

Nile Ltd. Vs. Renewable Energy Systems Ltd. and ors.

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Court : Andhra Pradesh

Decided On : Apr-18-2006

Reported in : 2006(3)ALD675; 2006(3)ALT746; [2006]132CompCas169(AP); (2006)6CompLJ547(AP)

Judge : C.V. Ramulu, J.

Acts : Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 3(1), 16, 17, 22, 22(1), 25 and 52; [Companies Act, 1956](#); Bombay Village Panchayat Act, 1959 - Sections 129; Code of Civil Procedure (CPC) - Sections 151 - Order 21, Rule 38; [Constitution of India](#) - Article 227

Appeal No. : CRP No. 2445 of 2005

Appellant : Nile Ltd.

Respondent : Renewable Energy Systems Ltd. and ors.

Advocate for Def. : L. Venkateshwar Rao, Adv. for Respondent No. 1 and ;Kanthi Narahari, Adv. for Respondent No. 3

Advocate for Pet/Ap. : I.V. Radhakrishna Murthy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

C.V. Ramulu, J.

1. This civil revision petition is filed under Article 227 of the [Constitution of India](#) being aggrieved by an Order dated 24-8-2004 made in E.A.No. 50 of 2001 in E.P. No. 32 of 1999 on the file of the learned Principal District Judge, Ranga Reddy District.

2. The petitioner is the decree-holder and the 1st respondent is the judgment-debtor. The petitioner filed a suit-O.S.No. 48 of 1998 on the file of the learned Principal District Judge, Ranga Reddy District - for recovery of certain amounts and obtained a decree. Thereafter, the decree-holder filed E.P.No. 32 of 1999 for execution of the decree. In the said E.P., attachment of an amount of Rs. 2,15,40,399/-of the judgment-debtor (M/s. Renewable Energy Systems Limited, Hyderabad) lying with the garnishee i.e., Accounts Officer/Director, Department of Telecommunications (DOT), Telecom Stores, 16 Greems Road, Chennai. After hearing the parties, the Executing Court prohibited the garnishee from making payment of amounts to the judgment-debtor and the said Orders were served on the gamishee on 21-10-1999. Thereafter, the decree-holder filed an application seeking a direction to the garnishee to deposit the attached amount. After receiving the notice, the garnishee filed a memo stating that they would deposit a sum of Rs. 75,00,000/-. In view of the said Memo, the Executing Court permitted the gamishee to deposit the said sum of Rs. 75,00,000/- to the credit of E.P., on 25-1-2000. However, the authorities of DOT did not deposit the amount on the ground that there are some directions from the High Court of Calcutta on deposit of the amounts till the finalization of the proceedings before it. Further, on 25-8-2000, the respondent-garnishee received directions from the High Court of Calcutta in C.C.No. 322 of 1999 filed by M/s. Magna Leasing Limited, Kolkatta that the DOT shall not make any payment to the judgment-debtor or anybody on thief behalf without leave of the Court. Subsequently, the said Orders were modified by an Order dated 25-4-2001 directing DOT to keep a sum of Rs. 47,23,786/- in Term Deposit in any Nationalized Bank, subject to further orders. That amount was deposited in Term Deposit for one year with effect from 10-11-2003 and the said Order was modified on 12-12-2001. By an order dated 7-9-2001 passed in Case No. 113 of 2001, the Board for Industrial and Financial Reconstruction (BIFR),

directed that all the secured creditors, who filed suits against the company, were allowed under Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'SICA') to continue with the legal proceedings, subject to the condition that a decree, if any, passed would not be executed without the approval of the Bench. Therefore, the amounts as directed by the Court could not be deposited. As such, the present petition under Order XXI Rule 38 read with Section 151 of the Civil Procedure Code was filed by the decree-holder to issue warrant of arrest for arresting the Accounts Officer, DOT, Telecom Store, 16 Greems Road, Chennai, Tamilnadu State. The question that arose for consideration of the Court below was whether, in view of Section 22(1) of SICA, when the matter is referred to BIFR and the same is pending, without the prior approval of the Board, the execution cannot be taken up. The Court below, after considering the rival contentions, dismissed the petition holding that since there is no dispute that the matter was referred to BIFR in Case No. 113 of 2001, unless and until prior approval of the Board is obtained, further proceedings cannot be taken up under Section 22(1) of SICA and the Counsel for the decree-holder has not shown any authority contrary to the provisions of Section 22(1), which specifically prohibits the continuance of any proceedings for winding up, execution, distress or the like against any of the properties of a company, which has been declared as a sick unit. Aggrieved by the same, the present civil revision petition is filed.

3. Learned Counsel for the petitioner strenuously contended that there is no necessity of obtaining any prior approval of BIFR under Section 22 of the SICA, since this amount of Rs. 75.00 lakhs is lying with the garnishee and as on today, the garnishee has already deposited the said amount into the Court. Further, the judgment-debtor is the lessee of the premises belonging to the decree-holder and the garnishee is the sub-lessee of the judgment-debtor. Therefore, this particular amount does not belong to the judgment-debtor. Further, Section 22 of SICA, strictly speaking, has no application to the facts of the case of this nature. After the amendment of Section 22 of SICA, the execution proceedings have been taken out of the purview of that Section in the year 1994. Therefore, a petition of this nature is maintainable and there is no necessity of obtaining prior approval from the BIFR for the purpose of execution of the decree obtained by the petitioner-

decree holder.

4. Learned Counsel for the respondents contended that neither in the unamended (original) Section 22 of SICA nor the amended section does permit taking out any winding up, execution and other proceedings against a sick industry where the proceedings under Section 16 of SICA have been invoked and if the case is pending before BIFR, the present application under Order XXI Rule 38 of the Civil Procedure Code taking execution proceedings, though directed against a garnishee, is not maintainable. Execution proceedings are execution proceedings whether it is against a garnishee or judgment-debtor. Admittedly, the garnishee is a sub-lessee of judgment-debtor and the amount relating to the suit as well as execution proceedings has been shown as one of the debts of the creditors in the petition filed before BIFR. Therefore, the Executing Court has not committed any error calling for interference of this Court under Article 227 of the [Constitution of India](#) and the civil revision petition is liable to be dismissed.

5. I have given my earnest consideration to the respective submissions made by the learned Counsel on either side and perused the Order impugned and other material available on record.

The admitted facts are that the judgment-debtor is an agency, which secured the property belonging to the decree-holder and leased out to the garnishee-Department of Telecommunications. During the pendency of the suit, BIFR proceedings were not initiated. After obtaining the decree, E.P. was filed, and the amount was attached and at that time also, the BIFR proceedings were not there. When the amount was not being deposited, the present E.A. is filed. Before going further, it may be necessary to notice the amended and unamended provisions of Section 22(1) of SICA :

Prior to 1994, Section 22(1) of SICA reads as follows :

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 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.

After amendment Section 22(1) read as under :

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 Section 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.

6. In support of his contentions, learned Counsel for the petitioner relied upon a judgment of a Division Bench of the Bombay High Court reported in *Madalsa International Ltd. v. Central Bank of India* AIR 1998 Bom. 247, wherein it was held that it is extremely relevant that the word 'execution' is used in the unamended Section 22 of SICA while in the added portion of the amendment, the word 'suit' is used. The interpretation of the word 'suit' in any particular statute will have to be made in the context in which the same is used. The intention and the object of

amendment is that not only 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, the prosecution of any suit of the description mentioned therein. It was also held that considered in this light, the word 'suit' in the amended portion of Section 22 of SICA cannot be included in its ambit execution or execution proceedings. Even if the appeal is pending so far as execution proceedings are concerned, excepting the properties of the industrial company, there cannot be any bar or impediment in proceeding further with the same. Taking inspiration from this judgment, learned Counsel for the petitioner submitted that the property in question i.e., the money lying with the garnishee, which is already deposited into the Court, is not the property of the industrial company. Therefore, there cannot be any bar or impediment in proceeding further with the same in any way in the execution proceedings. The amount lying with the garnishee does not include 'of any guarantee in respect of any loss or advance granted to the industrial company'. This means, only the guarantee given by the company itself and none else. The proceedings against directors or third parties as guarantor are not suspended. Therefore, in the present case, the proceedings against the garnishee can be taken to be proceedings against a third party. Therefore, suspension of those proceedings need not be considered.

7. Learned Counsel for the petitioner further relied upon another decision of the Bombay High Court in *Garden Finance Ltd. v. Prakash Industries Ltd.* AIR 2002 Bom. 8. After examining the amended and unamended provisions of Section 22(1) of SICA, it was held that the provisions incorporated by amendment in the year 1994 will not apply to a suit, which is a suit basically filed for recovery of the property of the plaintiff itself, which is in possession of the defendant-industrial company, which is before the BIFR. The words that are used in Section 22 are 'no suit for the recovery of money or for the enforcement of any security against the industrial company'. It was further held that unless the suit answers this description and can be said to be a suit for recovery of money, or for the enforcement of any security against the industrial company, the suit will not be barred. In that case, the

frame of the suit shows that it was basically a suit for recovery of lease equipment of the company and incidentally a decree for arrears of lease money has been claimed; therefore, such a suit, which is a composite suit and which is basically a suit for recovery of lease equipment will not be barred by provisions of Section 22 of the Act. Taking inspiration from this, the learned Counsel submitted that there it was a case of recovery of lease equipment of the company and incidentally a decree for arrears of money has been claimed. In this case also, it is only recovery of lease amount due from the judgment-debtor through the garnishee. Therefore, there is no bar under Section 22(1) of SICA for initiating such legal proceedings.

8. Learned Counsel for the petitioner also relied upon a decision of the Apex Court reported in *Kailash Nath Aarwal v. Pradeshia Indust. and Inv. Corporation of UP.* : [2003]1SCR1159 . That is a case where the Court considered when two different words are used in a same statute to convey the same meaning i.e., exception rather than rule. The general rule being when two different words are used by the same statute, prima facie one has to construe these different words as carrying different meanings. Therefore, while considering the decision reported in *Kanhaiyalal Yeshindas Gidwani v. Arun Dattatray Mehta* AIR 2000 SC 3681, the Apex Court held that the reasons, which persuaded it, in the said decision, cannot be applied here. Furthermore, the Parliament must be taken to be aware of the decision in *Maharashtra Tubes* 1993 AIR SCW 991 and the fact that the word 'proceeding' used in Section 22(1) had been widely construed to include proceedings for recovery of dues by State Financial Corporation as an arrear of land revenue. The deliberate choice of the word 'suit' in the circumstances would indicate that Parliament intended to limit the ambit of amendment introduced to particular modes for recovery of money or enforcement of guarantees. Taking inspiration from his judgment, learned Counsel for the petitioner stated that the garnishee proceedings in the execution are against a third party and taking proceedings against such garnishee is not prohibited and such proceedings cannot be considered to cover recovery proceedings also.

9. In this regard, the learned Counsel for the respondents relied upon a judgment of the Apex Court in *Gram Panchayat v. Shree Vallabh Glass Works Ltd.* : [1990]1SCR966 (a judgment prior to amendment), wherein it was held that once a

company declared as a sick industrial company under Section 3(1)(o) of SICA and steps are taken under Sections 16 and 17 by the Board, all the proceedings for execution, distress or the like against any of the properties of the company would be automatically suspended and could not be taken without consent of the Board. Therefore, held that the Gram Panchayat therein was not entitled to recover property tax and other amounts due from the company by initiating coercive proceedings under Section 129 of Bombay Village Panchayat Act, 1959 without the consent of the Board. The Board may at its discretion accord its approval for proceeding against the company. If the approval is not granted, the remedy is not extinguished, it is only postponed. It is contended that, in the instant case also, the money lying with garnishee is the property of the sick industrial company and the proceedings under Section 16 of SICA have already been initiated. In fact, as noticed above, in the impugned order it is stated that the Calcutta High Court had already passed a restrictive order in the other proceedings; therefore, the question of proceeding with such Execution Petition for recovery of money even from a garnishee does not arise. The very execution proceedings need to be suspended.

10. Learned Counsel for the respondents further relied upon another judgment of the Supreme Court in *Dy. Commercial Tax Officer v. Corromandal Pharmaceuticals* : [1997]2SCR1026 , wherein it was held (per curiam) as under :

The language of Section 22 of the Act is certainly wide. But, in the totality of the circumstances, the safeguard is only against the impediment, that is likely to be caused in the implementation of the scheme. The bar or embargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme. Such amounts like sales tax, etc., which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction, which is unfair, unreasonable and against the spirit of the statute in a business sense, should be avoided. Therefore, Section 22(1) should be read down or understood as contended by the Revenue.

It was further held that the object of the Act is undoubtedly laudatory, but it must also provide for appropriate measures against persons responsible, where it is found that sickness is caused by factors other than circumstances beyond the control of the management. The proceedings before BIFR take a long time to conclude and all the while the protective umbrella of Section 22 is held over the company, which has reported sick. There have been cases where unfair advantage is sought to be taken of the provisions of Section 22 of SICA by certain industrial companies and the wide language employed in the section is providing them a cover. Definitely, Section 22 of the SICA was not meant to breed dishonesty nor can it be so operated as to encourage unfair practices. It is expected that the Government might be thinking of necessary modification in the Act.

11. Learned Counsel for the respondents relied upon yet another judgment of the Apex Court in *Real Value Appliances Ltd. v. Canara Bank* AIR 1998 SC 2064, wherein it was held that Section 16(1) of SICA must be treated as having commenced as soon as the registration of the reference is completed after scrutiny and that from that time, action against the company's assets must remain stayed as stated in Section 52 of SICA till final decisions are taken by BIFR. In view of this, learned Counsel for the respondents submitted that, in the case on hand, the enquiry is already initiated under Section 16 of SICA. Therefore, any action against the company's assets must remain stayed till the finalization of BIFR proceedings, whether the proceedings have been initiated before or after the amendment. Since prohibition of any execution against a company's properties is provided even in the unamended section itself, the question of taking out any proceedings against the company does not arise.

12. From the above discussion, there is no difficulty in construing the object of SICA. But, it has to be seen whether, in the facts and circumstances of the present case, a suit, which was filed claiming lease equipment and decreed also needs to be suspended when the recoverable amounts are lying with the garnishee. In this case, admittedly, the equipment leased out by the decree-holder to the garnishee is through the judgment-debtor. Therefore, even if such amounts payable were included in the BIFR proceedings, since it is only an amount of lease payable by

the garnishee through the judgment-debtor, who has already deposited the amounts to the credit of E.P., the suit and the execution proceedings can be called to have fallen outside Section 22 of SICA. The present garnishee proceedings is not in respect of any loans or advance granted to the industrial company; therefore, the bar of Section 22(1) of SICA would not operate in relation to the proceedings for initiating and enforcing garnishee proceedings, which is in relation to payment of lease money, which became due from the industrial company to the decree-holder; as a result, of this agreement as held by the Bombay High Court in Garden Finance Limited case (supra). Further, if Section 22 of SICA is extended to cases of this nature, it may amount to allowing the judgment-debtor to take unfair advantage in the cover of Section 22 of SICA. The very opposition of the judgment-debtor for realization of the decretal amount and not allowing the decree-holder to proceed with garnishee proceedings with ulterior motive is nothing but dishonestly on his part and may amount to encouraging unfair practice as held in Corromandal Pharmaceuticals case (supra).

13. To a specific question put to the learned Counsel for the respondent-judgment debtor as to whether this amount lying with the garnishee has been shown towards the credit of the company, there was no specific answer. Now, the amount has already been deposited and it is not the case of the judgment-debtor that the proceedings before the Calcutta High Court any way come in the way of the petitioner in claiming garnishee amount, I am of the opinion that any proceedings, suit or execution, must relate to any amount advanced to the judgment-debtor company and then only the protection under Section 22(1) of SICA can be claimed, but not in a suit where lease amount was claimed and the leased equipment was with the garnishee in de facto and that the judgment-debtor in de jure. The garnishee has no objection for depositing the amounts and he has deposited the amount, since nothing came in his way in doing so. It is only the judgment-debtor, who is trying to create some obstacle, which is nothing but unfair on his part. Therefore, once suit or execution can go on against a guarantor, there is no prohibition under the SICA to take out proceedings against a garnishee also. May be, in a way, it is the property of the judgment-debtor. But, having utilized the leased equipment, any application under Section 22(1) of SICA would result in unfair dealing with the decree-holder. Such is not the object of the Act. Therefore, I

am of the considered opinion that the Court below has not properly appreciated the facts and circumstances of the case in relation to Section 22(1) of SICA. As such, the order impugned is arbitrary and illegal, and liable to be set aside; accordingly, set aside. Consequently, E.A. No. 50 of 2001 in E.P. No. 32 of 1999 on the file of the learned Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad shall stand allowed.

14. Accordingly, the civil revision petition is allowed. No order as to costs.

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