

Shree Chamundi Mopeds Ltd.

Vs

Church of South India Trust Association, Madras

Civil Appeal No. 2553 of 1991

(N. M. Kasliwal, M. M. Punchhi, S. C. Agrawal JJ)

29.04.1992

JUDGEMENT

S.C. AGRAWAL, J.

1. These appeals filed by M/s.Shree Chamundi Mopeds Ltd. raise questions involving the interpretation of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to as 'the Act'.

2. The appellant is a public limited company registered under the Companies Act, 1956. It was set up with the object of manufacturing mopeds in collaboration with Cycle Peugeot of France. It has set up a factory at Hirahalli in Tumkur district of Karnataka State. The appellant company has taken on rent the premises belonging to the Church of South Indian Trust Association, respondent No. 1 in these appeals, in Bangalore on a monthly rent of Rs. 21,159/-. The appellant company committed default in payment of rent and as on March 31, 1987 a sum of Rs. 2,45,534/- was payable as rent to the respondents. The respondents issued a legal notice dated 1 st April, 1987 calling upon the appellant company to pay the said amount. The appellant company while admitting the liability to pay the aforesaid sum stated that it was expecting certain sums of money towards developmental loan from the Government of Karnataka and as soon as the same was received it would clear the outstanding payable by it to the respondents. Since the amount was not paid the respondents issued a notice under Section 434 of the Companies Act and thereafter a petition was filed in the High Court of Karnataka under Section 433(e) of the Companies Act for winding up of the appellant company. While the said winding up petition was pending the appellant company, claiming that it has become a sick industrial company, filed a reference under Section 15(1) of the Act before the Board of Industrial and Financial Reconstruction, hereinafter referred to as 'the Board', on 12 December, 1988. After, hearing the concerned parties, the Board formed a prima facie opinion that it would be just and equitable as also in public interest that the appellant company, which has become a sick industrial company within the meaning of Section 3(1)(o) of the Act, should be wound up in view of the large accumulated losses, poor market prospects for the products of the appellant company and inability of the promoters to bring in the required additional interest free funds etc. After publication of the general notice in the newspapers and on intimation to the concerned parties the Board heard the objections/ suggestions, if any, of the concerned parties to the proposed winding up of the company and after considering the same the Board passed the order dated April 26, 1990, whereby it was found:

"Upon consideration of the facts and material before us and the submissions made at today's hearing, we find that Shree Chamundi Mopeds Ltd. have become economically and commercially non-viable due to its huge accumulated losses and

liabilities and should be wound up. However, in view of the submissions made by the company and in order to give a final opportunity to the promoters as requested by them, our advice to wind up the company to the respective High Court will be withheld for a period of one month. The promoters were directed to submit an acceptable rehabilitation proposal which is technically, economically and commercially viable for the revival of the company to ICICI urgently and ICICI was directed to appraise the proposal, if any, submitted by the promoters to them and submit their report to us within one month. If no acceptable rehabilitation scheme is received by the BIFR within one month, our opinion to wind up the company will be forwarded to the High Court of judicature in Karnataka for further necessary action under the law."

3. The appeal filed by the appellant company before the Appellate Authority for Industrial and Financial Reconstruction, hereinafter referred to as the "Appellate Authority", against the said order dated 26 April, 1990, was dismissed by the Appellate Authority by order dated January 7, 1991. The appellant company has filed Writ Petition (Civil) No. 594/91 in the High Court of Delhi wherein the said order passed by the Appellate Authority has been challenged. In the said writ petition, the High Court of Delhi, on February 21, 1991, passed an order for issuing notice returnable for May 10, 1991, to show-cause as to why rule nisi be not issued. On the stay petition filed with the said Writ Petition, notice was issued for May 10, 1991 and in the meanwhile, operation of the order of the Appellate Authority dated January 7, 1991 was stayed. We have been informed that the said Writ Petition is still pending in the Delhi High Court and the stay order passed by the said Court is also operative.

4. After the dismissal of the appeal of the appellant company by the Appellate Authority the winding up petition was taken up for consideration and it was allowed by a learned single Judge of the Karnataka High Court by order dated August 14, 1991. The learned single Judge was of the view that pendency of the writ petition in the High Court of Delhi and the stay of operation of the order of the Appellate Authority did not stand in the way of the Court to proceed with the matter. The appellant company filed an appeal against the said order of the learned single Judge which was dismissed by a Division Bench of the High Court by order dated November 6, 1991. Civil Appeal No. 126/ 92 has been filed by the appellant company against the said order of the Karnataka High Court dated November 6, 1991.

5. On 26 February 1988 the respondents filed a petition seeking eviction of the appellant company from the demised premises under S. 21(1) of the Karnataka Rent Control Act, 1961 on the ground that the appellant company is a chronic defaulter in the payment of rent and as on . March 31, 1987 the appellant company was in arrears to the tune of Rs. 2,45,534/- and that the said amount has not been paid in spite of notice and that a cheque dated January 1, 1988 for a sum of Rs. 50,000 1 - which was sent by the appellant company, when presented for encashment, was dishonoured. In those proceedings the appellant company moved an application under S. 151, C.P.C. read with S. 22 of the Act for stay of the said proceedings on the ground that the appellant company had been declared a sick industrial company under the Act by the Board and a scheme was under preparation as per Section 16 of the Act. The said application of the appellant company was rejected by the XII Additional Small Causes Judge, Bangalore by order dated September 14, 1989, on the view that Section 22 of the Act had no application inasmuch as proceedings instituted by the landlord for recovery of possession of the premises of which a sick industrial company is a tenant is not included among the proceedings which are required to be suspended under S. 22(1) of the Act. Thereafter the XII Additional Small Causes Judge, Bangalore by order dated September 30, 1989 allowed the

eviction petition filed by the respondents and held that the respondents were entitled to get possession of the premises and that appellant company is liable to vacate and give possession to the respondents. The appellant company filed a writ petition against the said order of the Additional Small Causes Court which was subsequently converted into a revision petition under S. 50 of the Karnataka Rent Control Act. The said revision was dismissed by a learned single Judge of the Karnataka High Court by order dated 15 March, 1991 in view of S. 29(1) of the Karnataka Rent Control Act which prescribes that no tenant against whom an application for eviction has been made by a landlord under S. 21 shall be entitled to prefer or prosecute a revision petition under S. 50 against an order made by the Court on an application made under S. 21 unless he has paid or pays to the landlord or deposits with the District Judge or the High Court, as the case may be, all arrears of rent due in respect of the premises up to the date of payment. The learned single Judge found that neither the tenancy nor the amount claimed in the petition towards the arrears and the subsequent rents due as on February 28, 1991 (amounting in all Rs. 9,35,618/-) was disputed. The learned single Judge rejected the prayer for exemption from the applicability of S. 29(1) of the Karnataka Rent Control Act claimed on the basis of the statutory protection granted to the appellant company under Section 22 of Act. It was held that no enquiry under S. 16 was pending nor any scheme referred to under S. 17 was under preparation or consideration and there is also no sanctioned scheme under implementation and that the appeal filed by the appellant company under S. 25 of the Act has also been rejected. It was held that the stay order which had been passed by the Delhi High Court in the writ petition did not entitle the appellant company to invoke the protection under S. 22 of the Act as if the appeal under Section 25 of the Act was pending. The revision petition filed by the appellant company was, therefore, rejected. Civil Appeal No. 2553/91 has been filed by the appellant company against the said order of the Karnataka High Court.

6. Two questions that arise for consideration in these appeals are :

1) What is the effect of the order passed by Delhi High Court dated February 21, 1991 staying the operation of the order dated January 7, 1991 passed by the Appellate Authority? Does it mean that after the passing of the said order by the High Court, the proceedings under the Act should be treated as pending and, if so, before which authority?

2) Are the proceedings instituted by a landlord for eviction of a tenant who is a sick company from the premises let out to it, required to be suspended under Section 22(1) of the Act?

7. The first question arises in both the appeals inasmuch as the order of the learned single Judge of the High Court dated August 14, 1991 for winding up of the appellant company as well as the order of the Division Bench of the High Court dated November 6, 1991, which are under challenge in C.A. No. 126 of 1992, were passed after the passing of the stay order dated February 21, 1991 by the High Court. Similarly in C.A. No. 2553 of 1991 the revision petition filed by the appellant-company against the order of the XII Additional Small Cause Judge, Bangalore allowing the eviction petition was dismissed by the learned single Judge of the High Court on March 15, 1991, i.e., after the passing of the stay order by the Delhi High Court. The second question arises for consideration only in Civil Appeal No. 2553 of 1991 arising out of the eviction proceedings instituted by the respondents.

8. Sub-s. (1) of Section 22 which alone has relevance to these questions provides 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 shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

9. A perusal of the aforesaid provision shows that it is applicable, in respect of an industrial company, where (i) an inquiry under Section 16 is pending; or (ii) a scheme referred to in Section 17 is under preparation or consideration; or (iii) a sanctioned scheme is under implementation; or (iv) where an appeal under Section 25 relating to the industrial company is pending. In that event no 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 appointment of receiver in respect thereof shall lie or be proceeded with further. This injunction is, however, subject to the exception that the proceedings can be instituted or proceeded further with the consent of the Board or the Appellate Authority. In other words, there is no absolute bar to the institution of proceedings referred to in S. 22(1) and for the operation of the bar imposed by the said section it is necessary that one of the matters referred to therein should be pending so that directions may be obtained either from the Board or the Appellate Authority for institution of or continuation of a proceeding of the type specified in S. 22(1).

10. In the instant case the proceedings before the Board under Ss. 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant company under S.25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate

Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant company against the order of the learned single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant company. The said appeal, therefore, fails and is liable to be dismissed.

11. Similarly in Civil Appeal No. 2553 of 1991 this question has been raised by the appellant company to challenge the order of the learned single Judge of the Karnataka High Court dated March 15, 1991 dismissing the revision petition under S. 50(1) of Karnataka Rent Control Act. For the reasons aforementioned Section 22(1) of the Act cannot be invoked to assail the said order of the High Court on the ground that on the date of passing of the order of the High Court the matter was pending before the Appellate Authority. But in this appeal, the order allowing the eviction petition was passed by the XII Additional Small Cause Court on September 30, 1989 and at that time the matter under Ss. 15 and 16 was pending before the Board. It is, therefore, necessary to consider the second question about the applicability of S. 22(1) to eviction proceedings instituted by the landlord against the tenant who happens to be a sick company. In this regard, it may be mentioned that the following proceedings only are automatically suspended under S. 22(1) of the Act:

- 1) Proceedings for winding up of the industrial company;
- 2) Proceedings for execution, distress or the like against the properties of the sick industrial company; and
- 3) Proceedings for the appointment of receiver.

12. Eviction proceedings initiated by a landlord against a tenant company would not fall in categories (1) and (3) referred to above. The question is whether they fall in category (2). It has been urged by the learned counsel for the appellant company that such proceedings fall in category (2) since they are proceedings against the property of the sick industrial company. The submission is that the leasehold right of the appellant-company in the premises leased out to it is property and since the eviction proceedings would result in the appellant-company being deprived of the said property, the said proceedings would be covered by category (2). We are unable to agree. The second category contemplates proceedings for execution, distress or the like against any other properties of the industrial company. The words 'or the like' have to be construed with reference to the preceding words, namely, 'for execution, distress' which means that the proceedings which are contemplated in this category are proceedings whereby recovery of dues is sought to be made by way of execution, distress or similar process against the property of the company. Proceedings for eviction instituted by a landlord against a tenant who happens to be a sick industrial company,

cannot in our opinion, be regarded as falling in this category. We may, in this context, point out that as indicated in the Preamble, the Act has been enacted to make special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined. The provision regarding suspension of legal proceedings contained in Section 22(1) seeks to advance the object of the Act by ensuring that a proceeding having an effect on the working or the finances of a sick industrial company shall not be instituted or continued during the period the matter is under consideration before the Board or the Appellate Authority or a sanctioned scheme is under implementation without the consent of the Board or the Appellate Authority. It could not be the intention of Parliament in enacting the said provision to aggravate the financial difficulties of a sick industrial company while the said matters were pending before the Board or the Appellate Authority by enabling a sick industrial company to continue to incur further liabilities during this period. This would be the consequence if S'ub-section (1) of S. 22 is construed to bring about suspension of proceedings for eviction instituted by landlord against a sick industrial company which has ceased to enjoy the protection of the relevant rent law on account of default in payment of rent. It would also mean that the landlord of such a company must continue to suffer a loss by permitting the tenant (sick industrial company) to occupy the premises even though it is not in a position to pay the rent. Such an intention cannot be imputed to Parliament. We are, therefore, of the view that Section 22(1) does not cover a proceeding instituted by a landlord of a sick industrial company for the eviction of the company premises let out to it.

13. We are also unable to agree with the contention of the learned counsel for the appellant company that the leasehold interest of the appellant company in premises leased out to it is property for the purpose of Section 22(1). It is no doubt true that leasehold interest of the lessee in the premises leased out to him is property which can be transferred and the said interest can also be attached and sold by way of execution in satisfaction of a decree against a lessee. In that sense, it can be said that the leasehold interest of a company is its property. But the question is whether the same is true in respect of the interest of a company which is in occupation of the premises as statutory tenant by virtue of the protection conferred by the relevant rent law because in the instant case on the date of reference to the Board the proceedings for eviction of the appellant company were pending and the appellant company was in occupation of the premises only as a statutory tenant governed by the provisions of the Karnataka Rent Control Act. In *Smt. Gian Devi Anand v. Jeevan Kumar*, 1985 Supp (1) SCR 1 : (AIR 1985 SC 796), this Court has laid down that the termination of a contractual tenancy does not bring about a change in the status and legal position of the tenant unless there are contrary provisions in the relevant Rent Act and the tenant, notwithstanding the termination of tenancy, does enjoy an estate or interest in the tenanted premises. It is further laid down that this interest or estate which the tenant continues to enjoy despite termination of the contractual tenancy creates a heritable interest in the absence of any provision to the contrary. This Court has also held that the legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant.

14. In the instant case, we are concerned with the right of the tenant as governed by the Karnataka Rent Control Act. In Cl. (r) of S. 3, the expression "tenant" has been defined to include "the surviving spouse or any son or daughter or father or mother of a deceased tenant who had been living with the tenant in the premises as a member of the tenant's family after the death of the tenant

and a person continuing in possession after the termination of the tenancy in his favour". In view of Cl. (5) of the proviso to sub-sec. (1) of S. 21, protection against eviction is not available to a tenant who has "unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein and where the subletting, assignment or transfer has been made before the coming into operation of this part (except in respect of sub-letting, assignment or transfer to which the provisions of S. 61 are applicable), such sub-letting, assignment or transfer has been made contrary to any provision of law then in force. S. 23 prohibits subletting or transfer by the tenant and provides as under:

"(1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this part, for any tenant to sub-let whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein:

Provided that the State Government may, by notification, permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification:

Provided further that nothing in this section shall apply to a tenant having a right to enjoy any premises in perpetuity.

(2) Any person who contravenes the provisions of sub-sec. (1), shall, on conviction, be punished with fine which may extend to one hundred rupees."

15. From these provisions, it would appear that except in cases covered by the two provisos to sub-sec. (1) of S. 23, there is a prohibition for a tenant to sub-let whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. This prohibition is, however, subject to a contract to the contrary. A tenant who subjects or assigns or transfers the premises, in contravention of this prohibition loses the protection of law and can be evicted by the landlord under S. 21(1)(f). In the case of a statutory tenant, the relationship is not governed by contract. The prohibition against assignment and transfer is, therefore absolute and the interest of a statutory tenant can neither be assigned nor transferred. This means that the interest of the statutory tenant in the premises in his occupation, as governed by the Karnataka Rent Control Act is a limited interest which enables the surviving spouse or any son or daughter or father or mother of a deceased tenant who had been living with the tenant in the premises as a member of the tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, to inherit the interest of the tenant on his death. The said interest of the tenant is, however, not assignable or transferable and, therefore, the interest, of a company which is continuing in occupation of the premises as a statutory tenant by virtue of the protection conferred by the Karnataka Rent Control Act, cannot be regarded as property of the company for the purpose of sub-sec. (1) of S. 22 of the Act and for that reason also the provisions of S. 22(1) were not attracted to the eviction proceedings instituted by the respondents against the appellant company. The provisions of S. 22(1) did not, therefore, bar the prosecution of the said proceedings by the respondents and the order dated September 30, 1989 passed by the XII Additional Small Cause Judge, Bangalore allowing the eviction petition cannot be held to have been passed in contravention of the provisions of S. 22(1) of the Act. Civil Appeal No. 2553 of 1991 also, therefore, fails and is liable to be dismissed.

16. In the result, both the appeals are dismissed but in the circumstances with no order as to costs.

Appeals dismissed.

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