

IN THE HIGH COURT OF DELHI

CCP (Co.).No.8/2005

in

Co.A.(SB)No.4/2005

Date of decision: March 2, 2009.

In the matter of :

M/s.Chopra Hospitals Pvt.Ltd.

... Petitioner

Through : Dr.A.M.Dwarkadas Motiwala,
petitioner in person.

Versus

Dr.Usha Chopra & Anr.

....Respondents

Through : Mr.H.L.Tikku, Sr.Adv. with Mr.Sangram
Patnaik, Advocate.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | NO |
| 2. To be referred to the Reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

GITA MITTAL, J

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1. This petition has been filed by Dr.A.M.Dwarkadas Motiwala, Dr.Mrs.N.Dwarkadas and Mrs.Smita A.Motiwala on behalf of Chopra Hospital Pvt.Ltd. against Dr.Usha Chopra and the Commissioner of Police, Delhi under Rule 2-A of Order 39 of the

Code of Civil Procedure contending that the respondents have wilfully violated the order dated 14th March, 2005.

2. It appears that Dr.Mrs.Usha Chopra filed a petition bearing Co.P.no.76/2003 under sections 397/398 of the Companies Act, 1956 against the Chopra Hospital Pvt.Ltd. (hereinafter called as 'the company'); Dr.A.M.Dwarkadas Motiwala and five other persons before the Company Law Board. The petitioners, inter alia, contended that the company was incorporated on 13th May, 1999 with only two promoters, shareholders and directors, namely the respondent no.1-Dr.Usha Chopra and her husband Dr.Satish Kumar Chopra. Respondent no.1 had applied for allotment of land for construction of a nursing home which was granted to her by the DDA under a scheme of leasehold rights in nursing home plots to NRIs. Dr.Ashok Mohan Dwarkadas Motiwala and the other respondents before the Company Law Board (petitioners herein) are alleged to have practiced deception on Dr.Usha Chopra to grab her nursing home. In this behalf, several letters were detailed in the company petition which was finally allowed by the Company Law Board vide an order passed on 2nd March, 2005 in the following terms :-

“34. In the lights of above discussions, the petition is allowed. I hereby set aside the appointments of initial directors of Shri Ashish Gupta and Mr.Anil Agarwal. Their appointments having been held illegal, all other appointments made by these Directors, without holding Board Meeting and notice to the petitioner, would also

fall. Similarly, all allotments of shares made by the respondent company are contrary to the provisions of relevant sections of Companies Act, 1956 as well as the provisions of Memorandum of Articles of Association of the respondent company and are bad in law.

35. The respondent company is restored back to its original position with only two directors holding 100% shareholding i.e. the petitioner and her husband. All other appointments and shareholding are set aside. “

3. Dr.A.M.Dwarkadas Motiwala assailed the order dated 2nd March, 2005 by way of Co.Appl.(SB)No.4/2005 which was also dismissed by a judgment dated 19th February, 2007 passed by this court. It is an admitted position that the petitioner herein has been granted leave to appeal by the Supreme Court and the appeal is pending without any stay of the orders passed by this court.

4. Apart from Co.A.(SB) no.4/2005, filed by the petitioners, challenging the order passed by the Company Law Board on 2nd March, 2005, on merits, the petitioners had also filed CA no.359/2005, on which the following interim order was passed by this court on 14th March, 2005 :-

“ xxxx xxxxx

CA No.359/2005.

Mr.Nayar, learned senior counsel for the respondent, on instructions, states that the respondent shall not dispose of and/or alienate any property of the company. She shall not take any steps for cancellation of the registration of the hospital or

disconnection of the electricity etc.

XXXX

XXXXX“

5. The petitioners contend that the respondents have violated the interim order dated 14th March, 2005 inasmuch as they have taken steps for cancellation of the registration of the society; got effected disconnection of electricity and have also disposed of the property of the company. The three allegations made by the petitioner deserve to be considered in seriatim.

6. So far as the allegation with regard to respondent no.1 having taken steps for cancellation of the registration of the hospital is concerned, my attention is drawn to the orders dated 9th July, 2002 passed by the Directorate of Health Services, Govt. of NCT of Delhi whereby the Director of Health Services rejected the application for renewal of registration for the year 2002-03 for the Chopra Harsh Hospital and National Pediatric Center, signed by Dr.Ashok Mohan Dwarkadas Motiwala. As a consequence, the registration of the Chopra Hospital and Nursing Home (then called as Chopra Harsh Hospital and National Pediatric Centre by the petitioner) was cancelled. The order was issued under section 8(ii) of the Delhi Nursing Home Registration Act, 1953. The order does make references to the communications which have been received from Dr.Usha Chopra complaining of certain acts and illegalities allegedly

committed by Dr.Ashok Mohan Dwarkadas Motiwala but the same were prior to 9th July, 2002 when the order of cancellation was passed.

7. This order was assailed by the Hospital before the Financial Commissioner by way of an appeal under section 8 of the Delhi Nursing Homes (Regulations) Act, 1948. The appeal bearing Case No.242/03/CA, was also rejected by an order passed on 25th May, 2004. The order noted that the records of the Directorate of Health Services had been scrutinized and the renewal was refused for the reason that there was a departure from the previous practice in the sense that the name of the applicant had been changed from 'Dr.Mrs.Usha Chopra' to 'Chopra Harsh Hospital and National Pediatric Centre'. It was also noted that the renewal application was signed by Dr.A.M.Dwarkadas Motiwala. The Financial Commissioner notes that the registration stood in the name of Dr.(Mrs.)Usha Chopra and consequently could be renewed only in her name. As a consequence, the application for renewal, in fact, amounted to an application for a fresh registration.

8. From the chronology of events list as noted above, it is apparent that the application which has been submitted by Dr.Ashok Mohan Dwarkadas for renewal of the registration was much before

the order dated 14th March, 2005 was passed. Even the rejection of the application on 9th July, 2002 was almost three years before the interim order dated 14th March, 2005.

9. In view of the above factual position, it cannot be held that the respondent no.1 has taken steps for cancellation of the registration of the nursing home in violation of the orders dated 14th March, 2005.

10. The second allegation made by the petitioners against the respondent no.1 is to the effect that she has got the electricity to the nursing home premises disconnected.

11. The petition filed before this court has been examined with the assistance of the petitioner. No allegation could be pointed out by Dr.A.M. Dwarkadas Motiwala with regard to respondent no.1 being responsible for disconnection of the electricity. I find that there is not even a reference to the disconnection in the entire petition.

12. Only oral submissions to this effect were made placing reliance on the order dated 19th May, 2003 passed by the learned Single Judge in IA no.5503/03 in CCP no.57/03. These proceedings appear to have been initiated by the respondent no.1 herein against the

Delhi Vidyut Board substituted by the BSES Rajdhani Power Ltd. The petitioner has also placed copy of the order dated 27th May, 2003 passed in FAO(OS) no.210/2003 on record.

Perusal of the said order shows that the electricity to the premises of the plaintiff had been disconnected and the Division Bench had made certain observations with regard to the restoration of electricity. However, there is nothing on the record to show that the respondents have interfered with or have taken any steps for disconnection of the electricity.

13. The third grievance of the petitioners against the respondents is to the effect that the respondents have disposed of and/or alienated the property of the company. The petitioners contend that a complaint was made by the respondent no.1 to the Chowki In-Charge, PS Gulmohar Park on 19th March, 2005. Pursuant thereto, the respondent no.1 had illegally taken possession of a Toyota Qualis vehicle bearing registration no.DL1- 9VA 2709 in collusion with the police. The petitioner contends that after having taken such illegal possession, the respondent no.1 wrote a letter dated 4th April, 2005 to the ICICI Bank requiring it to take possession of the car and had handed over the car to the bank.

14. It is further contended that by a letter dated 17th August, 2005 the respondent no.1 had directed Mr.Rakesh Gulhani to remove medicines from the hospital which also amounted to disposal of the property of the company in violation of the order dated 14th March, 2005.

15. I have carefully examined the record which has been placed before this court. The petitioners have placed on record an account statement of Account No.LADEL00000731384 with the ICICI Bank for the period 26th August, 2002 to 8th July, 2005 showing deposit of monthly instalments towards the Qualis vehicle. Dr.Ashok Mohan Motiwala has orally explained that the vehicle had been obtained on a hire purchase from the ICICI Bank and there was no default in the instalments which had to be deposited in the bank. The submission is that handing over of the vehicle by the respondent no.1 to the ICICI Bank was contumacious and mala fide.

16. It is trite that the ownership in property taken on hire purchase vests with the hire purchaser only after the final instalment has been deposited. It is not even Dr.Ashok Mohan Motiwala's case before this court that the final instalment has been paid. For this reason, it is misconceived to contend that the ownership of the car had vested in the company.

17. Perusal of the letter dated 14th April, 2005 also does not make a reference to the vehicle in question. This was a communication addressed by the respondent no.1, notifying the bank that the respondent no.1 is not liable for any loan against the company which has been taken by Dr.Ashok Mohan Dwarkadas Motiwala and his mother Dr.Mrs.Nirmal Dwarkadas Motiwala by fraud or misrepresentation.

18. So far as the letter dated 17th August, 2005 to Mr.Rakesh Gulhani is concerned, there is nothing on record to indicate that the medicines were owned by the hospital and not by Mr.Rakesh Gulhani. It remains in the realm of speculation as to what was the status or interest of Mr.Gulhani in the nursing home and as to whether he was a supplier of medicines or was maintaining a drugs/chemist shop in the nursing home. Merely, on the basis of this letter, I am not satisfied that the respondent no.1 has disposed of or alienated any property of the company in violation of the order dated 14th March, 2005.

19. The present contempt petition was filed on 12th April, 2005. During its pendency on 19th February, 2007, the main appeal being Co.A(SB) no.4/2005 filed by the petitioners was dismissed. For this

reason also keeping the present proceedings or any action against the respondent no.1 would be unwarranted.

20. So far as respondent no.2 is concerned, it is contended that he has facilitated dispossession of the petitioner on the night of 11th-12th April, 2005. It is further contended that respondent no.2 has failed to take action on the complaint dated 10th April, 2005 and 11th April, 2005 lodged by the petitioners alleging grievous assault and illegal dispossession.

21. The petitioners have submitted that by order dated 12th April, 2005, they were permitted to take appropriate proceedings by filing an FIR with regard to the allegations of wrongful restraint of seven persons. The complaint before me is that on the failure of respondent no.2, no case was registered on his complaint which amounts to violation of order dated 12th April, 2005.

22. It needs no elaboration that the Code of Criminal Procedure provides the procedure by which the police has to take action on complaints lodged with it. Sections 154 & 155 set out the manner in which the case would be registered. Upon failure of the local police to take action on the complaint, the party concerned is enjoined to approach the DCP, and in case of failure of the police to

take action on the complaint, the party concerned may avail appropriate legal remedy by way of an application or a petition to the magistrate concerned or by invoking the jurisdiction of the high court seeking appropriate directions.

23. I find that the order dated 12th April, 2005 passed by this court issuing the notice in the present proceedings to the respondents, also gave the following liberty to the petitioner :-

“.... It is open to the appellant to take appropriate criminal proceedings by filing a FIR in respect of the allegations of wrongful restraint of the 7 persons as alleged by him.”

24. The contention of the petitioners is that the police failed to take action. If the allegations made by the petitioners disclose an offence, the police was required to follow the procedure prescribed under the Code of Criminal Procedure and on its failure to do so, it was open to the petitioner to proceed in accordance with law. There is no direction to the police by this court requiring it to register the FIR. For this reason, I am not inclined to take any further action against the respondent no.2 as well in this matter.

In view of the above discussion, this petition is hereby dismissed.

Nothing herein contained is adjudication on the merits of the grievance of the petitioners in such complaint(s).

Needless to state it shall be open for the petitioners to take any action with regard to the complaint made to the police by way of appropriate legal proceedings.

March 2, 2009
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GITA MITTAL, J