

CASE NO.:
Appeal (civil) 2572 of 2006

PETITIONER:
MORGAN SECURITIES AND CREDIT PVT. LTD. \005\005 APPELLANT

RESPONDENT:
MODI RUBBER LTD. \005\005 RESPONDENT

DATE OF JUDGMENT: 14/12/2006

BENCH:
P.K. BALASUBRAMANYAN

JUDGMENT:

J U D G M E N T
P.K. BALASUBRAMANYAN, J.

1. While, I agree with the conclusion of my learned Brother on the interplay of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'SICA') and the Arbitration and Conciliation Act, 1996 on the question of law formulated while issuing notice on the Petition for Special Leave to Appeal to this Court, and his final order, I think it necessary to express my reservation on the propriety of the order passed by the Division Bench of the High Court on the facts and in the circumstances of the case. While purporting to exercise jurisdiction in a writ petition challenging an order of the Board for Industrial and Financial Reconstruction (hereinafter referred to as, 'B.I.F.R.') which was approached by the respondent, the Division Bench of the High Court has chosen to brush aside valid orders passed by the Company Court in Allahabad, the order to maintain status quo passed by the Appellate Authority for Industrial and Financial Reconstruction (A.A.I.F.R.) and by various Debts Recovery Tribunals and has permitted the asset of the respondent to be sold as proposed by the respondent. It must be noted that the orders were made by the competent tribunals or court and that those orders were binding on the respondent, the writ petitioner in the High Court. If on its understanding of Section 22(3) of SICA, the High Court was of the view that the orders of restraint did not bar the BIFR from considering the prayer of the respondent, there was still the order of A.A.I.F.R. to maintain status quo regarding the assets of the respondent-Company. Surely, that was an order under the SICA. No reason is given by the High Court to hold that the order of A.A.I.F.R. is also not binding on B.I.F.R. or that B.I.F.R. could ignore it. According to me, the High Court should have dealt with the question properly with reference to the nature of the relevant orders and the context in which they were made and if it was still of the view that the power vested in B.I.F.R. under Section 22(3) of SICA enabled it to override all those orders, it should have normally remitted the application made by the respondent to B.I.F.R. so as to enable it to take a decision on the prayer of the respondent in the context of the proceedings pending before B.I.F.R. and all elements relevant for the purpose of such a decision. The High Court has also not considered how far it will be

appropriate to permit the sale of the assets of a Company which is before B.I.F.R. for a scheme of revival.

2. Occasions are not infrequent when not so scrupulous debtors approach B.I.F.R. to stall the proceedings and to keep their creditors at bay. The delay before the B.I.F.R. is sought to be taken advantage of. The Parliament has apparently taken note of this and has repealed SICA by the Sick Industrial Companies (Special Provisions) Repeal Act, 2003. The vacuum, thus created has been filled by an amendment to the Companies Act. But, so far, the provisions of the Amending Act and the Companies Act introduced, have not been brought into force. It appears to be time to consider whether these enactments should not be notified.