

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11029 OF 2013 @
(Special Leave Petition (C) No.35942 of 2012)

Inderjeet Arya and another Appellants

Verses

ICICI Bank Limited Respondent

J U D G M E N T**K.S. RADHAKRISHNAN, J.**

Leave granted.

2. We are, in this case, concerned with the question whether the appellants who are Directors and Guarantors of a sick company and are entitled to get the protection of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "the SICA).

3. M/s Rajat Pharmachem Pvt. Ltd. (RPL) was engaged in the business of manufacturing, trading and export of generic pharmaceuticals formulations and products. First appellant is the Chairman-cum-Director of RPL, while

second appellant is its Director. The Bank of Rajasthan, prior to its amalgamation with the respondent-ICICI Bank Limited, instituted recovery proceedings in the Debt Recovery Tribunal (DRT), Delhi and the same was registered as OA No.118 of 2009. In those proceedings, the State Trading Corporation of India Ltd. (STC) was defendant No.1, while RPL along with its Directors and Guarantors were arrayed as Defendant Nos.2, 3 and 4 respectively. By way of recovery proceedings, Bank of Rajasthan (Now ICICI Bank) sought recovery of Rs.26,55,35,824.50 which included interest to the tune of Rs.2,79,43,736/- till the date of institution of action in DRT. Future interest @ 18% per annum was also sought. RPL apprehending institution of recovery proceedings took steps seeking registration of its reference under Section 15 of the SICA. Later Board for Industrial and Financial Reconstruction (BIFR) intimated its registration and accorded Case No.14 of 2009.

4. The Bank instituted Original Application OA No.118 of 2009 in DRT on 13.05.2009. In the recovery proceedings

notices were issued by the DRT to all the defendants, which included the appellants as well. On 14.12.2009 the appellant, along with RPL preferred an application under Section 22(1) SICA which was registered as OA No.1046 of 2009. They sought dismissal of IA since the same was filed without prior permission of the Appellate Authority for Industrial and Financial Reconstruction (for short "AAIFR")/BIFR in terms of Section 22(1) of SICA. The DRT took the view that the execution of the decree had to be kept in abeyance until the question whether the guarantors were entitled to protection under Section 22(1) of SICA stood decided by the Apex Court. On appeal, the DRAT set aside the order passed by the DRT. The matter was ultimately brought to the High Court wherein the correctness of the two orders passed by the DRAT on 29.08.2011 in OA No.118 of 2009 and the orders dated 30.05.2011 and 03.05.2010 passed by the DRT were examined.

5. The primary issue that came for consideration before the High Court was whether the protection under Section

22(1) of SICA can be extended to the appellants in their capacity as guarantors of debt owned by RPL. The High Court upheld the judgment dated 19.08.2011 passed by the DRAT and the orders dated 30.05.2011 and 03.05.2010 passed by the DRT. The High Court also held that the protection of Section 22(1) of SICA would not be available to the appellants who are Directors and Guarantors of sick industrial company, in view of the judgments rendered by this Court in ***Kailash Nath Agarwal and others v. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. And another*** (2003) 4 SCC 305, ***KSL and Industries Limited v. Arihant Threads Limited and others*** (2008) 9 SCC 763 and ***Nahar Industrial Enterprises Limited v. Hong Kong and Shanghai Banking Corporation*** (2009) 8 SCC 646 etc. Aggrieved by the same, this special leave petition has been preferred.

6. We need not labour much to answer the question of law raised in this appeal since, as rightly pointed out by the High Court, the same stands covered by various

Judgments of this Court referred to earlier. Appellants, who are the guarantors, can obtain the protection of Section 22(1) of SICA only if the action filed by the bank comes within the ambit of the term 'suit'. If the action filed by the respondent bank in the nature of 'proceedings' and not a 'suit', protection under Section 22(1) would not be available, especially, when the appellants are guarantors.

7. This Court, in ***KSL and Industries Limited*** (supra) took the view that even though both the conflicting statutes SICA and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short the "RDDB") contain a non-obstante clause, in case of conflict the RDDB Act, 1993 will prevail over SICA, so far as public revenue recoveries are concerned. This Court also emphasized that the liability of surety or guarantor is co-extensive with that of the principal debtor in ***Kailash Nath Agarwal and others*** (supra). In ***Nahar Industrial Enterprises Limited*** (supra) this Court reiterated the term 'suit' have to be confined in the context of sub-

section (1) of Section 22 of SICA to those actions which are dealt with under the Code and not in the comprehensive over-arching proceedings so as to apply to any original proceedings before any legal forum. The term 'suit' would apply only to proceedings in civil court and not actions or recovery proceedings filed by banks and financial institutions before a tribunal such as DRT.

8. In our view, all the legal points raised by the appellants stand covered by the judgments referred to hereinbefore and hence a further examination of the same is unnecessary. The appeal, therefore, lacks merits and the same is dismissed, however, there will be no order as to costs.

JUDGMENT

.....J.
(K.S. Radhakrishnan)

.....J.
(A.K. Sikri)

New Delhi,
December 13, 2013