IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.570 of 2015

In

COM PET 11 of 1998

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1. The Official Liquidators, Standard Saving and Investments Co. Ltd, (in Liquidtion) Mourya Lok Complex, Bailey Road, Patna.
2. Sunil Kumar Sinha, Ex-Managing Director, Standard Saving and Investments Co. Ltd., Corporate Office, Radha Ram Sinha Road, Bhagalpur, P.S.-Kotwali, District-Bhagalpur, Registered Office at Gola Ghat, Chowk, P.S.-Barari, District-Bhagalpur. .
3. Braj Kishore Srivastava, Son of Sri Shiv Shankar Prasad, at P.O.-Piprahi Bazar, Sheohar, District-Sheohar.

.... Petitioner/s

Versus

1. Vridhishree Hotels Ltd. through the Managing Director, Akhileshwar Kumar Shrivastava, Son of Late Bachoo Prasad, resident of H.C. Building Opposite of Kuber Hotel, Exhibition Road, Patna.
2. Akhileshwar Kumar Shrivastava, Managing Director, Vridhishree Hotels Ltd., Son of Late Bachoo Prasad, resident of H.C. Building Opposite of Kuber Hotel, Exhibition Road, Patna.

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

4 16-04-2015 Heard learned counsel for the parties.

2. An application has been filed by Vridhishree Hotel and Akhileshwar Kumar Shrivastava, Managing Director of Vridhishree Hotel to recall the order of this court dated 8.01.2015.

3. Mr. Yogendra Mishra, learned counsel for the Opposite Party Nos. 1 and 2 in support of the prayer for such recall has submitted that:-

i) since possession of the H.C. Building was already handed over by the opposite Party Nos. 1 and 2 in compliance of the order of this Court dated 15.05.2014, there was no need to pass fresh order on 08.01.2015.

ii) the opposite parties are still awaiting the result of the review petition filed before the Division Bench and thus they should not have been coerced by way of passing the order dated 08.01.2015.

iii) the Opposite Party No. 2 having written letter to District Magistrate, Patna to take over possession of H.C. Building was not expected to do anything more.

iv) some more time should be given to Opposite Party Nos. 1 and 2 to hand over possession of H.C. Building.

4. In order to appreciate these submissions, this Court will be required to record the background in which the order dated 08.01.2015 has been filed.

5. This Court on 15.05.2014, while considering the matter of a liquidation proceeding in the case of

Standard Saving & Investment Company Limited., had passed an order that the four sale deeds and agreement for sale of fixtures are declared null and void and M/s Vridhishree Hotels was also directed to hand over peaceful possession of property to Official Liquidator forthwith and in any case within a period of two weeks from the date of the order. This order was passed on contest by M/s Vridhishree Hotels and its M.D. Mr. A.K. Srivastava as would be evident from 47 pages order probably considering each and every aspect including Mr. Mishra's plea of so called investment by M/s Vridhishree Hotel after purchase of the property through four sale deeds. The operative portion of the order dated 15.05.2014 in fact had read as follows:-

> *"In the aforesaid circumstances, the prayer of the O.L. is allowed and all the four sale deeds and the Agreement for Sale of furniture and fixture are declared to be null and void. The purchaser M/s.Vridhishree Hotels Ltd is directed to hand over peaceful possession of the said property to the Official Liquidator forthwith and in any case within a period of two weeks from today."*

6. The Official Liquidator on 27.05.2014 had

approached the Opposite Party No. 2, the M.D. of the Vridhishree Hotel to hand over possession and on 28.05.2014, had gone to take possession and when possession of entire Hotel was not handed over, he in his report had recorded as follows:-

"MINUTE

1. Sri Sanjay Sardar
Asstt. Official Liquidator
o/o Official Liquidator
High Court, Patna
2.Sri Gauri Shankar Sah
Sr. Technical Assistant
o/o O.L. High Court, Patna
3. Sri Binod Kumar Choudhary
Steno Gr-II,
O/o Official Liquidator,
High Court, Patna.
4.Sri Anil Kumar, Peon
Of the said office

In respectful compliance of the orders dt. 15.05.2014 and further this office order No. Ol-126/Possession/164 dt. 31.05.2014, the above representatives of the official Liquidator attended as the site namely H.C. Building, Exhibition Road, Patna and found that police Administration was available to co-operate in taking possession of the H.C. Building from the purchaser M/s Vridhishree Hotels Ltd. but they have stated that no any direction from the Hon'ble Court has been issued upon the District Administration to take forcible possession. Further they have stated that the Hon'ble Court has directed the purchaser the hand over peaceful possession, hence, there is no question for taking possession forcibly but my police force to remaining available till disposal of the work as stated by the police Administration.

Further, Sri A.K. Srivastava, purchaser of M/s Vridishreee Hotels Ltd., stated that possession of 1st floor of H.C. Building have already handed over on 28.05.2014 and in respectful compliance of the Hon'ble Court's order today handed over the possession of

Basement & Ground Floor which is now under possession of Tenant/Occupant, on rental basis. Further they have stated that 2nd, 3rd, Forth and under possession and they showed inability ot hand over possession and denied on the ground that said floor was constructed by own cost. Police Force a handed for etc., purpose of safely only discloses the facts of the case lodged over the Prayag Group of Company and stated that Case No. 151/13 dt. 24.04.2013 under the provision of Sec. 408, 409, 420, 467, 468, 471 & 120B/34 and assured to submit reply of Notice in due course by letter. Thus, the purchaser of M/s Vridhishree Hotels Ltd., handed over the possession of Basement, Ground Floor on as is where & whatever there is basis.

After taking possession of the basement, Ground Floor, we left the premise after pasting the notice on etc. said premises."

7. The period of two weeks in the meantime had expired on 29.05.2014. Let it be noted that the aforesaid order of this Court dated 15.05.2014 was not complied and the peaceful possession of the entire property in question consisting of four floors of the Building was not handed over by the persons managing the affairs of M/s Vridhishree Hotels including Opposite Party No. 2.

8. Then comes the next date of visit of Official Liquidator i.e. 03.06.2014. Let it be noted that the period of two weeks as per the order has been completed on 29.05.2014 and on that day as well the proceedings were

recorded by appointment of Official Liquidator, would go to show that Mr. Srivastava did not hand over possession of the entire property i.e. H.C. Building which as noted above consist of ground floor, first floor, second floor, third floor and fourth floor. The Official Liquidator was given possession only of basement and ground floor on 3rd June, 2014 apart from first floor which was given on 28th of May, 2014.

9. In the meantime, the appeal against the order of the Company Court dated 15.05.2014, was carried out in Company Appeal No. 1 of 2014 and that also was dismissed by the Division Bench by order dated 31.07.2014. Thus, the order of this Court dated 15.05.2014, had merged with the appellate order dated 31.07.2014.

10. After the order of the appellate Court dated 31.07.2014, the purchaser M/s Vridhishree Hotels and its Managing Director in all fairness ought to have complied the order by handing over peaceful possession

of the property to the Official Liquidator but that also was not done and as a matter of fact when the case had appeared on 08.01.2015, this Court in the light of the prayer made by the Official Liquidator in O.L.R. No. 44 of 2014 had considered the prayer for giving direction to the District Magistrate to take steps for taking final possession by vacating the occupiers as stated in paragraph no. 12 of the report and hand over possession to the Official Liquidator as also take measures by deploying number of security personnel and payment of their salary from establishment fund till its realization from the assets of the company.

11. This Court having considered the aforesaid direction and specially the directions contained in earlier order dated 15.05.2014, giving only two weeks time for handing over possession had not only directed the Collector of Patna district to take possession of H.C. Building within a period of one month from the date of receipt of the order. Additionally, having found that the

order of this Court dated 15.05.2014, was not complied within the time prescribed in the order dated 15.05.2014, had issued a notice of contempt to Mr. A.K. Shrivastava both in capacity of M/s Vridhishree Hotel and in his personal capacity directing him to file show cause reply as to why he should not be proceeded and punished for violation of the direction in the order dated 15.05.2014. The relevant portion of the order of this Court dated 08.01.2015, reads as follows:-

> ***"Item No.(ii)***
>
> *Heard Official Liquidator as with regard to the prayer made in OLR No.44/2014 which reads as follows:*
>
> > *"a) Directions may be given to the District Administration to take steps for taking forcibly possession by evicting of occupiers as stated in the para 12 of the report and hand over possession to the Official Liquidator.*
> >
> > *b) Approve the no. of Security personnel deployed to protect property and payment of salary from establishment fund till realization assets of the company."*
>
> *It is not in doubt that Vridhishree Hotels Limited has purchased the building, its fixture and furniture of the company under liquidation, namely, M/s Standard Saving & Investment Co. Ltd.. Such purchase of the building and fixture on 24.8.1998 made after the petition for filing of winding of the aforesaid company under liquidation, presented on 16.8.1998, the Company Judge by his reasoned order dated 15.5.2014 had set aside the same and in the operative portion of the aforesaid order it was held as follows:*
>
> > *"In the aforesaid circumstances, the prayer*

> *of O.L. is allowed and all the four sale deeds and the Agreement for Sale of furniture and fixture are declared to be null and void. The purchaser M/s Vridhishree Hotels Ltd. is directed to hand over peaceful possession of the said property to the Official Liquidator forthwith and in any case within a period of two weeks from today."*

The aforesaid order of the Company Judge having been not complied within the specified period, both Vridhishree Hotels and its Managing Director Akhileshwar Kumar Srivastava have become liable for being proceeded and punished for causing willful violation of the direction of this Court as with regard to handing over of the possession of their entire premises with furniture and fixture, namely, H.C.Building.

Let it be noted that as against the aforementioned order dated 15.5.2014 of the Company Judge though an appeal was filed by Vridhishree Hotels and its Managing Director Akhileshwar Kumar Srivastava the same was also dismissed in limine by an order dated 31.7.2014 which in turn would give no scope to the purchasers to remain in continued possession of H.C.Building.

Thus when the learned counsel for Vridhishree Hotels and its Managing Director Akhileshwar Kumar Srivastava has also been conspicuously absent today, this Court will have now no other option but to direct the Collector of the District to take possession of HC Building if necessary by also evicting any and every occupier thereof within a period of one month from the date of receipt of this order. The Collector of Patna District having taken possession of H.C.Building shall also submit his report to this Court.

Let a copy of this order alongwith a copy of OLR No.44/2014 be also given to Mr. Partha Sarthy, learned GA11 for its communication to the Collector of Patna District.

Additionally, issue notice of contempt against Mr. A.K.Srivastava both in capacity of the Managing Director of Vridhishree Hotels and in his personal capacity directing him to file a show cause reply as to why he should not be proceeded and punished for causing wilful violation of the direction given in the order of this Court dated 15.5.2014.

Requisites both under ordinary process and registered cover with A/D shall be filed by the Official Liquidator within a period of one week."

12. It appears that against the aforementioned order, M/s Vridhishree Hotel had filed Special Leave Petition before the Apex Court, claiming that an application for recall of the impugned order dated 08.01.2015, was pending before the High Court and noting this aspect, the Apex Court had declined to interfere. The Apex Court had however passed an order that the petitioner M/s Vridhishree Hotel and its Managing Director, who were petitioners before the Apex court were not to be evicted for a period of three weeks from the date of the order i.e. 23.02.2015 and the petitioner M/s Vridhishree Hotels may approach the High Court for consideration of the application for recall. Thereafter, the case has been mentioned and also heard on the petition for recall as would be apparent from the order of this Court dated 09.04.2015 as also today.

13. The recall petition filed by the petitioner being M.J.C No. 570 of 2015 was actually filed before this Court on 12.03.2015, though it was presented on 03.02.2015, but had remained defective and the defects were removed by the learned counsel for the petitioner on 03.03.2015. Obviously, under the same misconceived notion the Apex Court on 23.02.2015, was made aware of the recall petition being pending where the fact remains that it was not even filed. The presentation of application is not a filing of the application because till the defects are not removed, the presentation of the application would not be held to be filing of an application.

14. That apart in the application which has been filed for recall being M.J.C No. 570 of 2015, the main ground is that the petitioners had handed over possession to the Officers of the Official Liquidator and to that extent reliance has been placed on minutes of the meeting of 28.05.2014 and 03.06.2014. From the report

dated 28.05.2014 already quoted above, it would become very clear that none including the Opposite Party No. 2 from M/s Vridhishree Hotels had turned up when the Official Liquidator had visited to comply the order of this Court dated 15.05.2014, read with letter of the Official Liquidator dated 27.05.2014. In fact on 28.05.2014 in the minutes, it was clearly recorded that the whole building was under possession of Mr. A.K. Srivastava of M/s Vridhishree Hotels but no one except security agency of the Hotel had turned up at the time when the team of Official Liquidator had visited for compliance of the order of this Court dated 15.05.2014. The said minutes also record that earlier Mr. Shrivastava had claimed that notices were served by him to his present tenants of the building but no steps for vacating the lease/rented premises were taken by them.

15. The aforesaid report dated 28.05.2014 is therefore sufficient to show as to how Mr. A.K. Shrivastava is playing the game of ducks and drakes and

was adamant in flouting the order of this Court. From the reading of the aforementioned report, it would be also clear that the Official Liquidator could only get possession of basement, ground floor first floor whereas second, third and fourth floors were still under possession of Mr. A.K. Shrivastava.

16. The team of Official Liquidator has also recorded in its report dated 28.05.2014 that an assurance was given that possession of the building as a whole would be handed over in one month after taking possession from M/s Prayag Group of Companies on the third floor. It thus becomes clear that the possession of H.C. Building was not handed over to the Official Liquidator.

17. It must be kept in mind that all these explanations of Mr. Srivastava that he had made huge investment was gone into by the Court in the order dated 15.05.2014, wherein it was noted as follows:-

> "*Re: H.C. Building matter:*
>
> *The present matter under Section 531A of the Companies Act has arisen out of the report dated 9.7.2007 and OLR No. 48/2010 filed by the Official*

Liquidator by which a prayer has been made to hold that the sale of Schedule property by the company (in liquidation) in favour of M/s. Vridhishree Hotels Limited is void under Section 531A of the Companies Act, 1956 and consequentially the sale deeds executed in favour of the purchasers be annulled with a direction to hand over possession of the property.

In the said reports it is pointed out by the Official Liquidator that the Company (in liquidation) was incorporated on 28.5.1996 as a Public Company Limited by shares with the objects to carry on the business of investors by selling and purchasing business, as such property, building, land, etc., was also one object for which the company was established. On 26.8.1998 one of its Executive and creditor presented the winding up petition. The petition was finally advertised and published in two local dailies and winding up order was passed on 21.5.2004 appointing the Official Liquidator. The winding up order casts a mandatory duty on him to take into custody or under his control all the properties, effects and actionable claims to which the company (in liquidation) is or appears to be entitled under Section 456 of the Companies Act, 1956.

It may here be mentioned that on 20.11.1998 this Court while issuing notice in both the company petition as well as interlocutory application being I.A. No. 13256/1998 to the respondents to show cause why an order of winding up and/or any other appropriate order on the petition/application be not made by this Court, further directed that in the meantime, the Directors of the Company, namely, respondent nos. 2 to 4 are restrained from disposing of the property of the company by sale or otherwise and from withdrawing money from the account of the company.

In his report the O.L. further points out that the company (in liquidation) had purchased the property, land with building known as H.C. Building situated at Exhibition Road, in the town and district of Patna from Shri Baldeo Krishna Logani, Shri Jagdish Chandra Logani and Nirmal Rani Logani who were the joint owners of the said building by three different registered sale deeds dated 17.7.1996 registered at the office of the Sub-Registrar of Assurances, Kolkata bearing registration Nos. 10470 dated 22.7.1996, 10476 dated 24.7.1996 and 10126 dated 27.7.1996. Since the Government of Bihar by enactment decided not to grant recognition to any sale deeds registered *outside the State of Bihar with regard to any immovable properties situated within the State unless the purchaser of such sale deeds pay appropriate fee and stamp duty in accordance with the rules framed by the Government of Bihar, the Patna Municipal Corporation has not entered the name of the company (in liquidation) as owner of the H.C. Building but only as occupier of the said building.*

It is further pointed out in the Reports that the Board of Directors of the company (in liquidation) by its resolution dated 1.12.1997 resolved to sell the said building premises for the purpose of payments to investors on the maturity of their investments and one M/s. Vridhishree Hotels Limited had made offer to purchase the said building premises which offer was accepted by the Board of Directors by its resolution dated 20.12.1997. Thereafter an agreement for sale dated 23.12.1997 was entered into. It may here be pointed out that the agreement for sale provided for sale of the H.C. building with all furniture and fixtures for a consideration of Rs. 50 lacs. It was stated in the said agreement for sale that an amount of Rs. 5 lacs has been paid but the mode of payment either by Cheque or Demand Draft or cash is not mentioned in the said agreement for sale. It was further stated that the company (in liquidation) in part performance of agreement for sale delivered possession of the building premises to M/s. Vridhishree Hotels Limited on 23.12.2007 which was allowed permissive possession till the execution and registration of the sale deeds. It is also stated that the purchaser had released a public notice in the local daily "Times of India" published from Patna on 22.1.1998 inviting objection, if any, from the public at large or the investors of the vendor company (in liquidation) in regard to purchase of the said building premises and whatever objections were received, had been taken care of and none of the objectors taken any action restraining the company (in liquidation) to complete the formalities of sale. Thereafter the company (in liquidation) transferred the said H.C. building including the land covered by building and surrounding it and its fixtures, fittings and furniture and stock in trade as existing on the date through four registered sale deeds for a total sale consideration of Rs. 19,93,000/- as also an agreement for sale of furniture, fixture and stocks in trade dated 24.8.1998 for a sale consideration of Rs. 8,00,000/-. The details of the registered sale deeds have been stated *as follows:-*

(i)	*Basement*	*Sale Deed dated 24th day of August 1998 was lodged for registration on 08.10.1998 with the office of Sub-Registrar of Assurances, Mumbai bearing Registration No. R-3-BBB-2103/98 for sale consideration of Rs. 4,98,000/-. However, the Vendor could not admit the execution of the documents before the Sub-Registrar on 08.10.1998 and the same was confirmed on 06.05.1999 vide "Deed of Declaration-cum-Confirmation".*
(ii)	*Ground Floor*	*Sale Deed dated 24th day of August 1998 for a sale consideration of Rs. 4,99,000/-*
(iii)	*First Floor*	*Sale Deed dated 24th day of August 1998 for a sale consideration of Rs. 4,00,000/-*
(iv)	*Roof/Terrace*	*Sale Deed dated 24th day of August 1998 was lodged for registration on 09.10.1998 with the office of Sub-Registrar of Assurances, Mumbai bearing Registration No. R-3-BBB-2120/1998 for sale consideration of Rs. 4,97,000/-. However,*

		the Vendor could not admit the execution of the documents before the Sub-Registrar on 09.10.1998 and the same was confirmed on 6th day of May 1999 vide "Deed of Declaration-cum-Confirmation".
(v)	*Furniture & Fixture*	*Agreement for sale for the Purchase of furniture, Fixture and Stocks in trade , dated 24.08.1998, for the Sale consideration of Rs. 8,00,000/-.*

The purchaser company claims to have paid a total sale consideration amount of Rs. 27,93,000/- out of which Rs. 4,51,000/- is claimed to have been paid by Demand Draft, Rs. 15,00,000/- by Cheque and Rs. 8,42,000/- by cash.

It is also reported that Patna Municipal Corporation has entered the name of the vendee as occupier of the said building premises by order dated 27.6.2002 passed in Mutation Case No. 114/2002-03. It was further pointed out in the report that Shri Sunil Kumar Sinha, Ex-managing Director of the Company (in liquidation) in his affidavits filed twice at flags 19 dated 21.8.2006 and at flag-24 sworn on 12.4.2007 had made statements on oath that the H.C. building belongs to the company (in liquidation) furnishing a copy of the sale deed by which the same had been purchased but had never disclosed on any occasion that the company (in liquidation) had transferred the building premises to M/s. Vridhishree Hotels Ltd. for reasons best known to him.

It is further asserted that under Section 531-A of the Companies Act any transfer of the property, movable or immovable made by a company (in liquidation) not being transfer made in the ordinary course of its business or in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up, shall be void against the liquidator under Section 531-A of the Companies Act.

It was, accordingly, the stand of the O.L. in *the said Reports that on the basis of materials placed on the record by the purchaser and from the other averments made in the reports it was evident that the property has not been sold bona fide and in good faith and in the interest of the transferor company and therefore, this Court may please declare that the property in question which is situated at the prime location has not been sold bonafidely in good faith and amount mentioned in the sale deed do not reflect the fair market price and the transactions has been entered into with a view to defeat the claim of the creditors and in preference to a set of persons and to enable the Directors in management to encash the benefit for themselves and thereby hold that the sale of the Schedule property in favour of M/s. Vridhishree Hotels Ltd. was void under Section 531-A of the Companies Act, 1956 and consequentially the sale deeds executed in favour of the purchaser be annulled with direction to him to hand over peaceful possession.*

The stand of the purchaser M/s. Vridhishree Hotels Ltd. as stated in as many as seven affidavits sworn from 11.9.2008 till 27.10.2010by its Managing Director, has been shifting from time to time with marked developments and additions apart from what it had reported to the O.L. which was reproduced by the O.L. in his first report dated 9.7.2007 at flag-25. It was pleaded that the Ex-Managing Director of the company in his affidavits at flags 19 and 24 furnished the details of the property belonging to the company but on both occasions Sri Sunil Kumar Sinha, Ex-managing Director of the company (in liquidation) had made statement on oath that H.C. Hotel building belongs to the company and is in the possession of trespassers and strangely never disclosed on any occasion that he has already transferred the building premises surrounding along with fixture and furniture to M/s.Vridhishree Hotels Ltd. for reasons best known to him. The whole transaction of the vendor company regarding H.C. Building was as per the resolution of the Board of Directors of the company dated 1.12.1997, therefore, the entire transaction was made in the ordinary course of business and in good faith and for valuable consideration and such transfer cannot be annulled under Section 531A of the Act. It was further asserted that the burden of proof is entirely on the Official Liquidator or the person who has impugned the transaction of transfer.

Thereafter in the fourth affidavit, filed on

16.10.2009 on behalf of the purchaser-company, it was asserted that the said company had purchased the immovable and movable properties of H.C. building, Exhibition Road, Patna by registered sale deeds for a consideration amount of Rs. 27.93 lacs with respect to which four registered sale deeds for immovable property had been executed for an amount of Rs. 19.93 lacs as also an agreement for sale of movables of H.C. Building for Rs. 8 lacs. The details of the modes of payment were again given which shows that the total amount paid in cash was Rs. 8,42,000.00, by Demand Draft Rs. 4,51,000.00 and by cheque Rs. 11,50,000.00. It was further stated therein that cash receipts were available only for Rs. 7.65,000.00 and six such receipts were annexed. It is further stated that amount paid by Demand Draft mentioned in the sale deeds comes to Rs. 8,01,000.00. It is admitted that out of total cheque amounts of Rs. 11,50,000/- for an amount of Rs. 2,50,000/- the cheques were honoured and balance of Rs.9 lacs the cheques were replaced by Demand Draft of Rs. 7.93 lacs and cash of Rs. 1,07,000/- was paid. It is further asserted that only after paying the entire amount the sale deeds were executed and registered and full and final payments were acknowledged and the deed signed.

In the meantime, on questions having been raised by the Ex-Managing Director in his reply and objections regarding the report of the O.L. as also the replies filed by the Managing Director of M/s. Vridhishree Hotels Ltd. that the agreement for sale was for a total amount of Rs. 50/- lacs but the sale deeds were registered on receipt of Rs. 27.93 lacs only which amounts were also not paid as most of the cheques were dishonoured another affidavit that is, the 5th affidavit was filed on behalf of M/s. Vridhishree Hotels Ltd. in which a new story was narrated that when the purchaser after the agreement for sale on 23.12.1997 went to take delivery of possession of the building along with Mr. Sunil Kumar Sinha, Ex-Managing Director of the company (in liquidation) he had to face strong resistance from one Lalbabu Yadav and his son Dependra Kumar Yadav, resident of Goria Toli, Patna who claimed to have paid Rs. 18/- lacs to Mr. Sunil Kumar Sinha for purchase of H.C. building which fact was not denied by Mr. Sunil Kumar Sinha and in such a situation those two persons insisted for refund of their advance money and forcibly carried away Sunil Kumar Sinha with them in order to realize their money.

Thereafter a letter dated 7.5.1998 was received from Sunil Kumar Sinha requesting him to refund Rs. 18/- lacs to Mr. Dependra Kumar, S/o Lal Babu Yadav, Goriya Toli, Patna by way of refund of the amount taken from them by Sunil Kumar Sinha. Mr. Sunil Kumar Sinha in the said letter had expressed his agreement to adjust this sum of Rs. 18/- lacs from the account (sale price of Rs. 50 lacs of the H.C. building). The letter dated 7.5.1998 was also brought on the record for the first time.

It is further stated that accepting the words of the Ex-Managing Director, an amount of Rs. 18/- lacs was paid to Lalbabu Yadav and his son Dependra Kumar and further two lacs by way of interest was also paid to Lalbabu Yadav for which request was made on telephone and total Rs. 20/- lacs was paid to Lalbabu Yadav on the instruction of Sunil Kumar Sinha and after the payment to Lal Babu Yadav and Dependra Yadav which had been acknowledged by them, Mr. Sunil Kumar Sinha, executed the receipt of full and final payment in May, 1999. Four receipts granted by Lal Babu Yadav have been annexed which are however for a total amount of Rs. 10.75 lacs only. After the new enactment that has come forward, by letter dated 28.4.1998 Mr. Sunil Kumar Sinha had agreed to adjust "State Registration Charges (difference in Registration charges of Kolkata and Bihar) in the consideration amount in view of the original sale deeds of H.C. building having registered at Kolkata, since the said amount had to be paid by the purchaser at the time of its mutation in Bihar and thus two lacs was accordingly adjusted. It is also stated that the purchaser had insisted that the entire consideration amount of Rs. 50/- lacs be mentioned in the sale deed but Sunil Kumar Sinha insisted for execution of four sale deeds each having less than Rs. 5 lacs value in order to evade his income tax liabilities and thus four sale deeds showing valuation of Rs. 27.93 lacs were registered.

In the next affidavit filed on 8.10.2010 the purchaser again came out with a further story that, as a matter of fact, in October/November, 1996 he came to know that the company is interested to sell the H.C. Building to meet its liabilities and approached Mr. Sunil Kumar Sinha for purchasing the same. After a number of meetings in mid January, 1997 Mr. S.K.Sinha agreed to sell the said building on payment of Rs. 50/- lacs. It is stated that the official valuation of the land for execution of sale deed at that time was Rs.

1,28,700/- per decimal and the land being 3 kathas 17 dhoors, i.e., 11.7 decimals bearing Plot Nos. 782, 783 and 784 Ph-2(part) sheet no. 31, holding no. 397m (old) present holding no. 705, ward no. 2, circle no. 6, the total value of it comes to Rs. 15,44,400/-.It is stated that at this stage the purchaser paid Rs.1,30,000/- as an advance in token as proof of agreement and requested to bring the resolution of the company for selling the said property so that he may be able to pay the remaining amount and get the deed of agreement executed as early as possible. After receiving the Board of Directors resolution dated 1.12.1997, including the further amounts which had been paid in the meantime and an amount of Rs. 1,01,000/-was paid by draft the agreement for sale was signed incorporating the payment of Rs. 5 lacs till the date of such signing. After entering into the agreement for sale and after taking peaceful possession of the building the deponent published a notice in the Patna edition of „The Times of India" dated 22.1.1998 seeking objections of any person. It is thereafter stated that after publication of the said notice, one Lalbabu Yadav with his son Dependra Kumar Yadav came to the office of the deponent and informed that when he had already made advance of Rs. 18 lacs to Mr. Sunil Kumar Sinha on 1.7.1997 for purchase of the said building then how the company of the deponent has entered into agreement with the said investment company for purchasing the said building and how the company of deponent has taken possession of the said H.C. building. It was stated by the purchaser that after signing of the agreement on 23.12.1997 possession had been handed over on the same day. Thereafter the matter being referred to Mr. S.K.Sinha, finally said Lalbabu approached the purchaser with a letter dated 7.5.1998 of Sunil Kumar Sinha to refund Rs. 18 lacs to Mr. Dependra Kumar Yadav, S/o Lalbabu Yadav and adjust the same against the payment of his company. Thereafter on confirmation from Mr. S.K.Sinha regarding the letter dated 28.4.1998 and 7.5.1998 the purchaser paid Rs. 18 lacs to Mr. Lalbabu Yadav and his son Deependra Kumar Yadav in installments. It is further stated that four sale deeds were prepared at Bombay and after great persuasion Mr.Sinha put his signature on the said four sale deeds and all the sale deeds were submitted for registration on 24.8.1998 after payment of proper stamp duty at Bombay but Mr. Sinha presented himself *before the Registrar of Registration for two documents only on 24.8.1998 and refused to appear for registration of remaining two sale deeds on the pretext that he will complete the execution before the Registrar only when remaining part of payment of Lalbabu Yadav will be made. Thereafter as soon as possible after making final payment of Rs. 18 lacs, the deponent requested Mr. Lalbabu Yadav and his son to inform Mr. Sinha about the payment but after receipt of Rs. 18/- lacs the said Lalbabu Yadav and his son demanded Rs. 2 lacs were from him as interest upon which Mr. Sinha requested by his letter dated 10.4.1999 that Lalbabu Yadav and his son should be paid Rs. 18 lacs only and thereafter on being satisfied that Rs. 18 lacs had been paid to them, Mr. Sinha appeared on 6.5.1999 and confirmed the execution of remaining two sale deeds.*

It is further stated that although the whole consideration money was paid to the Ex-Managing Director or his nominees, but he developed an evil eye on the properties in order to obtain benefit of the said properties, and instructed one of his employees to file a petition for winding up and on his instruction Shri Brij Kishore Srivastava had filed the company petition

The stand of the Ex-Managing Director apart from his initial stand in his affidavits that the H.C. building was in possession of the trespassers, has been that the company (in liquidation) delivered possession of the premises to M/s. Vridhishree Hotels Ltd on 23.12.1997. He has denied the statement that the purchaser-company had paid Rs. 4,51,000/- by demand draft stating that Rs. 1,51,000/- was paid in cash and Rs. 3,00,000/- through cheque which stood dishonoured on presentation. It is further stated that the purchaser company handed over 3 cheques to the company (in liquidation), each amounting to Rs. 3,00,000/-, all of which stood dishonoured and no subsequent payment against those cheques were made by the purchaser"s company. It is further stated that after execution of the agreement for sale, an amount of Rs. 10,00,000/-was paid but on 6.5.1998 the Managing Director of Vridhishree Hotels Ltd. took back the demand drafts and one cheque totaling to Rs. 10,00,000/- stating that he was not interested in the purchase and he also retained all the original papers of H.C. building with a promise that he will return the documents after receiving full amount paid by him. Thereafter Mr. A.K.Srivastava, Managing Director of Vreedhishri

Hotels Ltd. compelled the deponent to execute the sale deed in favour of the M/s. Vreedhishri Hotels Ltd. and under compulsion he executed the sale deeds on 24.8.1998. It is stated that thereupon Mr. A.K.Srivastava handed over three cheques amounting to Rs. 9 lacs but all the cheques stood dishonoured on presentation and despite several requests to make payments the payments were not made and having broken up financially and mentally he could not take legal action against Shri A.K.Srivastava and Vreedhishri Hotels Ltd. It was accordingly, prayed by him that the sale deeds dated 24.5.1998 be declared as void.

In his further affidavit, the Ex-Managing Director has reiterated his earlier stand and further submitted that an agreement dated 20.8.1999 produced by the purchaser does not bear his correct signature. It is also submitted that the fact regarding dishonour of the cheques in question have not been refuted in the different replies filed by the purchaser and that the sale deed is fit to be declared void.

In the further affidavits replying to the purchasers affidavit it is stated that an attempt was made by the purchaser to justify that an amount of Rs. 9 lacs was compensated further by payment of Rs. 7.93 lacs through Demand Drafts and rest through cash but in the details given in the affidavit of the purchaser the said figures are not appearing. It is reiterated that the purchaser had not even paid Rs. 27.93 lacs what to say Rs. 50/- lacs.

In his last affidavit sworn on 17.2.2010 again a denial of the payments and dishonour of the cheques have been reiterated and the agreement dated 10.5.1999 has been alleged to be a manufactured document and not bearing correct signature of the deponent stating that he had not even met Mr. A.K.Srivastava in the year 1999 and therefore the question of entering into agreement on 10.5.1999 does not arise. The statements made by Sri A.K.Srivastava regarding Lalbabu Yadav and his son have been denied although it is stated that the Ex-Managing Director had some negotiation with Dependra Kumar S/o Lalbabu Yadav for sale/purchase of the H.C. Building and when he refused to purchase then only he negotiated with Sri A.K.Srivastava and if there would have been any wrong he would not have disclosed the same to Mr. A.K.Srivastava. It is stated that Mr. A.K.Srivastava fraudulently and illegally wants to grab the H.C.

Building and as per his own showing and as per Annexure-G he gave Rs. 10.75 lacs to Lalbabu Yadav whereas he claims to have paid Rs. 20/- lacs to said Lalbabu Yadav and is thus playing a fraud upon this Court after earlier having played fraud upon the deponent and reiterated non-receipt of Rs. 27.93 lacs what to say of Rs. 50/- lacs.

On the basis of the facts and pleadings of the parties, learned counsel for the purchaser submits that M/s. Vreedhishri Hotels Ltd. had purchased the H.C. building bona fide and has not connived with the company (in liquidation). It is submitted that after 22.1.1997 the purchaser waited for nearly a year before entering into the agreement for sale. It is also submitted that the O.L. has alleged that the transferor and transferee have common intention to defraud the creditors but the purchaser had not done so. On the basis of the resolution of the Board of Directors they entered into the agreement. Reliance is placed upon the affidavit of the ex-Managing Director of the company (in liquidation) that the entire amounts had been received. It is stated that the purchaser is in possession since 1997 and no one has come forward to challenge the said possession.

Learned counsel further submits that the execution of sale deed has not been denied by the Ex-Managing Director. It is further submitted that the mutation has also not been opposed by the Ex-Managing Director which shows that there has been full and final payment. It is urged that in the said circumstances, the presumption would be that the entire payments have been made. In support of his stand learned counsel relies upon a decision of a learned single Judge of Gujarat High Court in the case of O.L. of Trimline Health and Research Ltd. Vs. G.S.F.C. and others : (2010) 154 Company Cases 480 (Guj) in para – 19 of which it has been held as follows:

> *"19. The purpose of the section is to preserve the assets of the company and to enable the company to carry out the transactions that might be for the benefit of those interested in the assets of the company. The substance of the section is that any transfer of property or goods made by a company otherwise than in the ordinary course of business, will be void, if it had been made within one year from the*

presentation of a winding up petition or the passing of a resolution for voluntary winding up. Section 531A has put the initial burden upon the one who wants to avoid the transaction to establish that the transaction was not made in the ordinary course of business or that it lacked good faith. It is only when this initial onus is discharged that it will shift to the official liquidator. An application under this section for setting aside a transfer can be allowed where either it is proved that there was no consideration for the transaction or that the consideration was so inadequate as to raise a presumption of want of good faith. Even if there was a valuable consideration, the liquidator may show want of good faith in the sense that the transferee entered into the transaction with the knowledge of all the circumstances with a view to shield the assets against the claims of the creditors. Where a transaction is sought to be annulled under this provision, the burden of proof is on the official liquidator or the person who impugns the transaction of transfer. If the court comes to the conclusion that such transfer though made within a period of one year before the presentation of the petition, was made either in the ordinary course of business or in good faith and for valuable considerations, such transfer would not be annulled. Thus, the crucial question in all the cases is whether the transferor"s dominant intention was to deny the assets to the creditors."

Learned counsel further relies upon a decision of the Bombay High Court in the case of Monark Enterprises Vs. Kishan Tulpule and others: (74) 1992 Company Cases 89 at page 115 and 116 of which it has been held as follows:

"It has been contended by Mr. Puri that the properties are worth crores of rupees. Prima facie, there is no material of any nature whatsoever to indicate that

the transaction is undervalued. The impugned transaction was cleared by the Income Tax Department. In the absence of any reliable material and in view of the detailed particulars set out in the affidavit dated September 7, 1991, and reference to the book value of the asset reflected in the balance-sheet of the company, I hold that this allegation is not at all proved. Prima facie, the transaction was entered into in good faith and for valuable consideration.

In the case of N.Subramania lyer V. Official Receiver, MANU/SC/0006/1957: [1958] 1 SCR 257, the apex court dealt with an identical question under insolvency legislation. It was held by the apex Court that the burden of proof was entirely on the official liquidator who impugned the transaction of transfer. In paragraph 10 of his judgment, Sinha J., speaking for the Bench of the Hon"ble Supreme Court, observed that it was not necessary for upholding the transaction that the transferor who had been subsequently adjudged as an insolvent should have been honest and straightforward in the matter of the transaction impeached. It was observed in paragraph 11 of the said judgment that both the transferor and the transferee must have shared a common intention to defraud the creditors. It was held that unless the conduct of the transferee was blameworthy, the transaction could not be annulled. In that case, the High Court had accepted the submission of the official liquidator who represented the estate of the insolvent that the burden of proof was on the transferee to prove that the transaction was bona fide. Relying on several judgments of the Privy Council, the apex court negatived this proposition of law propounded in the judgment of the High Court under appeal. The definition of „good faith" in the General Clauses Act (X of 1987) is in these terms: "A thing shall be deemed to be done in good faith where *it is in fact done honestly, whether it is done negligently or not."*

The same definition of „good faith‟ is not adopted under the Indian Limitation Act, 1963. The definition of „good faith‟ as set out in the Limitation Act, 1963, states that a thing shall not be deemed to be done in good faith if not done without due care or caution. The definition of good faith as enacted in the Limitation Act was erroneously adopted in the High Court‟s judgment in support of its finding that the impugned transaction of transfer or usufructuary mortgage was not a transaction in good faith. The High Court held that the mortgagee had not acted with due care and caution and, therefore, the transaction could not be considered to have been effected in good faith. Overruling this approach of the High Court and its ultimate decision, our Supreme Court held that the definition of „good faith‟ given in the General Clauses Act (X of 1987) shall have to be read in all central statutes unless some other definition was provided in the specific statute. It was, therefore, held that the act of the transferee shall have to be held to have been done in good faith if it was done honestly, whether it was done negligently or without due care and caution. No definition of „good faith‟ is to be found in the Companies Act 1 of 1956."

Learned counsel further submits that the sale deed itself was executed on 24.8.1998 and was lodged on 8/9-10.1998 and the declaration/confirmation in the case of two of the sale deeds on 6.5.1999 were mere acknowledgement and thus the registration on the said date would refer back to 24.8.1998 as per the provisions of Section 47 of the Registration Act. It is thus argued that the interim order dated 20.11.1998 of this Court cannot have any effect on the subsequent registration on 6.5.1999. In support of the same learned counsel relies upon a decision of the Supreme Court in the case of Thakur Kishan Singh Vs. Arvind Kumar: AIR 1995 SC 73, in para-3 of which it has been held as *follows:*

> *"3. The findings recorded by the High Court and the trial Court have been assailed by Shri Sen, the learned Senior Counsel appearing for the appellant, and it is claimed that the lease deed having been registered after the material date, it could not confer any title on the respondent as the right title-in-interest of the respondents predecessor already stood vested in the State prior to registration of the lease deed. The argument does not appear to be sound. Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. [See Ram Saran Lall v. Mst. Domini Kuer, AIR 1961 SC 1747 (1749) and Nanda Ballabh Gururani v. Smt. Maqbool Begum, 1980 UJ (SC) 597]. Since, admittedly, the lease deed was executed on 5th December, 1949, the plaintiff after registration of it on 3rd April, 1950 became owner by operation of law on the date when the deed was executed. Therefore, the land did not vest in the State. And the courts below not commit any error in negativing the claim of appellant."*

Learned counsel also relies upon a decision of a Division Bench of this Court in the case of Jamuna Prasad Vs., Bhuneshwar Thakur and others: 1987 PLJR 251, para-7 of which is quoted below:

> *"7. Sec. 47 of the Act is as follows :- "47. Time from which registered document operates. - A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration." The scope of Section 47*

was considered by the Supreme Court in the case of Ram Saran V/s. Domini Kuer, AIR 1961 SC 1747. It was pointed out that registration under the Act is not complete till the document to be registered has been copied out in the office of the Registration Office, as provided by S.61 of the Act. It was pointed out that once the registration is complete, in view of S.47 of the Act, the registered document operates from the date of its execution."

He also relies upon another Division Bench decision of this Court in the case Sadei Sahu Vs. Chandramani Dei and another: AIR 1948 Patna 60, in para-4 of which it has been held as follows:

"4. This Section can only be read together with S.54, T.P.Act, 1882, on the basis that the transfer by registered instrument under S.54, T.P.Act, 1882, once effected, relates back to the date of execution or other conventional date. That this is so, is, in my opinion, clear from the decision of the Judicial Committee in 8 P.L.T. 327 and from the application of that decision made by a Division Bench of this Court in 19 P.L.T. 383. In the case in the Privy Council, it was held that where a Hindu governed by the Mitakshara School executed a deed of gift and made it over to the donee, who accepted the gift, but prior to registration the donor adopted a son, the adoption did not render the gift inoperative, although the gift had not been registered before adoption. The ratio decidendi of their Lordships' decision was stated by Lord Salvsen as follows: "They (their Lordships) are unable to see how the provisions of S. 123 T.P. Act can be reconciled with S 47, Registration Act, except upon the view that, while registration is a necessary solemnity in order to the enforcement of a gift of immovable property, it does not suspend the gift

until registration actually takes place. When the instrument of gift has been handed by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective. Registration does not depend upon his consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses, must register it if it is presented by a person having the necessary interest within the prescribed period. Neither death or the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with."

It is also submitted by learned counsel that whatever payments have been made by the purchaser are reflected in the Books of Accounts of the Company M/s. Vridhishri Hotel (India) Pvt. Ltd.

It is further contended by learned counsel for the purchaser that the company (in liquidation) itself accepted the sale deeds and never took steps to get it annulled and for the first time in 2006 took the stand before this Court that the purchaser is trespasser after having developed evil eye towards the property."

18. All these submissions were duly considered by this Court in the order dated 15.05.2014, wherein, it was held as follows:-

"On a consideration of the rival submissions of learned counsels for the purchaser, Ex-M.D., intervenor as also the O.L., this Court is inclined to accept the submission of the O.L. It is evident from the detailed conspectus of facts as also from the affidavits of different parties particularly that of the purchaser that the company (in liquidation) itself purchased the property entering into agreement in the year 1994 for a consideration of Rs. 36 lacs with furniture and fixture. Thereafter it is alleged that an Agreement for Sale was entered on 23.12.1997 for Rs.

50 lacs including furniture and fixture. It is evident that even if all the other allegations are excluded then the sale deed ought to have been for Rs. 50 lacs which, excluding the agreement for sale of furniture and fixture for Rs. 8 lac, the sale deed for the building in question ought to have been for Rs. 42 lacs. There was no good reason that when the entire Hotel was being sold as a unit along with all its furniture, fittings and fixtures there should have been four separate sale deeds prepared for registration of the sale. Even if four sale deeds were to be prepared then considering the value taken in each of them or at least three of them on a proper valuation would have been above about Rs. 10 lacs which would have required clearance from the Income Tax Department for such sale, in terms of the provisions of the Income Tax Act. It is evident that both the Ex-M.D. of the company (in liquidation) as also the purchaser were anxious to avoid scrutiny by the Income Tax Department as they were afraid that it would be difficult to justify such low valuation with respect to property situated in the most important commercial location of Exhibition Road in Patna. If they were afraid of getting income tax clearance even for say Rs. 42 lacs for the land and building in question that itself goes to show that the property was worth much more several times over even the said price. Ultimately, the sale deeds are only for Rs. 19.93 lacs which would be impossible for such prime property at Exhibition Road at such cheap rates even in the year 1997 and that would be irrespective of any circle rate fixed by the Government/District Registrar in the matter. Thus the manner in which the sale deeds had been registered makes it practically impossible for the purchaser to show the bona fides of the transaction or that it was entered into in the ordinary course of business. It is also evident from the materials on the record that the purchaser has failed to show that even the amount of Rs. 27.93 lacs has been paid by it to the company as practically all the cheques that it had issued in that regard had been dishonoured. So far as the cash transactions are concerned, the same also throws serious doubt upon the bona fides of the transaction as it is not expected of a limited company to have entered into huge transaction in cash that too with respect to sale and purchase of immovable property and is contrary to the requirement under the Income Tax Act. The purchaser has been unable to show that benefit of such cash payments if any have gone to the company and not into the private pockets of the Directors of the company and that again would show that the transaction was not in the ordinary course of business *or in good faith or for valuable consideration and shows the connivance between the purchaser and the Ex-M.D. for their personal benefit at the cost of the company.*

This Court is also unable to accept any such story of any prior agreement with the said Dependra Kumar and his father Lalbabu Yadav as no chit of paper nor any Agreement for Sale has been brought on the record in this regard. It is quite unacceptable that a person would pay a huge amount of Rs. 18/- lacs for the purchase of property without there being any Agreement for Sale or receipt showing payment in that regard. Moreover the story of Dependra Kumar and his father Lalbabu Yadav has been cooked up in the 5th affidavit filed by the purchaser and it clearly shows the concoction and figment of imagination and the letter written by the Ex-M.D. dated 7.8.1998 thus could easily have been created subsequently after it became difficult for the purchaser to justify its stand of sale deeds being only to the extent of Rs. 27.93 lacs as compared to Agreement for Sale price of Rs. 50 lacs. Moreover there are serious discrepancies in the story or even the amount paid to them, whether Rs. 20 lacs or Rs. 18 lacs, as pointed out above. Such subsequent story is clearly to be rejected as a concoction and afterthought.

The decisions relied upon by learned counsel for the purchaser do not support his stand as the facts of the present matter are on entirely different footing and there has been complete failure on the part of the purchaser to show its bona fide in the matter. On the other hand, the decision of the Madras High Court in P.G.Vivekanandan's case (supra) is clearly applicable as in the present matter also a very valuable property in a prime location has been sought to be sold within practically three weeks after the Board of Directors' resolution to sell the said property without there being any negotiation at all nor any efforts to find out the best purchaser or search any other purchaser. The Agreement for Sale was entered into on 23.12.1997 and the company petition itself has been filed on 26.8.1998.

This Court finds sufficient force in the submission of the O.L. that the agreement entered into between the company and the purchaser is fraudulent and the sale therefore, would be void in law. There is further nothing on the record to show that even limited amount of sale consideration that was received out of the lower amount of the sale deeds at Rs. 27.93 lacs had been paid for discharge of the liabilities of the company or the depositors as no particulars have been brought on the record.

That the property has been under valued in the sale deeds is evident from the fact that the Agreement for Sale was for Rs. 50 lacs whereas the sale deeds are for Rs. 19.93 lacs plus Rs. 8 lacs for furniture and fixture. In the present matter the situation is much worse than even in P.G. Vivekanandan"s case (supra) as the whole attempt in the transaction was to escape from the scrutiny by the Income Tax Department as there was every likelihood that the company in liquidation and the purchaser were apprehending that such permission would not be granted with respect to such prime property even at the sale price of Rs. 50 lacs.

It is also not in dispute that the property in question is situated at Exhibition Road which is the most prime location in the town of Patna having large number of commercial institutions as also prestigious hotels and business. Thus, this Court is of the view that the property in question has not been sold bona fide and in good faith and in the interest of the transferor company nor it has been sold in the ordinary course of business.

This Court is also in agreement with the submission that the whole transaction much below the existing market value of the property in question in the year 1997-98 has been effected in connivance between the purchaser and the Ex-Managing Director and other Directors of the company (in liquidation). A large number of claims were pending against the company from the depositors. The company (in liquidation) being a non-banking financial company, the attempt was to defeat the claim of the creditors and in preference to set up persons so as to enable the Directors and the management to enter into the sham transaction and therefore the same shall not be binding on the O.L. All the four sale deeds and the Agreement for Sale of furniture and fixtures are, accordingly, declared as void against the O.L.

At this stage, I may refer to another ground on which at least two of the sale deeds would be void. The sale deed with regard to Basement, although it had been lodged for registration on 8.10.1998 but the Ex-M.D. of the vendor company did not admit the execution of the documents before the Sub-Registrar at Bombay on 8.10.1998. The same was the position with regard to sale deed relating to roof/terrace which was lodged for registration on 9.10.1998 in the office of Sub-Registrar, Bombay but the execution was not admitted on 9.10.1998 before the Sub-Registrar. On 20.11.1998 this Court passed specific order restraining the Directors from disposing of the property of *the company by sale or otherwise and from withdrawing money from the Account of the Company. It is evident that after such a restraint order it was not open to the Ex-Managing Director to have issued any deed of declaration/confirmation dated 6.5.1999 as he had done with respect to these two sale transactions upon which the same has been registered. Any such action in violation of restraint order of this Court would make the transaction by the Director as null and void in the eye of law and the reliance by learned counsel for the petitioner on several decisions that under Section 47 of the Registration Act, the sale upon registration would refer back to the date of execution i.e., 24.8.1998 can be of no assistance in the present matter as the same could not apply if there was anything further to be done by the Directors who were under a restraint order of this Court. Had the execution been admitted before the Sub-Registrar on 8.10.1998 or at any time before restraint order dated 20.11.1998 of this Court, the matter would have been different but once the Directors had been restrained from taking any such steps then no such document by way of deed of declaration/confirmation for registration of documents could have been given for the registration of the sale deeds; such provisions of law like Section 47 of the Registration Act cannot be applied to defeat the specific direction of this Court given to protect the property of the company. The two sale deeds are therefore declared as null and void on the further ground as having been registered in violation of the restraint order dated 20.11.1998 of this Court, on the basis of deeds of declaration/confirmation issued by the Ex-Managing Director of the company in liquidation on 6.5.1999.*

In the aforesaid circumstances, the prayer of the O.L. is allowed and all the four sale deeds and the Agreement for Sale of furniture and fixture are declared to be null and void. The purchaser M/s.Vridhishree Hotels Ltd is directed to hand over peaceful possession of the said property to the Official Liquidator forthwith and in any case within a period of two weeks from today."

19. Let it be noted that since the aforesaid order dated 15.05.2014 has already been affirmed by the Division Bench while dismissing the Company Appeal

No. 01 of 2014 on 31.07.2014, the Opposite Party cannot be allowed to play second inning in the garb of recall of order dated 08.01.2015.

20. In fact whatever is being said today on merit in support of the recall petition was duly considered by this Court in the order dated 15.05.2015. This Court, therefore, will have no difficulty in holding that the recall petition was only aimed at further circumventing the order of this Court. It has to be kept in mind that the order of this Court dated 08.01.2015 was passed on a report filed by the Official Liquidator in this background that when he had sought help from the district administration, a blank face was shown by them.

21. In view of the above, this Court will have no difficulty in holding that this M.J.C application is subterfuge for circumventing the order dated 15.05.2014 which has become final after dismissal of the appeal by the Division Bench.

22. The next submission of Mr. Mishra today is that the applications are still pending before different

forums including the appellate Court for review of the order of the Division Bench dated 31.07.2014 can also be no ground for not complying the order by M/s Vridhishree Hotel and its Managing Director. There is no stay of any Court as of today and in fact there was none in the period on 15.05.2014 and 23.02.2015. The brief interlude stay obtained by the petitioner from the Apex Court as noted above was also based on incorrect facts and cannot be a ground to defy the directions of this Court in the order dated 15.05.2014 by M/s Vridhishree Hotel.

23. The next submission of Mr. Mishra that a letter was written by Mr. A.K. Shrivastava on behalf of M/s Vridhishree Hotels to the Collector is neither here nor there. This Court in its order dated 15.05.2014 did not ask Mr. Shrivastava to write letter to the District Magistrate, Patna, inasmuch as, the direction was plain and simple that peaceful possession was to be given by M/s Vridhishree Hotels and if that was not done, at least writing letter to the District Magistrate, Patna can be of

no avail.

24. Now comes the last and fourth submission of Mr. Mishra that this Court should give some more time to M/s Vridhishree Hotels to comply the order dated 15.05.2014. A person who defies the order of this Court cannot seek for any compassion. Here is a person who has defied the order of this Court creating all sort of obstructions to the Official Liquidator in taking further possession and now wants this Court to grant him time when he is clearly in contempt. No compassion can be shown to such person and therefore, there is no occasion for this Court to grant any further time even for a minute.

25. Thus for the reasons indicated, the prayer for recall of the order dated 08.01.2015 is rejected and M.J.C No. 570 of 2015 is accordingly dismissed.

26. Put up the main case i.e. Company Petition No. 11 of 1998 on Monday, i.e. **20.04.2015** at **10:30 am** for passing further orders.

(Mihir Kumar Jha, J)

Ranjan/-

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