

M/S Patheje Bros. Forgings & Stamping & ... vs Icici Ltd & Ors on 24 July, 2000

Bench: S.P. Bharucha, M.B. Shah, Ruma Pal

PETITIONER:

M/S PATHEJE BROS. FORGINGS & STAMPING & ANR.

Vs.

RESPONDENT:

ICICI LTD & ORS.

DATE OF JUDGMENT: 24/07/2000

BENCH:

S.P. BHARUCHA. J, M.B. SHAH.J, & RUMA PAL J.

JUDGMENT:

Bharucha, J.

L.....I.....T.....T.....T.....T.....T.....T...J The question in this appeal is whether Section 22 of The Sick Industrial Companies (Special Provisions) Act, 1985 ('the said Act') covers a suit against the guarantor of a loan or advance that has been granted to the concerned industrial company.

On 31st March 1999 the first respondent filed a suit inter alia against the first appellant to recover the amounts of the loans that had been given to the latter. To the said suit were impleaded the guarantors (including the second appellant) and the guarantees were sought to be enforced. A Notice of Motion was taken out in the suit for ad interim relief. which was granted on 1st, April 1999.

On 8th April, 1999 the reference made by the first appellant to be declared a sick undertaking within the meaning of the said Act was registered.

On 9th April 1999 it was brought to the notice of the learned single Judge hearing the Notice of Motion that the reference had been registered; in view of that, he directed the Court Receiver not to take possession pursuant to the ad interim order, if not already taken. On 3rd May, 1999 it was pointed out to the learned single Judge that certain properties mentioned in an exhibit to the plaint were not the properties of the first defendant and that, consequently, the order of ad interim relief would not apply to them. It was argued that these properties belonged to the guarantors and, therefore, considering the language of Section 22 of the said Act, the suit in respect of these properties could not be proceeded with. The attention of the learned single Judge was, on the other hand, drawn to the judgment of a Division Bench of the High Court in the case of Madalsa

International Ltd. and Ors. vs. Central Bank of India, AIR 1998 BOMBAY 247. It had there been held that the provision of Section 22 would not apply in so far as guarantors were concerned. In view of that judgment, the learned single Judge declined to vacate the ad interim order in so far as the guarantors' properties were concerned. The order of the learned single Judge was carried in appeal, and a Division Bench relying upon the judgment in Madalsa International Ltd., summarily dismissed the appeal. That is the order under challenge before us.

It was contended by learned counsel for the appellants that the provisions of Section 22 were clear and that thereunder no suit for the enforcement of any guarantee in respect of any loan or advance granted to the concerned industrial company would lie or could be proceeded with except with the consent of the Board or the Appellate Authority under the said Act. The learned Solicitor General, appearing for the first respondent, submitted that the suit contemplated by Section 22 was a suit only against the industrial company and that it was only when the industrial company was itself the guarantor or it was sued by a guarantor on subrogation that the provisions of Section 22 would apply. He also submitted that the provisions of Section 22 had to be read in harmony with other provisions of the said Act and he relied in particular upon Section 17(3). Section 18(2)(e) and Section 22(A) thereof.

Section 22, so far as it is relevant, reads thus:

"22 Suspension of legal proceedings, contracts, etc (1) 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 sections 25 relating to an industrial company is pending, then notwithstanding anything contained in the Companies Act 1956 (1 of 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 [and no suit for the 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 of the Board or, as the case may be, the Appellate Authority."

The words in the square brackets above were inserted into Section 22 by Act 12 of 1994 and it is these words which are relevant for our purposes. As we read them they provide that no suit.

- a) for the recovery of money or
- b) for the enforcement
 - i) of any security against the industrial company.
 - or ii) of any guarantee in respect of any loans or advance granted to the industrial company.

shall lie or be proceeded with except with the consent of the Board or the Appellate Authority under the said Act. For our purposes, therefore, the relevant words are : no suit ... for the enforcement ... of any guarantee in respect of any loans or advance granted to the industrial company" shall lie without the consent of the Board or the Appellate Authority. The words are crystal clear. There is no ambiguity therein. It must, therefore, be held that no suit for the enforcement of a guarantee in respect of a loan or advance granted to the concerned industrial company will lie or can be proceeded with without the sanction of the Board or the Appellate Authority under the said Act.

It is not possible to read the relevant words in Section 22 as meaning that only a suit against the industrial company will not lie without such consent. There is no requirement in Section 22, as analysed above, that to be covered thereby, a suit for the enforcement of a guarantee in respect of a loan or advance to the industrial company should be against the industrial company.

Section 17(3) empowers the Board to direct the preparation of a scheme adopting all or any of the measures specified in Section 18. Section 18(2) states that the scheme may provide, inter alia, for "the continuation by, or against, the sick industrial company or as the case may be, the transferee company or any action or any other legal proceedings pending against the sick industrial company immediately before the date of the order made under sub section (3) of Section 17". The argument on behalf of the first respondent is that while this provision provides for the continuation of proceedings against the industrial company, there is no provision in the said Act which provides for the continuation of any held up proceeding against the guarantor of a loan or advance to such company and that, therefore, Section 22 should be read as applying only to a suit against the industrial company and not a guarantor. Apart from the fact that, as indicated above, the language of Section 22 is explicit, the scheme would provide for the repayment of the loan or advance and, therefore, would take within its ambit the claim on the guarantee, the question of proceeding with the suit against the guarantor would not arise. On the other hand, if the industrial company cannot be revived by a scheme, the embargo under Section 22 would cease to operate.

Section 22A empowers the Board to direct the industrial company not to dispose of, except with its consent, any of its assets. Learned counsel for the first respondent pointed out that there was no provision in the said Act which empowered the Board to order the guarantor of a loan or advance to an industrial company not to dispose of his assets. This is true, but section 22 provides that the suit would lie or be proceeded with after the consent of the Board has been obtained. It would, therefore, be open to the claimant on a guarantee to obtain such consent from the Board.

It remains to deal with the judgment of the Division Bench of the Bombay High Court in Madalsa International Ltd. The Division Bench found no ground to so read Section 22 as to hold that a suit against the guarantor also stands suspended. It said, "The guarantor 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 guarantor 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 as the guarantee given by the industrial company itself and none else."

We have analysed the relevant words in Section 22 and found that they are clear and unambiguous and that they provide that no suit for the enforcement of a guarantee in respect of any loan or advance granted to the concerned industrial company will lie or can be proceeded with without the consent of the Board or the Appellate Authority. When the words of a legislation are clear, the court must give effect to them as they stand and cannot demur on the ground that the legislature must have intended otherwise.

As of today, there is an appeal in respect of the first appellant pending before the Appellate Authority under the said Act Therefore, the first respondent's suit for the enforcement of the guarantees in respect of the loans granted to the first appellant cannot be proceeded with unless consent as required by Section 22 is obtained.

The appeal is allowed. The order under appeal is set aside.

No order as to costs.