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**Nepa Limited Vs. Manoj Kumar**

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**SooperKanoon Citation** : sooperkanoon.com/497403

**Court** : Madhya Pradesh

**Decided On :** Oct-17-2001

**Reported in** : 2002(1)MPHT125; 2002(1)MPLJ463

**Judge** : S.P. Khare, J.

**Acts** : Sick Industrial Companies (Special Provisions) Act, 1986 - Sections 15, 22 and 22(1); Arbitration and Conciliation Act, 1996; Limitation Act, 1963 - Schedule - Article 70; Limitation Act, 1908 - Schedule - Article 145

**Appeal No.** : Civil Revision No. 1487/2001

**Appellant** : Nepa Limited

**Respondent** : Manoj Kumar

**Advocate for Def.** : N.S. Kale, Sr. Adv. and ;H. Singh, Adv.

**Advocate for Pet/Ap.** : V.R. Rao, Adv.

**Disposition** : Civil revision dismissed

**Judgement** :
ORDER

**S.P. Khare, J.**

1. This is a revision by judgment-debtor Nepa Limited against the order by which its application raising the two objections regarding the enforcement of the award against it has been rejected.

2. It is not in dispute that an award dated 14-4-2000 has been passed by the arbitrator against the judgment-debtor company directing it to pay an amount of Rs. 14,49,300/- with interest at the rate of 18% per annum to the decree holder. The respondent had deposited an amount of Rs. 20,59,800/-with the petitioner company on 22-10-1996 for 'due performance of the contract'. Out of this security deposit a deduction of Rs. 6,10,500/- has been allowed.

3. The objection of the judgment-debtor is two-fold. Firstly, the judgment-debtor company has become 'sick industrial company' under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter to be referred to as the Act) and its application under Section 15 of the Act has been registered by the Board for Industrial and Financial Reconstruction on 29-5-1998 in Case No. 502 of 1998 and therefore Section 22(1) of the Act has come into play and it bars any proceeding for 'execution, distress or the like against any of the properties of the industrial company except with the consent of the Board'. Secondly, an amount more than the amount of the award is recoverable from the decree-holder as 'excise duty' and, therefore, the award cannot be executed.

4. The reply of the decree holder to these two objections is that he is entitled to the refund of security deposit and the bar created by Section 22(1) of the Act is not attracted to the claim for refund of the security deposit which is the property of the decree holder and not of the judgment-debtor company. It is pointed out that the amount of security deposit was deposited by this company in fixed deposit. A photo-copy of the FDR No. 708503 has been produced as proof of fixed deposit showing that this money was kept separately by the judgment-debtor company. Secondly, there is no liability fixed as yet by the authorities for payment of the excise duty.

5. The executing Court has rejected both the objections and has proceeded with the execution.

6. The language of Section 22(1) of the Act is clear. It bars execution against the 'property of the company'. The security deposit made by the decree-holder for due performance of the contract entered into with the company cannot by any stretch of imagination be held to be the property of the company especially when it has been set apart in the form of a fixed deposit by the company in its name. As per Oxford Shorter English Dictionary themeaning of deposit is 'something laid up in a place, or committed to the charge of a person for safe-keeping'. The person with whom such deposit is made is known as 'depository'. He is a person with whom anything is lodged in trust; a trustee; one to whom anything is committed or confided. In Law, a bailee of personal property to be kept for the bailor without recompense. In Law Lexicon by P.R. Aiyar edited by Justice Y.V. Chandrachud the word 'deposit' is defined : 'Thing stored or entrusted for safe-keeping', an act by which a person receives the thing of another person, with the obligation to keep it and to return it in kind; a naked bailment of goods, to be kept for the depositor without reward and to be returned when he shall require it; the delivery of a thing for custody, to be redelivered on demand without compensation. The essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made on the fulfilment of certain conditions.

7. The person with whom the 'security deposit' is made is a bailee or the trustee of that money and that is to be refunded to the person by whom the deposit has been made. The deposit is only for the purpose of safe keeping. The person with whom the deposit has been made holds it in trust for the depositor and has to return it to the depositor when the entrustment is over. The holder of the trust cannot be permitted to say that it is his own money or his own property. The depository cannot plough this money for running its business.

8. The word deposit has been used in Article 70 of the Limitation Act, 1963 (Article 145 of the Limitation Act, 1908). In that context it has been held that a suit against the Government for recovery of money kept as security deposit for the proper discharge of the plaintiffs functions as Government auctioneer is a suit against a depository and is governed by Article 145 of the Limitation Act, 1908. The term moveable property within Article 145 includes 'money' as well. The deposit is in the nature of a trust. (Union of India v. Mohd. Sultan, AIR 1966 AP 218, and Zila

Parishad v. B.D. Kapur, AIR 1973 P & H 276). That being the nature and character of a 'security deposit' it cannot be blended with the other property of the depository and it must be refunded when the purpose of deposit is over.

9. It has been observed by a Division Bench of this Court in Kedia v. Appellate Authority. 2000(1) MPLJ 242 that the SICA was enacted to provide opportunity to sick industrial companies to revive and be rehabilitated or wind up. Its purpose was not to enable unscrupulous companies to feign and manipulate sickness and to make a buck out of it. Section 22(1) was only a tool to achieve this object. Its terms were, therefore, to be interpreted reasonably and in that spirit and perspective. Otherwise it would breed dishonesty, encourage unfair practices and shady dealings and defeat the very purpose for which the Statute was enacted. There is no dearth of instances where unscrupulous companies had misused this provision by manipulatingsickness to Ward off legitimate claims of creditors. Therefore, it requires both caution and circumspection to extend protection of Section 22(1) to such companies.

10. In the present case it is not disputed that the amount was deposited by the decree holder with the judgment-debtor company as 'security deposit' for performance of the contract and after adjudication by the arbitrator appointed under the Arbitration and Conciliation Act, 1996, the amount of security deposit which was set apart in a fixed deposit, is to be refunded to the decree-holder after deduction of certain amount. This security deposit was not the property of the industrial company but it is the property of the decree-holder being held in trust by the judgment-debtor company and, therefore, it cannot invoke Section 22(1) of the Act in this case and refuse refund of the deposit. In this context the observations of the Division Bench referred above become very pertinent. In all fairness the judgment-debtor should not refuse to refund the security deposit. The chances of the revival of the company are likely to be very bleak if it loses its goodwill and credit in the market by refusing to refund even the security deposit which is not the property of the company. That may amount to breach of trust. As observed by the Supreme Court in Dy. Commercial Tax Officer v. Corromandal Pharmaceutical, 1997 (10) SCC649 = AIR 1997 SC 2027: 'Definitely Section 22 is not meant to breed dishonesty nor can it be so operated as to encourage unfair practices'. The

first objection of the judgment-debtor, the petitioner herein, is rejected.

11. The second objection is also without any substance. There is no demand of excise duty by the authorities from the company. The arbitrator has dealt with this aspect in the award. The same cannot be permitted to be raised in execution.

12. The revision is dismissed.

13. Civil Revision dismissed.

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