessary to go into the question whether the expression 'suit' occurring in section 22 which has been added by amendment in the year 1993 includes execution proceedings or not. It is on this ground the learned Judge by his Judgment and order dated 11-4-1997 dismissed the Chamber summons. Aggrieved by this order the original defendants have preferred this appeal. 5. We have heard Shri Doctor, learned Counsel for the appellants and Shri Diwan, learned Counsel for the respondents, original plaintiffs. It was an agreed position before us that in view of the Division Bench decision of this Court dated 8.8.1997 in Real Value Appliances Limited v. Vardhaman Spinning & General Mills Limited : Appeal No. 1193 of 1996 dated 8.8.97 : 1997 VI L.J. 10, in the facts and circumstances as obtainable on the date of the order of the learned Judge, impugned herein cannot be faulted. 6. However, Shri Doctor, learned Counsel appearing for the appellants contended that although the reference filed by the appellant No. 1 was rejected by the BIFR the appeal has been filed on 15.9.1997 before the appellate forum under section 25 of the SICA 1985 and

as such the provisions of section 22 would be attracted. 7. The provisions of section 25 of the SICA 1985 show that "any person aggrieved by an order of the Board made under this Act may, within forty five days from the date on which a copy of the order is issued to him, prefer an appeal to the Appellate Authority". Sub-section (2) of section 25 further provides that the Appellate Authority may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify, or set aside the order appealed against or remand the matter to the Board for fresh consideration. Section 22 of SICA 1985 provides that where an inquiry under section 16 is pending or any scheme referred under section 17 is under preparation or consideration or 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 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 by distress or the like against any of the properties of industrial company or for the appointment of a Receiver in respect thereof and no suit for the recovery or for 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. In view of this it was an agreed position before us that by virtue of the appeal of the industrial company pending before the Appellate Authority, during the pendency of his appeal the situation has changed and the provisions of section 22 of the SICA 1985 have become operative. Therefore in this appeal on the basis of the aforesaid developments question which is required to be considered is as to whether under the provisions of section 22 of the SICA 1985 the Chamber Summons for stay of execution is required to be allowed. 8. Shri Doctor, learned Counsel for the appellants, read out the provisions of section 22 and contended that the word 'suit' mentioned in the amended portion of section must include execution proceedings as well. He further submitted that the suit of proceedings are suspended not only as against the industrial company but also such proceedings cannot be continued without the consent of the Board even as against the guarantors. In this behalf he emphasized the following words in the amended portion of the section i.e. 'or of any guarantee in respect of any loans or advance granted to the industrial company'. 9. In support of his submission that the word 'suit' in the section must include execution. Shri Doctor relied upon the following extracts on pages 2336 and 2338 from Venkataramaiya's Law Lexicon 1982 2nd edition : "Suit. The word"suit" has no doubt not been defined anywhere and is word of very wide import. The dictionary meanings of the word are so comprehensive as to take any request to any person, in particular, to a Court of Law or Tribunal for redress to any person, in particular, to a Court of Law or Tribunal for redress. In Law, it means vide Mukherjee, Law Lexicon at page 529. 'Suit' in its common parlance is a term of wide amplitude. Broadly a 'suit' is a proceedings in a Court of justice for the enforcement of a right denoting a legal proceedings

of a civil kind. It is a proceeding in a Court according to the forms of law to enforce the remedy to which a party deems itself entitled. Lord Coke defines a suit to be 'actio nihil aliud est quam jus prosequend in judico qunod licui debetur meaning' an action is nothing else that the right of pursuing in a Court of justice, that which is due to one. 'Blackstone simply says that a 'suii' is legal demand of one's rights. In its generic sense, a 'suit' is the pursuit or prosecution of some claim. The term 'suit' in its comprehensive sense may be treated as applying to any original proceedings in a Court of justice by which a party pursues the remedy which the law grants him. The modes of proceedings may be various depending upon the different stages in the litigation, that is, proceedings in the original Court, Court of appeal, proceedings in the nature of review or revision and execution proceedings. The legal significance of the word 'suit' is very broad, and the term has also a much narrower meaning when it is examined in the procedural sense." "No definition is given of the term"suit" either in the Act or in -the Civil Procedure Code. The term "suit" has sometimes been interpreted as not including an appeal but at the same time it has also been at places interpreted to include an appeal which is regarded as a continuation of the suit. The meaning to be given to the term "suit" should depend on the context in which the term is used in the Civil Procedure Code. Special procedure has been provided for appeals, and the term "suit" appearing in the procedure prescribed for original Courts is, therefore, taken as not including an appeal. But this does not however, mean that the legislature has always used the term "suit" in the same context. At places it has been used in its wider sense as including an appeal also." 10. Shri Doctor next relied upon the Wharton's Law Lexicon 14th edition and especially the following extract appearing on page 387 thereof : "Execution - the last state of a suit whereby possession is obtained or anything recovered by a judgment. It is styled final process, and is regulated by R.C.C. 1883, Ord. XLII, R. 17 which allows immediate execution in ordinary cases." 11. Shri Doctor next relied upon the decision of the Apex Court reported in Dokku Bhushayya v. Katragadda Ramakrishnayya and others , and paragraphs 4, 8, 9 (last part), 20 and 22 which are as under : "4. Order 32, R. 7 of the present Code corresponds to section 462 of the Code of 1882. It has been settled since the Code of 1882 was in force that the provision under consideration applied to proceedings in execution though it only mentions agreement or compromise with reference to the suit. As long ago as 1901 Jenkins, C.J., said in Virupakshappa v. Shivdappa, I.L.R. 26 Bom. 109 at p. 114."I will first deal with the question whether section 462 applies to a compromise of execution proceedings. On the words of the section I think it does; applications in execution are proceedings in the suit so that a compromise of such a proceeding would be a compromise with reference to the suit. "This view has been followed ever since." 8. Beyond this, I find no justification for limiting the operation of the rule. I observe that Jenkins, C.J., in what I have earlier read from his judgment, said that the rule applies to a compromise of execution proceedings". Therefore, it seems to me that according to the learned Chief Justice it applies, to all compromises of execution proceedings, excepting of course compromises concerning the conduct of them and this whether the compromise directly affects the rights or liabilities

under the decree or not. I think the principle of the rule was correctly stated by Heaton, J., when dealing with section 462 of the Code of 1882 he observed in Gurumallapa v. Mallappa, I.L.R. 44 Bom. 574 : A.I.R. 1920 Bombay 37. That section, I think necessarily implies that during the continuance of proceedings in Court the dispute between the minor and another, party which the Court has to decide could not be compromised except by the guardian ad litem, of the minor and him only with the leave of the Court". I think any compromise of a proceeding which concerns the dispute involved in it would require the sanction of the Court should also point out that sub-rule (5) of Rule 3 of Or. 32 provides that a person appointed guardian for the suit for minor shall unless his appointment is terminated is continued as such throughout all the proceedings arising out of the suit including the proceedings in execution of a decree." 9. . . . . Quite obviously the word "suit" in this observation would include a proceeding in execution. 20. The next limitation is that the protection is only during the pendency of the suit. When does a suit come to an end? It has been held that for the purpose of the said rule an execution proceeding is a continuation of a suit. 22. We agree with these observations. The result is that Order XXXII, R. 7 of the Code will apply only to an agreement or compromise entered into by a guardian of a party to the suit, who is a minor, with another party thereof during the pendency of the suit and the execution proceedings." 12. Shri Doctor next relied upon the decision of the Apex Court reported in Bansidhar Sankarlal v. Md. Ibrahim and another. , and to the following observations in paragraph 7 thereof :- ". . . . . the contention raised on behalf of Bansidhar loses all significance for an execution application is only a continuation of the suit and the control of the High Court ensures during the execution proceedings also. . . . ." 13. Reliance was next placed by Shri Doctor on the decision of the Madras High Court reported in Muthalakhammal v. Narappa Reddiar, A.I.R. 1993 Madras 456, wherein it was held that the Order 32,. Rule 7 Schedule 1 of CPC applies to execution proceedings, on the basis that the proceedings in execution are proceedings in a suit and that compromise in such proceedings is compromise with reference to the suit. 14. Next decision cited by Shri Doctor was the decision of the Delhi High Court reported in M/s Prakash Playing Cards Manufacturing Company, Delhi and others v. Delhi Financial Corporation, New Delhi, A.I.R. 1980 Delhi 48 wherein in paragraph 5 a reference was made to Mukherjee Law Lexicon P. 529 on "suit" and thereafter it was observed as under : ". . . . . However, it is seen that the expression derives colour from its setting and has been interpreted in different ways in different legislative contexts. In Kripa Singh A.I.R. 1928 Lah. 627 a Full Bench of the Lahore High Court pointed out that the words"suit, proceedings" and words of a similar connotation have different meanings in different statutes and it is not possible to lay down a general rule of interpretation which would be applicable to all cases. In each particular case the question has to be examined in reference to the context and that meaning is to be preferred which will best fit in with it". 15. Reliance was next placed on the decision of the Allahabad High Court Achaibar Singh v. Ram Muraf, wherein the question was what is the ambit of the term"suit" in section 6 of the Specific Relief Act and whether it would include an objection under section 47

of the Code of Civil Procedure filed against the execution of the decree passed in suit and it was held that the term "suit" under section 6 of the Specific Relief Act would include an objection under section 47 of the C.P.C. filed against the execution of decree passed in such a suit and in view of the bar created by the provisions of sub-section (3) of section 6 of said Act, no appeal would lie from an order passed on such an objection filed under section 47 of the C.PC. 16. Shri Doctor also relied upon the decision of Lahore High Court reported in Bhai Kirpa Singh v. Rasalldar Ajaipal Singh & others A.I.R. 1928 Lahore 627. In the said case the Full Bench of Lahore High Court was concerned with the provisions of Sikh Gurudwaras Act (Punjab Act 8 of 1925). In the aforesaid judgment an occasion arose as to what is the meaning of the word 'suit' and 'proceeding'. The learned Judges observed that it is possible to cite an equally large number of cases in which a narrower meaning has been attached to the word 'suit' as denoting the stage of the litigation before the Court of the first instance, beginning with the filing of the plaint and ending with the decree or final order passed by such Court. Finally after considering several authorities on the issue, the learned Judges observed as under : ".....An examination of these and other cases leads to the conclusion that"suit","proceeding" and words of similar connotation have different meanings in different statutes and that it is not possible to lay down a general rule of interpretation which would be applicable to all cases. In such particular case the question has to be examined in reference to the context and that meaning is to be preferred which will best fit in with it....." 17. Shri. Doctor submitted that taking into consideration the object of the Act and the fact that section 22 was amended in the year 1993 and it was provided that no suit for 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 ot the Board or as the case may be, the Appellate Authority, the word 'suit' must be given wider meaning so as to include also execution as such interpretation would advance the remedy and the object to be achieved by the provisions of the SICA 1985. In this behalf Shri Doctor relied upon the decision of the Apex Court reported in Kanai Lal Sur v. Paramnidhi Sadhukhan and especially to the following observations : ".....However, in applying these observations to the provisions of any statute, it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constitutions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy then the courts would prefer to adopt

the latter construction." Shri Doctor also relied upon the decision of the Apex Court reported in Union of India and others v. Filip Tiago De Gama of Vedem Vasco De Gama, A.I.R. 1990 S.C. 981 : 1990 Mh.L.J. 724 and especially the observations in paragraph 16 thereof which is as under: "16 The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question that does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation."Words are certainly not crystals, transparent and unchanged" as Mr. Justice Holomes has wisely and properly warned. Towne v. Fisher, 1918(245) U.S. 418, 425. Learned Hand, J„ was equally emphatic when he said : "Statutes should be construed not theorems of Euclid, but with some imagination of the purposes which behind them"Lenigh Valley Coal Co. v. Yensavage, 218 F.R. 547." 18. Shri Doctor submitted that the object of the amendment to section 22 in the year 1993 was to protect not only the Industrial Company but also directors thereof and guarantors in respect of any guarantee given as against any loans or advances granted to the industrial company. Shri Doctor submitted that in most of the cases guarantors are normally directors or their close relations who are shareholders and if such directors or guarantors could be proceeded against then obviously the revival of the company would be in jeopardy. Shri Doctor also relied upon the decision of the Apex Court reported in Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Lid. and another in support of his submission. 19. Shri Diwan, the learned Counsel appearing for the respondent plaintiff Bank contended that in view of the Division Bench decision of this Court referred to above, the learned Counsel for the appellant has to concede that the impugned order on the basis of the facts obtainable on the date thereof cannot be faulted with. Shri Diwan also pointed out that by the decree itself Receiver stood appointed in July, 1996 and if that be so, Shri Diwan contended, that so far as the Receiver's actions contemplated under the decree are concerned they cannot be affected by the pendency of the appeal under section 25 of SICA 1985. In this behalf he relied upon the decision of the learned Judge of this Court reported in Industrial Development Bank of India v. Nira Pulp and Paper Mills Ltd and others Company Cases 811. Shri Diwan also brought to our notice order dated 18-8-1997 passed by the BIFR on the reference made by M/s, Madalsa International Ltd. an industrial company under section 15(1) of the SICA 1985. The said order shows that the learned members of the BIFR took into consideration various orders passed by this Court. They also took into consideration consent terms of the order of the Court especially regarding the Receiver being empowered to take forcible possession as also copy of the plaint in the suit, relevant and material portion of the operative part of the order passed by the Court on 21-3-1997 especially directing the Court Receiver to take forcible possession was reproduced and ultimately it was observed that after careful consideration of the facts and material on record and in the circumstances of the case in particular the proceedings taken before the High Court and the orders passed by the High Court, the Board considers that it would not legally be in order for

them to entertain and proceed with the present reference which was directed to be closed and filed. However, it is an admitted position that the aforesaid order of the Board is being challenged in a pending appeal before the appellate forum under section 25 of the SICA 1985. Shri Diwan also submitted that the word 'suit' will have to be, interpreted in the context in which it is used in a particular statute. He further submitted that same word appearing in the same statute must be interpreted in the same manner and obviously different words appearing in same section or same statute will have to be interpreted differently. In this behalf Shri Diwan relied upon the decision reported in 1828(8) B and 969 Doc v. Dyebalf, wherein learned Chief Justice Lord Tenterden observed as under : "The safest course in this case is to give effect to the particular words of the enacting clause. Where the Legislature in the same sentence uses different words, we must presume that they were used in order to express different ideas. The words are That the house or building shall be held and the land occupied". Here the house was held for one whole year, and the pauper's mother gained a settlement in Little Bolton. The order of sessions must therefore be quashed." Next Shri Diwan relied upon the decision reported in 1966(2) All E.R. 47, Gibson v. Skibs A/s Marina and Orkla Groube, A/B and Smith Coggins Ltd., and particularly the observations at page 478 which is as under : "It will be observed that para (c) of the regulation uses the word 'inspected"; para(a) of the regulation uses the word "examined", and regulation 18 uses the phrase "thorough examination" and defines that particular phrase. There is clearly a difference between a thorough examination" as contemplated by the regulations and an "examination" as contemplated by the regulations. Is there also a difference between "examination" and "inspec- tion" as contempated by the regulations. Prima facie one would except that when two different words, although practically synonymous in ordinary use, are employed in different parts of the same regulation dealing with the same kind of topic, they are intended to have some different meaning." Shri Diwan also brought to our notice the decision of the Apex Court reported in Commissioner of Income Tax, New Delhi (Now in Rajasthan) v. M/s. East West Import & Export (P.) Ltd. (now known as Asian Distributors Ltd.) Jaipur and the observations in paragraph 7 thereof which is as under : "7. The Explanation has reference to the point of time at two places; the first one has been stated as"at the end of the previous year" and the second, which is in issue, is "in the course of such previous year". Counsel for the Revenue has emphasised upon the feature that in the same Explanation reference to time has been expressed differently and if the legislative intention was not to distinguish and while stating" in the course of such previous year" it was intended to convey the idea of the last day of the previous year, there would have been no necessity of expressing the position differently. There is abundant authority to support the stand of the Counsel for the Revenue that when the situation has been differently. There is abundant authority to support the stand of the Counsel for the Revenue that when the situation has been differently expressed the legislature must be taken to have intended to express a different intention." 20. Thus the first question which arise in this case is whether the word "suit' used in section 22 of the SICA 1985 includes in its ambit execution

or execution proceedings. In this behalf it is relevant to notice that prior to the amendment of section 22 it was provided that 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 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 shall lie or be proceeded with further, except with the consent of the Board or, as the case may be the Appellate Authority. Thus it is clear that the proceedings for 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 could not lie and if already taken up could not be proceeded with further except with the consent of the Court or Appellate Authority. It is clear that this was with a view to giving a free hand to the Board of Industrial and Financial Reconstruction for considering whether a company can be made viable and with that purpose it was thought necessary that the properties of the industrial company should not be exposed to coercive action of the nature mentioned in the section. Unamended section did not prohibit or suspend any suit for recovery of money or enforcement of any security against the industrial company and/or guarantee in respect of any loans or advances granted to the industrial company. It is extremely relevant that the word”execution" is used in the unamended section while in the added portion by amendment the word “suit is used. It is also further relevant that various authorities quoted above, clearly show that the interpretation of word ‘suit’ in any particular statute will have to be made in the context in which the same is used. In our opinion the intention and object of the amendment is that not only the coercive action against the industrial company or properties belonging to it should be suspended but also the suit for any recovery of money or enforcement of any security against the industrial company should be suspended. The earlier part takes care of the coercive measures in execution etc. while the latter part obviously suspends the very initiation or if already initiated, prosecution of any suit of the description mentioned therein. Considered in this light we are of the clear opinion that the word”Suit" in the amended portion of section 22 cannot include in its ambit execution or execution proceedings. On this interpretation in fact even if the appeal is pending so far as the execution proceedings are concerned, excepting the properties of the industrial company, there cannot be any bar or no impediment in proceeding further with the same. 21. The second submission is that by amendment not only the proceedings by way of suit for recovery of money or for enforcement of any security against the industrial company are suspended but proceedings against the guarantors is also suspended. We are not at all impressed by this submission. As is clear from the judgment of the Apex Court , the purpose and object of suspension of proceedings etc. under

section 22(1) of the SICA 1985 is to await the outcome of the reference made under the BIFR for revival and rehabilitation of the sick industrial company. The Supreme Court in the aforesaid case referring to the words “or the like” which follow the words “execution’ and”distress" held that it clearly intended to convey that the properties of the sick industrial company shall not be made the subject-matter of coercive action of similar quality and characteristic till the BIFR finally disposes of the reference made under section 15 of the 1985 Act. It is observed that the legislature has advisedly used an omnibus expression “the like” as it could not have conceived of all possible coercive measures that may be taken against a sick undertaking. The Apex Court in the aforesaid case has considered the coercive action under section 29 of the State Financial Corporation Act, 1951 against the sick industrial company. 22. Considering the object and purpose of the SICA 1985 and the scheme of the Act which is clearly for protecting the properties of the industrial company and for enabling the BIFR to have complete free hand for the revival if possible of the sick industrial company, that the provisions of section 22 are enacted. Section 22 in a sense imposes serious restrictions on the rights of the third party against filing of suits of the nature mentioned thereunder or for taking coercive action of the nature mentioned therein mentioned against the industrial company. Apart from the fact that such restrictions will have to be read on strict interpretation they affect the valuable rights, even the rights finalised by the judgment and decrees of the competent courts we find absolutely no ground to read in these provisions that the proceedings against the guarantors or sureties of the company should also stand suspended. The guarantors could be absolute third parties or directors of an industrial company. However, in both cases it would be the guarantors, whether third parties or directors, who would be affected personally; and we see no reason to interpret the section in such a manner that apart from the properties of the industrial company, the legislature intended to protect the personal interest of the guarantors as proceedings against guarantors and their personal property would not affect the revival of the industrial company in any manner whatsoever. In the circumstances the words “of any guarantee in respect of any loans, or advance granted to the industrial company” in the context will have to be read the guarantee given by the Industrial company itself and none else. On the basis of the aforesaid we do not find any force in the second submission of Shri Doctor as well. Defendant No. 3 has nothing to do with defendant No. 1 company. Mortgaged property at Exh. 8 belong to defendant No. 3. 23. In the result we do not find any merit in this appeal and the appeal is dismissed with costs. 24. At this stage the learned Counsel for the appellants prays for stay of this as well as the impugned order to enable the appellants to approach the Apex Court. However, in the facts and circumstances of the case we are not inclined to grant absolute stay as prayed for. We only direct that the Receiver shall take formal possession of the properties mentioned in Exhibit B to the decree and on or after 23rd of January 1998 shall also be at liberty to take actual physical possession even forcibly, if required, and shall take further steps as per the decree in respect thereof. 25. Appeal dismissed.