

[2009] 9 S.C.R. 463

M.D., BHORUKA TEXTILES LTD. A

v.

M/S KASHMIRI RICE INDUSTRIES

(Civil Appeal No.3603 of 2009)

MAY 15, 2009 B

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

*SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985:*

*Section 22 – Applicability of – Ouster of jurisdiction of Civil Court – Trial Court held that since no final order passed by BIFR mere reference would not suffice and s.22 does not apply – Appeal thereagainst dismissed by High Court – On appeal, Held: Reference having been made before filing of the suit, the receipt of reference is the starting point of enquiry – If the Civil Court's jurisdiction was ousted, any judgment rendered by it would be coram non judis – Such judgment becomes a nullity – Impugned judgment set aside – Civil Court to transfer the deposit of the decretal amount to BIFR – If no scheme has been finalized, BIFR to expedite the same – It should also take into consideration the decree passed by the Trial Court.* C D E

*Tata Motors Ltd. Vs. Pharmaceutical Products of India Ltd. & Anr. (2008) 7 SCC 619; Kiran Singh & Ors. Vs. Chaman Paswan & Ors. AIR 1954 SC 340; Chief Engineer, Hydel Project vs. Ravinder Nath (2008) 2 SCC 350 and Mantoo Sarkar vs. Oriental Insurance Co. Ltd. & Ors. (2009) 2 SCC 244, relied on.* F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3603 of 2009. G

From the Judgment & Order dated 29.01.2008 of the High

A Court of Karnataka at Bangalore in R.F.A. No. 982 of 2007.

R.S. Hegde (for P.P. Singh) for the Appellants.

Kashi Vishweshwar (for A. Sumathi) for the Respondents.

B The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Leave granted.

C 2. This appeal is directed against a judgment and order dated 29.1.2008 passed by the High Court of Karnataka at Bangalore in RFA No.982 of 2007 whereby and whereunder judgment and decree dated 21.12.2006 passed by the Civil Judge, Senior Division, decreeing the suit being OS No.728 of 2002 filed by the respondent was affirmed.

D 3. A partnership firm known as M/s. Kashmiri Rice Industries has its place of business at Hangal. The said firm entered into a contract for supply of paddy husk with the appellant. Inter alia, on the premise that appellant herein, despite supply of the agreed quantity of paddy husk, failed and/or neglected to pay the price therefor, the respondent filed a  
E suit for recovery of a sum of Rs.2,61,696/- in the Court of Civil Judge, Hangal.

F One of the contentions raised by the appellant in the said suit was that as the appellant-company has become a sick industry within the meaning of the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, 'the Act') and a reference having been made to the Board of Industrial and Financial Reconstruction (BIFR) in terms of the provisions of the Act, the suit was not maintainable.

G The learned Trial Judge, inter alia, framed the following issue:

H "Do defendants prove that suit is also hit by Section 22 of Industrial Companies (Special Provisions) Act as

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contended in Para 7 of W.S. Preliminary issue?"

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From a perusal of the judgment, it appears that no argument was advanced before the learned Trial Judge on the said issue. However, it was opined that Section 22 of the Act provides for suspension of the proceedings and in view of the fact that no final order has been passed by the BIFR declaring the appellant as a sick industry, mere reference would not suffice. A finding of fact furthermore was arrived at that the transaction in question being subsequent to the reference, Section 22 of the Act would have no application.

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4. An appeal preferred thereagainst has been dismissed by the High Court by reason of the impugned order. The High Court, although noticed issue No.3, did not record any positive finding thereupon.

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5. Mr. R.S. Hegde, learned counsel appearing on behalf of the appellant, would urge that the learned Trial Judge as also the High Court committed a serious error insofar as they entered into a wrong finding of fact that the transaction in question is subsequent to the reference. It was furthermore contended that a plain reading of Section 22 of the Act would clearly establish that the jurisdiction of the Civil Court is ousted thereby.

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6. Mr. Kashi Vishweshwar, learned counsel appearing on behalf of the respondent, however, would support the impugned judgment.

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7. Before advertng to the rival contentions of the parties, we may notice the following admitted facts.

Supply of husk during the period 17.9.2001 and 28.11.2001, the agreement wherefor was entered into on or about 6.9.2001. Reference to BIFR in terms of Section 16 of the Act was made on 27.12.2001. The said reference was registered by the BIFR on 20.03.2002. Respondent filed the suit on 17.12.2002. The learned Trial Judge, therefore, committed

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A a manifest error in opining that the transaction in question was subsequent to the reference. It is also apparent from the record that respondent was aware of the fact that the appellant had made reference to the BIFR in terms of the provisions Act.

B 8. The Act was enacted to make, in the public interest, 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  
 C the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto.

Indisputably, thus, appellant is an industrial undertaking. Chapter III of the Act provides for reference, enquiries and  
 D schemes. Section 15 of the Act provides for reference to the Board in terms whereof the Board of Directors of the Company is required to make a reference within 60 days from the date of the duly audited accounts of the company for the financial year as at the end of which the Company has become a sick  
 E industrial company. Such reference is made for determination of the measures which may be adopted with respect to the company. The proviso appended thereto, however, entitles the Board of Directors to make a reference within 60 days from the date of formation of the opinion that the Company had  
 F become a sick industrial company before the audited accounts of the financial year in question are finalized.

Section 16 of the Act empowers the Board to make such enquiry as it may deem fit for determining whether any Industrial Company has become a sick industrial company, inter alia,  
 G upon receipt of a reference with respect to such company under Section 15.

Sub-section (1) of Section 22 of the Act reads as under:

H "22. *Suspension of legal proceedings, contracts, etc.—*

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(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."

A plain reading of the aforementioned provision would clearly go to show that a suit is barred when an enquiry under Section 16 is pending. It is also not in dispute that prior to institution of the suit, respondent did not obtain consent of the Board.

9. The provisions of the Act and, in particular, Chapter III thereof, provides for a complete code. The Board has a wide power in terms of the provisions of the Act, although it is not a Court. Sub-section (4) of Section 20 as also Section 32 of the Act provides for non-obstante clauses. It envisages speedy disposal of the enquiry and preferably within the time framed provided for thereafter. Section 17 empowers the Court to make suitable orders on the completion of enquiry. Preparation and sanction of the scheme is also contemplated under the Act.

10. Section 22 of the Act must be interpreted giving a plain meaning to its contents. An enquiry in terms of Section 16 of

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A the Act by the Board is permissible upon receipt of a reference. Thus, reference having been made on 27.12.2001 and the suit having been filed on 17.12.2002, the receipt of a reference must be held to be the starting period for proceeding with the enquiry. The effect of the provisions of the Act has been considered by a Three Judge Bench decision of this Court in *Tata Motors Ltd. v. Pharmaceutical Products of India Ltd. & Anr.* [(2008) 7 SCC 619], wherein it, in no uncertain terms, held that SICA is a special statute and, thus, overrides other acts like Companies Act, 1956, stating :

C “31. SICA furthermore was enacted to secure the principles specified in Article 39 of the Constitution of India. It seeks to give effect to the larger public interest. It should be given primacy because of its higher public purpose. Section 26 of SICA bars the jurisdiction of the civil courts.

D 32. What scheme should be prepared by the operating agency for revival and rehabilitation of the sick industrial company is within the domain of BIFR. Section 26 not only covers orders passed under SICA but also any matter which BIFR is empowered to determine.

E 33. The jurisdiction of the civil court is, thus, barred in respect of any matter for which the Appellate Authority or the Board is empowered. The High Court may not be a civil court but its jurisdiction in a case of this nature is limited.”

F If the civil court's jurisdiction was ousted in terms of the provisions of Section 22 of the Act, any judgment rendered by it would be coram non judis. It is a well settled principle of law that a judgment and decree passed by a court or tribunal lacking inherent jurisdiction would be a nullity. In *Kiran Singh & Ors. v. Chaman Paswan & Ors.* [(AIR 1954 SC 340), this Court held :

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"... It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity & that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties."

[See also *Chief Engineer, Hydel Project v. Ravinder Nath* [(2008) 2 SCC 350]

In *Mantoo Sarkar v. Oriental Insurance Company Ltd. & Ors.* [(2009) 2 SCC 244], we must place on record, that a distinction has been made between a jurisdiction with regard to the subject matter of the suit and that of the territorial and pecuniary jurisdiction. It was laid down that a case falling within the former category would make a judgment a nullity.

11. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed accordingly.

12. However, it appears that the appellant has deposited 50% of the decretal amount. The Civil Court shall transfer the said amount to BIFR. The BIFR, if has not finalized any scheme so far, would do so as expeditiously as possible. The BIFR shall also take into consideration the decree passed by the learned Trial Judge in favour of the plaintiff. In the facts and circumstances of the case, there shall be no order as to costs.

G.N.

Appeal allowed.