

actually being appointed to it. We cannot, therefore but apply here the oft repeated rule of interpretation, namely, that absurdity cannot be imputed to the Legislature.

(10) With respect, we too cannot, therefore, accept as correct the view expressed in *Dr. Gajinder Kumar Diwan's case* (supra) that the benefit of reservation for dependants of Ex-Servicemen is confined only to dependants of living Ex-Servicemen. We are consequently hereby constrained to overrule this judgment and hold instead that the benefit of reservation under the Rules extends to dependants of all Ex-Servicemen whether living or deceased.

(11) Keeping in view the fact that the judgment in *Dr. Gajinder Kumar Diwan's case* (supra) has held the field for many years, we direct that the view now expressed, shall operate prospectively only, that is, with effect from the date of this judgment.

(12) In so far as the petitioner is concerned, it follows that he would clearly be entitled to the Certificate of dependency as sought by him. We consequently hereby allow his writ petition and direct the District Sainik Welfare Officer, Gurdaspur to issue him a Certificate of dependency under relevant Rules.

(13) This reference is thus answered accordingly and this writ petition is accepted with costs. Counsel fee Rs. 1,000.

J.S.T.

Before : Ashok Bhan, J.

SARUP CHAND,—Petitioner.

versus

M. K. PAPER AND BOARD MILLS PVT. LTD., KHARAR AND
OTHERS,—Respondents.

Civil Revision No. 618 of 1990.

26th February, 1992.

Sick Industrial Companies (Special Provisions) Act (1 of 1985)—S. 22(1)—Company declared a sick company—Civil suit pending for recovery of specified amount against it—Whether such suit liable to be stayed.

Sarup Chand v. M. K. Paper and Board Mills Pvt. Ltd., Kharar 445
and others (Ashok Bhan, J.)

Held, that the Legislature in its wisdom has restricted only certain types of proceedings in S. 22 of the Act, which can neither be commenced and if commenced, cannot be proceeded with in case the company has been declared to be a sick unit and not proceedings like the suit which may be initiated against a company; thereby restricting the right of the third party against the company curtailing the powers of the civil Court from granting such a relief. It is, however, made clear that as and when such a suit is decreed and the decree holder seeks to execute such decree then the provisions of S. 22(1) of the Act, shall come into play with full force to the help of such a company.

(Para 6)

Petition under Section 115 C.P.C. for revision of the order of the Court of Shri K. S. Bhuller, P.C.S., Sub Judge Ist Class, Samana allowing the application of the respondent No. 1 and 4 for staying the proceedings in this case under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.

Claim : Application/Suit u/s 33 Rule 1 C.P.C. for permission to sue the defendants as an indigent person, for the recovery of Rs. 2,09,794 (Principal amount), 1,60,194.60 and 49,600.40 as interest at the rate of 1 per cent per month upto 12th April, 1989.

Claim in Appeal : For reversal of the order of lower Court.

D. D. Gupta, Advocate, for the petitioner.
Rajive Bhalla, Advocate, for the respondent.

JUDGMENT

Ashok Bhan, J. (Oral)

Plaintiff-petitioner (hereinafter referred to as the petitioner) filed a suit against the defendant-respondents (hereinafter referred to as the respondents) for the recovery of Rs. 2,09,794 (Rs. 1,60,194.60 as principal amount and Rs. 49,600.40 as interest) and future interest at the rate of 1 per cent per month. During the pendency of the suit respondents-Company which is a private limited, filed an application stating therein that on a reference made to the Board for industrial and financial reconstruction, in the prescribed form under the Provisions of Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the Act), the respondent-company has been declared a sick company and so keeping in view the provisions of section 22(1) of the Act, proceedings in the suit be stayed. The trial Court accepted this application and

stayed further proceedings in the suit. The suit was adjourned *sine die* and the file was ordered to be consigned to the record room. Petitioner has come up in revision challenging the said order.

(2) Mr. D. D. Gupta, Advocate, appearing for the petitioner contended that only certain specified proceedings are contemplated to be stayed under section 22 of the Act, like winding up, execution distress or appointment of a receiver and the proceedings in the suit cannot be stayed and, therefore, the trial Court has clearly erred in staying the proceedings in the suit.

(3) I find force in the submission of the learned counsel appearing for the petitioner. Section 22(1) of the Act reads as under:—

“S. 22. Suspension of Legal Proceedings, Contracts etc. (1) Where in respect of an industrial company, an inquiry under Sec. 16 is pending or any scheme referred to under S. 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 or for the appointment of a receiver in respect thereof shall lie or be proceeded further, except with the consent of the Board or, as the case may be, the Appellate Authority.*”

(4) A careful reading of the provisions of sub clause (1) of section 22 of the Act, would show that there are certain types of proceedings which cannot proceed during the pendency of an application under section 15(1) of the Act before the Board constituted under the Act, that is:—

- (i) Proceedings for winding up;
- (ii) Proceedings for execution, distress or the like against any of the properties of the industrial company; and
- (iii) for the appointment of a receiver in respect thereof.

If a company files an application under section 15(1) of the Act before the Board constituted under the Act, then the proceedings

such as specified cannot be initiated and if initiated, the same cannot be proceeded with. In this particular case, we are concerned with the proposed action of the plaintiff in a Civil Suit for the recovery of certain specified amount. The legislature in its wisdom, did not include the word 'suit' but if the suit is decreed then its execution has to be stayed. The reason seems to be that the legislature wanted to protect a sick unit from being wound up or going bankrupt in execution of a decree or where there is some sort of recovery being made against the property of such company.

(5) The word 'the like' in section 22(1), would not help the respondent-company either. The word 'the like' would not include stay of proceedings in the suit because had that been the intention, the legislature would have put the word 'suit' before the word 'execution' in this section. The word 'the like' would mean the proceedings in the nature of winding up, execution or distress for the recovery of the money against the properties of the company. This matter was examined at length by Andhra Pradesh High Court in *The Andhra Cement Company Ltd., Secunderabad v. A. P. State Electricity Board and others* (1), where a suit had been filed by the Andhra Cement Company Limited against the A.P. Electricity Board and its officers for a declaration that the defendants are entitled to take any coercive steps like disconnection of power to the plaintiff's factories either under the Indian Electricity Act or under the Electricity Supply Act or under the conditions of supply, pending the settlement of claims between the plaintiff and the Board and in view of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, and for issuance of consequential permanent injunction restraining the Board from disconnecting the power supply to the plaintiff's factories. The Andhra Cement Company had gone to the Board constituted under the Act, for getting a declaration that it was a sick unit prior to the filing of the suit. The plaintiff in the said suit, filed an application under Order 39 R. 1 and 2 of the Code for *ad interim* injunction to the same effect during the pendency of the suit. This plea was negatived by the Andhra Pradesh High Court holding as under:—

"It is argued for the Company that the words 'legal proceedings' used in the heading to S. 22 cannot be given much importance and that read with the word 'proceeding' used in

(1) A.I.R. 1991 A.P. 269.

the body of the section, it would include 'disconnection' of electrical supply by the Electricity Board. On the other hand the learned Advocate General has stressed that the body of the Section uses the words 'proceedings' and the words 'lie or proceeded with' and that the proceedings prohibited are necessarily against the properties of the Company. Both sides have placed reliance on several dictionaries as to the meaning of the words 'legal proceedings' and 'proceedings'. We do not think it necessary to refer to those dictionaries. On a plain reading of Section 22, we are of the view stated above, namely, that the section contemplates that no proceedings either for winding up or for execution, distress or the like *against any of the properties* of the company or for appointment of a receiver in respect thereof shall 'lie or be proceeded with' and if the Electricity Board, by itself, refuses to supply its product namely, electricity in future, it cannot be brought within the above said prohibition."

(6) The important question which has to be determined is as to what extent the Legislature has given the protection to the company and to what extent, the rights of the third party has been curtailed from approaching the Courts or restricted the jurisdiction of the Courts from granting relief to the third party. Section 22 takes away the jurisdiction of the Courts from adjudicating upon certain proceedings and such a provision has to be construed very strictly. As I have mentioned in the foregoing paragraph, the Legislature in its wisdom has restricted only certain types of proceedings in section 22 of the Act, which can neither be commenced and if commenced, cannot be proceeded with in case the company has been declared to be a sick unit and not proceedings like the suit which may be initiated against a company; thereby restricting the right of the third party against the company curtailing the powers of the civil Court from granting such a relief. It is however, made clear that as and when such a suit is decreed and the decree-holder seeks to execute such decree then the provisions of section 22(1) of the Act, shall come into play with full force to the help of such a company.

(7) For the reasons recorded above, the revision petition is accepted, impugned order of the trial Court is set aside with a direction that the trial Court shall proceed with the suit and decide the same expeditiously. The parties through their counsel are directed to appear before the trial Court on 24th March, 1992. No costs.

J.S.T.