

M. Alam at Mahfooz Alam Vs. Ms. Eastern Coalfields Ltd. and ors.

M. Alam at Mahfooz Alam Vs. Ms. Eastern Coalfields Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/911567

Court : Kolkata Appellate

Decided On : Mar-03-2011

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 4100 of 2008

Appellant : M. Alam at Mahfooz Alam

Respondent : Ms. Eastern Coalfields Ltd. and ors.

Advocate for Def. : Mr. Kaushik De,; Mr. Partha Basu, Advs

Advocate for Pet/Ap. : Mr. Arup Kr. Das, Adv

Judgement :

1. This application is at the instance of the decreeholder and is directed against the order no.42 dated September 22, 2008 passed by the learned Civil Judge (Senior Division), Asansal in Title Execution Case No.4 of 2005 thereby staying the execution proceeding.

2. The decreeholder/petitioner herein instituted a title suit being Title Suit No.178 of 1996 before the learned Civil Judge (Senior Division), Asansal against the defendants/opposite parties herein for defamation and other reliefs. The defendants/opposite parties herein did not contest the said suit at all and as such, the said suit was decreed ex parte on April 7, 2005 holding that the plaintiff was to get a decree for a sum of Rs.3,00,000/- against the defendants. The defendants were also directed to pay the said amount within 30 days, failing which the plaintiff

would be entitled to get interest at the rate of 11% per annum from that date till realisation. The decree remained unsatisfied and for that reason, the plaintiff/petitioner herein filed an application for execution of the decree and that application has been numbered as Title Execution No.4 of 2005. The judgment debtor is contesting the said execution case. It promised to make payment and as such, it took adjournments on several occasions. Ultimately, the judgment debtor filed an application for suspension of the proceeding under Section 22(1) of the Sick Industrial Companies (Special Provisions) Amendment Act, 1993. That application was allowed by the impugned order. Being aggrieved, the decreeholder has filed this application.

3. Now, the question is whether the learned Trial Judge is justified in passing the impugned order.

4. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the petitioner obtained a decree to the tune of Rs.3,00,000/- and other reliefs on the ground of defamation against the opposite parties and the decree was put into execution for realisation. The judgment debtor company contested the said execution proceeding. It promised to make payment and as such, it took several adjournments. Ultimately, it filed an application under Section 22(1) of the said Act of 1993 contending, inter alia, that the defendant company went on BIFR and as such, the proceeding was required to be suspended.

5. The learned Executing Court proceeded with the matter at first and it held that the judgment debtor was unable to show any paper in support of the fact that the judgment debtor had been declared a sick industry. The learned Trial Judge has also observed that the judgment debtor has failed to produce any scrap of paper or other materials such as, true copy of the sanctioned scheme prepared under Section 18 of the said Act of 1993 and or the annual audit report, balance sheet of the judgment debtor to show that the said company went on BIFR. Ultimately, the learned Trial Judge has observed that according to the xerox copy of the case no.501 of 2000 it appears that the judgment debtor has become a sick industrial company as per provisions of the said 1993 Act. The judgment debtor is

contesting this application and it has filed an affidavit in opposition. Though it is contended that the judgment debtor is under the BIFR and that the learned Trial Court below passed the said order relying upon a decision of the Honble Apex Court, no material has been filed in support of the contention. This Bench is not satisfied with such affidavit in opposition. It appears that the judgment debtor has not filed a single paper to show that it went on BIFR. Moreover, this Bench finds that initially the judgment debtor took several adjournments on the plea that it was issuing cheques shortly in favour of the decreeholder and so it requested the decreeholder no steps. The learned Executing Court granted adjournments from time to time for payment. Thereafter, the judgment debtor filed a petition along with a xerox copy of the judgment in case no.501 of 2000 and prayed for time on that ground. It was allowed in spite of filing the xerox copy of the said judgment in case no.501 of 2000. The decreeholder prayed for time to make payment. But, it is unfortunate to note that no such copy of the judgment or the proper description thereof has been furnished before this Bench. So, it cannot be taken into consideration.

6. Mr. Das, learned Advocate appearing on behalf of the petitioner, has referred to the decision of AIR 1997 SC 2027 and thus, he submits that the recovery of certain dues such as, recovery of sales tax dues, etc. is no bar though the company went on BIFR. The proceeding cannot be suspended. The bar or embargo will apply to the cases where the dues were reckoned or included in the sanctioned scheme only.

7. Similarly he has referred to the decision of AIR 2002 Bombay 8, particularly paragraph no.10 & 11A and thus, he submits that suspension of legal proceedings may be granted when steps have been taken under Section 22 of the 1993 Act upon certain conditions embodied therein such as (1) Where in respect of an industrial company, an enquiry under Section 16 is pending or a 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 shall lie or be proceeded with further except with the consent by the Board. There is no proof that such a recourse as embodied in Section 22(1) of the said Act of 1993 has been adopted by the opposite party. This decision will, therefore, be applicable in the instant case.

8. Mr. Das has also referred to the decision of AIR 2008 SC 451 and thus, he submits that the said Section does not prohibit any proceeding, other than a suit for enforcement of any security against the guarantor. Ultimately, since two divergent views have been expressed in respect of the same issues, the matter was referred to a Larger Bench to solve the anomaly.

9 In the instant case, the recovery of money has been sought for on the basis of a decree passed in a defamation proceeding. So, this matter does not come within the purview of Section 22 of the said 1993 Act.

10. In view of the above findings, observations and the decisions of the Honble Apex Court as well as the Bombay High Court, this Bench is of the view that stay of further proceedings as passed by the learned Trial Judge is not justified at all.

11. The application, therefore, succeeds. It is, therefore, allowed. The impugned order is hereby set aside.

12. The application for suspension of the execution proceeding under Section 22(1) of the 1993 Act stands rejected on contest without costs. The learned Executing Court shall proceed with the execution case from that stage.

13. Considering the circumstances, there will be no order as to costs.

14. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

Later:

15. Heard the learned counsel for the opposite parties. The learned counsel appearing for the opposite parties prays for stay of the above order.

16. Upon due consideration of the materials on record and the submission made by him, the prayer is considered and rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com