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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1 OF 2012
IN
INSOLVENCY PETITION NO. 31 OF 2002

Mahharlal H. Vora, Karta of
Hakimchand B. Vora HUF … Applicant

Rajesh Dhirajlal Vora … Insolvent

And

Arti Mehra … Petitioning Creditor

AND
NOTICE OF MOTION NO. 2 OF 2012
IN
INSOLVENCY PETITION NO. 31 OF 2002

Shalin Vora … Applicant

Rajesh Dhirajlal Vora … Insolvent

And

Arti Mehra … Petitioning Creditor

AND
NOTICE OF MOTION NO. 35 OF 2012
IN
INSOLVENCY PETITION NO. 77 OF 2005

Marine Container Services (India) Pvt. Ltd. … Applicant
(Petitioning Creditor)

Ranjan Dhirajlal Vora … Insolvent

And

Marine Container Services (India) Pvt. Ltd.

And

The Official Assignee, High Court, Bombay … Respondents

AND

NOTICE OF MOTION NO. 39 OF 2012
IN
INSOLVENCY PETITION NO. 76 OF 2005

Marine Container Services (India) Pvt. Ltd. ... Applicant (Petitioning Creditor)

Dhirajlal Vora ... Insolvent

And

Marine Container Services (India) Pvt. Ltd.

And

The Official Assignee, High Court, Bombay ... Respondents

Mr. V.R.Dhond, Senior Advocate with Mr. Prakash Shah, for Applicant in NMIS 1 of 2012 and 2 of 2012.

Mr. Sandip Parekh i/by M/s. Bilawala and Co., for Petitioning Creditor.

Mr. Simil Purohit i/by Mr. Ganesh Gole, for Insolvent.

Mr. K.H.Holambe-Patil, for auction purchaser Mr. Amiruddin Ajmal.

Mr. M.D.Narvekar, Official Assignee, present.

Coram : S.J. Kathawalla, J.

Date : 11st September 2015

P.C. :

Proceedings before this Court

1. There are, before this Court for consideration, four Notices of Motion. Two Notices of Motion viz., Notices of Motion Nos. 1 of 2012 and 2 of 2012, respectively, have been taken out by (i) Manharlal H. Vora (as Karta of Hakimchand Vora HUF); and (ii) Shalin Vora, claiming a 1/3rd share each, in Flat No. 151/B, Maker Tower, Cuffe Parade, Mumbai 400005 and an open parking space (**"the said property"**). The Applicants in these Notices of Motion do not dispute that the balance 1/3rd share in the said property belongs

to Rajesh Vora, the Insolvent. The remaining Notices of Motion viz., Notices of Motion Nos. 35 of 2013 and 39 of 2013 have been taken out by Petitioning Creditors seeking directions and reliefs contending that the Insolvents have a 50% share in Flat Nos. 81 and 83, Gitanjali Co-operative Housing Society, Walkeshwar, Mumbai 400006 (**"Gitanjali Flats"**) and in the office premises situated at 801, Raheja Centre, Nariman Point, Mumbai 400021 (**"Raheja Centre Office"**) and that accordingly, these assets should also be included in the assets of the Insolvents available for distribution.

Jurisdiction

2. Manharlal H. Vora and Shalin Vora (Respondents in Notices of Motion Nos. 35 and 39 of 2012) had initially challenged the jurisdiction of this Court to adjudicate the right, title and interest of third parties in insolvency proceedings. This Court vide its Order dated 29th January 2013 (Coram : N.M. Jamdar, J.) held that this Court has jurisdiction to decide the claim to right, title and interest of third parties in insolvency proceedings. The said Order was challenged by the Applicants by filing an Appeal (L) No. 66 of 2013 and Appeal (L) No. 67 of 2013 respectively. The said Appeals were dismissed for default on 29th October 2013. Mr. Dhond, appearing for for Manharlal H. Vora and Shalin Vora, the Applicants, on taking instructions, informed the Court that they have accepted the position that this Court has jurisdiction.

3. Since all the Notices of Motion involve common questions of fact, all parties agreed that they be heard together and disposed of by a common order.

4. Pending the disposal of all Motions, under a pro-tem consent arrangement recorded in my Order dated 28th January 2014, the said property was agreed to be sold. This included the consent of one Marine Container Services Ltd. who

had secured an attachment on the said property (**"attaching Creditors"**). The attaching Creditors agreed that the sale of the said property be free of their attachments so as to facilitate obtaining the best possible price, subject to their claim and dues being paid out of the sale proceeds.

5. After several unsuccessful attempts, on 30th June 2015, this Court confirmed the sale of the said property in favour of Mr. Amiruddin Ajmal for a sum of Rs.26,10,00,000/- (Rupees Twenty Six Crores Ten Lakhs Only).

Issues for consideration

6. What is required to be ascertained is (i) What is the share of the Insolvents in the said property; and (ii) What, if any, is the share of the Insolvents in the 'Gitanjali Flats' and 'Raheja Office Centre'. Allied thereto is the issue of what rights do Mr. Manharlal H. Vora HUF and Mr. Shalin Vora have in the properties in question.

7. It is the contention of the Applicants, Manharlal H. Vora HUF (**"HUF"**) and Shalin Vora that they are co-owners in respect of the said property and have a 1/3rd share therein. In support thereof, the Applicants have relied upon the original Agreement For Sale dated 15th January 1979 and the Share Certificates issued by the Maker Tower A and B Co-operative Housing Society Limited. It is their contention that these are documents of title and these reflect their 1/3rd share and in view of the aforesaid, they are each entitled to a 1/3rd equal share along with Insolvent in the said property.

8. Mr. Purohit, appearing for the Insolvents i.e. Rajesh Vora and Ranjanben Vora on the other hand contends that :-

Re : Shalin Vora :

(a) Neither Shalin Vora nor Hakimchand B. Vora HUF have any right, title and interest in the said property;

(b) The Agreement for Sale dated 15th January 1979 pertaining to the said property is not even signed by Shalin Vora or anyone on his behalf;

(c) Shalin Vora, at the relevant time was a minor;

(d) Shalin Vora can therefore have no beneficial or legal right, title, interest or share therein;

(e) Shalin Vora never showed the property as part of his assets before the Income Tax Authorities prior to 2005. The flats were acquired as far back as 1979 and it is only in the year 2005, for the first time, Shalin Vora claimed a 1/3rd ownership in the said property before the Income Tax Authorities;

(f) The name of Shalin Vora in the Share Certificate was thus inserted only for the purposes of convenience and Shalin Vora cannot thereby claim any right in the said property.

Re : HUF :

(g) As far as the HUF is concerned, the HUF is no longer the owner or co-owner of the said property.

(h) More particularly, in or around 1995 there was an overall Family

Settlement which involved separation of the properties between Manharlal H. Vora (and his family) and his brother Dhirajlal (and his family). The Family Arrangement contemplated that (i) the said property would go to the Dhirajlal branch; and (ii) the Gitanjali flats and the Raheja Centre office would go to the Manharlal branch; and (iii) an amount representing the difference in the value between the two sets of properties would be paid by the Dhirajlal branch to the Manharlal branch. This oral family settlement was subsequently recorded in writing and/or is contained in and evidenced by (i) a Memorandum of Understanding dated 27th April 1995; and (ii) eight Gift Deeds.

(i) The Family Arrangement was given effect to and acted upon with respect to (i) Flat No. 81, Gitanjali Building, 73-74 Walkeshwar Road, (ii) Flat No. 83, Gitanjali Building, 73-74 Walkeshwar Road, (iii) Office Premises at 214, Nariman point, (iv) 151/B, Maker Tower, Cuffe Parade, and (v) Garage of Maker Tower.

(j) In implementation of the family arrangement,

(A) Manharlal H. Vora on behalf of the HUF relinquished all its 50% right, title and interest in the said property in favour of Smt. Ranjanben Vora (50%) (mother of Rajesh Vora), Sahil Vora (25%), and Rushabh Vora (25%), the sons of Rajesh Vora vide Gift Deeds dated 18th April 1995, 28th April 1995 and 2nd May 1995 respectively.

(B) Dhirajlal Vora (father of the Insolvent) and Smt. Ranjanben Vora, likewise, executed Gift Deeds dated 20th April 1995 and 20th April 1995 respectively and relinquished their 50% right, title and interest in Flat Nos. 81 and 83, Gitanjali, Walkeshwar, Mumbai 400006 in favour of Manharlal Vora and Mridula Manharlal Vora respectively.

(C) Smt. Ranjanben Vora by a Gift Deed dated 1st January 1999 relinquished her 50% right, title and interest in the office premises at 801, Raheja Centre, Nariman Point, Mumbai.

(D) Manharlal Vora and Mridula Vora applied to Gitanjali Co-operative Housing Ltd. seeking a transfer of the 50% right of Dhirubhai Vora and Ranjan Vora's share in the Gitanjali flats in their favour, and to this end, applications for transfer of the Gitanjali Flats were also executed.

(E) Similar applications were also made with respect to the office premises at Raheja Centre.

(F) All that remained was that the Dhirajlal branch was to pay an amount which represented the difference in the values of the properties / shares therein, gifted as above.

(G) As this was not done, the said property continued to remain in the Society records in the names of the other two co-owners.

(H) Consequently, while the Dhirajlal branch may have a monetary obligation to pay the difference, this does not detract from the fact that the parties ceased to have any right, title, interest or share therein.

(I) The shares in the said property are therefore as under :-

(i)	Rajesh Vora	…	50%
(ii)	Smt. Ranjanben Vora	…	25%
(iii)	Sahil Vora	…	12.5%
(iv)	Rushabh Vora	…	12.5%

(J) In the circumstances, the only claim of the HUF and Shalin Vora is to receive a monetary sum and they do not have any right or share in the said property.

9. Mr. Dhond, appearing for the HUF and Manharlal Vora and his branch, on taking instructions from his clients, who are present in Court, was not in a position to controvert the documents produced by Mr. Purohit. He, however, submitted that the family arrangement was never fully implemented since the differential amount that was to be paid was not paid. He contended that, the family arrangement was a composite arrangement. It contemplated the divesting of the title of the Manharlal branch only upon the payment of the differential amount. He submitted that the two (vesting of title and payment of the differential amount) had to be concurrent. One was a condition and/or consideration for the other. His clients could not be told that their rights had gone and that they would have to wait in queue with the other creditors of the Insolvents. Hence, until the differential amount was paid, the HUF and Shalin Vora should be held to continue to have rights in the said property.

10. Upon my inquiring, both Counsel, on taking instructions, informed me that the differential amount payable but not paid was Rs.70 Lakhs.

Issues

11. I have heard the Counsel for the respective parties. With their assistance. I have examined the documents, including Gift Deeds and the Memorandum of Understanding. In my view, the following issues arise for consideration:-

(i) Was there a Family Arrangement and, if so, what is its effect;

(ii) Does Shalin Vora have any right, title and interest in the said property;

(iii) Does the HUF have any right, title and interest in the said property;

(iv) Do the Insolvents have any right in the Geetanjali Flats and the Raheja Centre Office.

FAMILY ARRANGEMENT :

12. In my considered view, the material on record clearly bears out the family arrangement. Not only does a written record thereof exist. The contemporaneous actions of the parties also bear out that the family arrangement was acted upon. It is for this reason that the Geetanjali flats and the Raheja Centre office were transferred to the Manharlal branch. The only reason why the said property was not similarly transferred on the records of the Society was the inability to pay the differential amount of Rs.70 Lakhs. The family arrangement has been implemented and acted upon and exchange of properties / assets has taken place. It is settled law that technicalities cannot come in the way when there is a family arrangement. Aspects like stamp duty, registration, etc. cannot hamper the implementation of family arrangements which are bonafide and in the interests of the family. Once their claim to the differential amount is protected and provided for, the Manharlal H. Vora HUF and Shalin Vora cease to have or hold any right, title, interest or share in the

said property. Fortunately, for the parties, the value of the said property has appreciated considerably more than the differential amount and the differential amount can be provided for, first, from the sale proceeds. As more particularly provided below, the title to the said property is clear and marketable and the resulting sale proceeds will be available for and can be utilised for the general benefit of a large number of creditors. The properties having vested in the Insolvents, the same can be sold. Furthermore, the said Sahil Vora and Rushabh Vora have consented for the sale of the said property. Hence, clear and marketable title can be passed on to the auction purchaser.

RIGHTS OF SHALIN VORA :

13. From the documents relied upon by the parties, it is clear that Shalin Vora is not a signatory to the flat purchase agreement. In order to constitute a contract, there has to be an offer and acceptance. Shalin Vora, being then a minor could not execute the document and nor is the document executed on his behalf by his natural guardian. In response to the Court's query, the Learned Counsel for Shalin Vora could not produce any document to show that Shalin Vora contributed any sum or the acquisition of the said property. There is also no explanation as to why since the year 1979 till 2005, Shalin Vora did not show his share in the said property in his income tax records. There is also no explanation as to why from the year 2005, Shalin Vora for the first time claimed 1/3rd share in the said property. It is to be borne in mind that Shalin Vora attained the age of majority on or around 1989. Even from 1989 till 2005, Shalin Vora did not claim any right, title and interest in the said property. Rajesh Vora was adjudged insolvent pursuant to the Order dated 5th August 2003, Sunayna Vora was adjudged insolvent on 3rd August 2004, Smt.

Ranjanben Vora (mother was adjudged insolvent on 16th October 2007, late Dhirubhai Vora (father of the Insolvent) was adjudged insolvent on 18th September 2007. Shalin Vora started claiming a share in the said property on and from 2005. This could hardly be a coincidence. It is obvious that Shalin Vora, with a view to assist the Insolvents and in an attempt to protect them from their creditors and stall the sale of the said property, set up a claim to the said property in order to stall the sale of the said property. Thus, I have no hesitation in concluding that Shalin Vora has no right, title and interest in the said property.

CLAIM OF THE HUF :

14. As far as the share of the HUF is concerned, the family arrangement as recorded in the MOU has been acted upon. This is evidenced in the gift deed narrated hereinabove, which clearly show that the HUF gave up its right, title and interest in the said property in favour of Smt. Ranjanben Vora, Sahil Vora and Rushabh Vora as per the Gift Deeds executed by Manharlal Vora, as the Kart of HUF dated 18th April 1995, 28th April 1995 and 2nd May 1995 respectively. By the aforesaid Gift Deed dated 18th April 1995, the HUF gifted 50% of its share in the said property to Smt. Ranjanben Vora on 18th April 1995. Its balance 50% share was gifted to Sahil Vora as per the Gift Deed dated 28th April 1995 and to Rushabh Vora as per Gift Deed dated 2nd May 1995, the sons of the Insolvent, Rajesh Vora. Correspondingly, late Dhirajlal Vora and Smt. Ranjan Vora gave up their respective rights, titles and interests in the flats at Gitanjali and in the office premises at Nariman Point in favour of the Applicant and his wife. The fact that the family arrangement was acted upon is also evident from the applications made by the Applicant and his wife before the Gitanjali Co-operative Housing Society and the Raheja Centre Co-operative

Housing Society. Mr. Dhond, Learned Senior Counsel fairly submits that, as far as the Gift Deeds with respect to the Gitanjali flats and Raheja Centre office are concerned, they have been acted upon. It can then hardly be contended that one part of the family arrangement is acted upon, whilst the other part is not. A family arrangement entered into between the parties and acted upon does not require registration. Thus, even if the Gift Deeds per se are not registered, the same does not alter and/or effect the family arrangement and the division of properties arrived at between the parties and the insolvents have no right, title and interest in Gitanjali flats and also in office premises situated at Raheja Centre.

15. In light of the aforesaid, it is clear that since the Manharlal branch is only to receive the sum of Rs.70 Lakhs which it will get first from the sale proceeds, the HUF has no claim to the said property. The monetary claim made by the HUF, would be paid from the sale proceeds of the said property of Rs.26.10 Crores. Insofar as the sum of Rs.70 Lakhs is concerned, this will rank as a preferential liability over other unsecured creditors as this is payable under the family arrangement and as a condition and/or consideration for the same. The sum of Rs.70 Lakhs therefore will be paid out from the amount of Rs.26.10 Crores and no further amount will be paid to the Manharlal Vora branch. The Manharlal Vora branch has nominated Shalin Vora as the person to whom payment is to be made. Mr. Dhond, on seeking instructions from his client states that upon receipt of the aforesaid sum of Rs.70,00,000/-, the Manoharlal Vora branch shall not have any claims against the Insolvents.

16. I therefore conclude that, since Rs.70 Lakhs is the HUF's entitlements, neither the HUF nor Shalin Vora have any claim to or any right, title or interest therein in the said property. The said property is owned as under:

(i)	Rajesh Vora	...	50%
(ii)	Smt. Ranjanben Vora	...	25%
(iii)	Sahil Vora	...	12.5%
(iv)	Rushabh Vora	...	12.5%

Sahil Vora and Rushabh Vora, the sons of the Insolvent Rajesh Vora have appeared and stated that they have no objection if the said property is sold to discharge the dues of their father Rajesh Vora. Sahil Vora and Rushabh Vora are present in Court and are giving an undertaking to this Court that they have no objection for sale of the said property. To leave no manner of doubt, Sahil Vora and Rushabh Vora have expressed their desire to execute a Gift Deed in favour of their father viz., Rajesh Vora to enable the payment of dues of the creditors. Rajesh Vora is therefore permitted to execute and admit execution of the Gift Deed before the concerned Sub-Registrar of Assurances and accept the respective share of Sahil Vora and Rushabh Vora in respect of the said property. The said respective shares received from Sahil Vora and Rushabh Vora by Rajesh Vora shall be available for the General Body of the Creditors. The transfer documents shall be signed and executed by the Official Assignee for the Insolvents. They shall execute all the documents as and when required to convey marketable title in favour of Auction Purchaser or his nominee.

17. Consequently, Notices of Motion Nos 1 and 2 of 2012of are disposed of with no order as to costs in terms of this order.

18. In view of the findings aforesaid, the Notices of Motion Nos. 35 of 2013 and 39 of 2013 filed by the Petitioning Creditors, also do not survive as the Insolvents, do not have any right, title and interest in the Gitanjali flats and/or in the office premises situated at Raheja Centre. As regards the share of the Insolvent,

stamp duty is exempted under Section 115 of the Presidency Towns Insolvency Act, 1909.

19. Ranjanben Vora, the mother of the Insolvent, is also adjudged an insolvent. In view thereof, her 25% share, right, title and interest in the said property vests with the Official Assignee who is empowered to sell and dispose it in favour of the Purchaser and/or its nominees. Any claims and/or demands of any person claiming under or through the said Ranjanben Vora shall not lie against the said property and/or the Purchaser and/or its nominee/s and recourse, if any, will be only against the proceeds realised in the hands of the Official Assignee.

20. In the premises, the sale and transfer of the said property in favour of the Purchaser and/or its nominee/s is confirmed and clarified that the sale of the said property, along with Garage C-66 and car parking space in favour of the Purchaser and/or its nominee/s is inclusive of all share, right, title and interest in the said property, Garage C-66 and car parking spaces provided by the Society and is free from all encumbrances, claims and demands whatsoever. Claims / demands, if any, of the Applicants or anyone else shall not lie against the property and/or its purchaser and/or its nominee/s.

21. In due compliance of the order dated 28th August 2015, the Official Assignee has already handed over the keys of the said property to the Purchaser. The Official Assignee shall handover all the original documents of title and vacant and peaceful possession of the said property to the Purchaser, if already not handed over. All Notices of Motion stand disposed off accordingly.

(S.J. KATHAWALLA, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.