

RAJASTHAN HIGH COURT

Oswal Spinning and Weaving Mills Ltd.

Vs.

Baldev Raj Manoharlal

SB Civ. Revn. Petn. No. 1297 of 2003

(Dinesh Maheshwari, J.)

02.04.2008

ORDER

Dinesh Maheshwari, J.

1. This revision petition by the defendants is directed against the order dated 5-9-2003 passed by the learned Additional District Judge (Fast Track) No. 2 *Sriganganagar Camp Raisinghnagar* in Civil Suit No. 51/2003 rejecting an application moved under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 ('the Act of 1985').

2. Briefly put the relevant facts and aspects of the matter are that the plaintiff-non-petitioner has filed the suit aforesaid for money recovery wherein the defendant-petitioner No.1 Oswal Spinning and Weaving Mills Ltd, ('the Company') moved an application under Section 22 of the Act of 1985 and submitted that a reference made to the Board for Industrial and Financial Reconstruction ('BIFR') in its respect had been registered at No. 348/2002; and the defendant being such an Industrial Company in whose respect an inquiry under Section 16 of the Act of 1985 was pending and scheme for reconstruction was under consideration, therefore, per Section 22 of the Act of 1985 the proceedings in the suit were required to be kept in abeyance.

3. The learned Trial Court has referred to the Schedule to the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the Act of 2002') and has observed that after enforcement of the Act of 2002, no reference would be made in relation to the Sick Industrial Companies and even if a reference had been made, after enforcement of the Act of 2002, it would abate unless threefourth of the amount of dues of the secured creditors was distributed amongst them! The learned Trial Court has also observed that the suit was filed on 13-5-1999

and the Act of 2002 was enforced on 21-6-2002 and the defendant has not shown any proceedings having been taken after enforcement of the Act of 2002.

4. This revision petition challenging the order aforesaid was admitted for consideration on 13-11-2003 and further proceedings in the Trial Court were ordered to remain stayed. The said stay order was confirmed after hearing the parties on 18-1-2005.

5. It has been pointed out during the course of submissions by the learned counsel for the petitioners that after the requisite proceedings, ultimately the Rehabilitation Scheme in relation to the Petitioner Company has been sanctioned by BIFR on 15-2-2006 and the same is under implementation. Learned counsel has also placed for perusal the sanctioned Scheme before the Court.

6. Having given a thoughtful consideration to the matter, this Court is unable to sustain the order as made by the learned Trial Court.

7. The provision relied upon and referred to by learned trial Court as contained in III entry in the Schedule to the Act of 2002, whereby further proviso has been added to Section 15 of the Act of 1985, reads as under :-

"In section 15, in sub-section (1), after the proviso, insert the following:-

"Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitization and Reconstruction of Financial Assets Act, 2002, where financial assets have been acquired by any Securitization company or reconstruction company under sub-section (1) of Section 5 of that Act :

Provided also that on or after the commencement of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section (4) of Section 13 of that Act."

8. Section 22 of the Act of 1985 reads 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."

9. It is not the case that financial assets of the petitioner company have been acquired by any Securitization company under sub-section (1) of Section 5 of the Act of 2002. First part of proviso to Section 15 of the Act of 1985 (as inserted by amendment brought about by the Act of 2002) has obviously no application to the present case. Then, second part of the inserted proviso aforesaid operates to abate the proceedings in reference before BIFR essentially when the referred secured creditors have taken measures to recover secured debts under sub-section (4) of Section 13 of the Act of 2002. Such is not the case here that any second creditor has taken steps as contemplated by the said proviso. The provisions aforesaid as added by the Act of 2002 have no application at all to the facts of the present case. The impugned order as passed by the learned Trial Court being based on complete misreading of the provisions of law and being on entirely irrelevant considerations cannot be sustained.

10. Moreover, a scheme for reconstruction having been sanctioned by BIFR and being under implementation as shown on behalf of the petitioners, per the force of Section 22 of the Act, the suit cannot be proceeded further at present. It is not the case of the plaintiff that any consent of the Board had been obtained to proceed with the suit.

11. In view of the position obtainable at present, the suit proceedings are required to be kept in abeyance.

12. Accordingly, this revision petition is allowed; the order dated 5-9-2003 is set aside; and the suit proceedings are ordered to be kept in abeyance, subject of course to the condition that if the plaintiff makes out a case at any time before the Trial Court of the Scheme being not under implementation or of having obtained consent of the

BIFR as envisaged by Section 22 of the Act, the Trial Court may consider proceeding with the suit in accordance with law. There shall no order as to costs of this revision petition.

Revision allowed.