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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO. 277 OF 2014

IN

COMPANY APPLICATION NO. 449 OF 2013

IN

COMPANY APPLICATION NO. 420 OF 2011

IN

COMPANY PETITION NO. 59 OF 1984

Khandesh Spinning & Weaving Mills Co. Ltd. …Applicant

In the matter between

Index Tissues Private Limited ...Petitioner

And

Khandesh Spinning & Weaving Mills Co. Ltd. ...Applicant

Versus

The Official Liquidator, High Court & Anr. …Respondents

ALONG WITH

COMPANY APPLICATION (L) NO. 430 OF 2014

IN

COMPANY APPLICATION (L) NO. 277 OF 2014

IN

COMPANY APPLICATION NO. 449 OF 2013

IN

COMPANY APPLICATION NO. 420 OF 2011

IN

COMPANY PETITION NO. 59 OF 1984

Mrs. Yashomati Satishkumar Jain …Applicant
In the matter between
Khandesh Spinning & Weaving Mills Co. Ltd. ...Applicant
Versus
The Official Liquidator, High Court & Anr. …Respondents

Mr. Karan Thorat, *for the Applicant in CA(L) No. 430 of 2014.*
Mr. Gautam Ankhad, *i/b Mr. Vedchetan Patil, for the Applicant in CA(L) 277 of 2014 and for Respondent No. 1 in CA(L) No. 430 of 2014.*

CORAM: G.S. PATEL, J
DATED: 18th April 2015

PC:-

1. Company Application (L) No. 430 of 2014 is not on board. This application is for intervention. On instructions, Mr. Karan Thorat, learned Advocate for the Applicant, seeks leave to withdraw this Company Application for intervention with liberty to adopt appropriate proceedings. Leave granted with liberty as prayed. Company Application (L) No. 430 of 2014 is disposed of in these terms.

2. Company Application (L) No. 277 of 2014 is filed by one Lokesh Chaudhari, a Director of the Applicant Company. The matter has a more than somewhat colourful history. Mr. Ankhad, learned Advocate on behalf of the Applicants, points out that this is a case where extremely valuable assets of the company have been attempted to be spirited away by one of the erstwhile directors after

the date of an order of winding up and the appointment of the Official Liquidator. There was an earlier Company Application No. 449 of 2013 in which I had passed a detailed order dated 29th April 2014. In that order, I observed that this was a case where unscrupulous third parties have overreached the Court and attempted to present it with a *fait accompli.*

3. For completeness, I think it is necessary to restate a few facts. Company Petition No. 89 of 1984 was filed by one Index Tissues Private Limited, an unsecured creditor of Khandesh Spinning & Weaving Mills Limited (**"the Company"**). An order of winding up was passed on 19th September 1984. The Official Liquidator was appointed. He took charge of the Company and possession of its assets. Liquidation commenced. Several assets were sold in separate recovery proceedings initiated by other secured creditors who had come before the Company Court or filed applications before the Debt Recovery Tribunal.

4. Some time in 2008, one Yashomati Jain and others filed Company Application No. 547 of 2008 for the revival of the Company. That Company Application was allowed and the Company was ordered to be revived. Another Company Application No. 420 of 2011 was filed by the company itself and this was allowed on 18th November 2011. Consequently, the Official Liquidator stood discharged.

5. On these orders, the newly constituted management of the company started the process of revival of the company. It learned that after the order of winding up and appointment of the Official

Liquidator (19th September 1984), certain valuable immovable properties of the Company were illegally and fraudulently transferred in the year 1995 to some third parties by an erstwhile director, part of the previous management of the Company.

6. In my order of 29th April 2014, I noted that City Survey Nos. 292 and 293 located in the Pimprala Area of Jalgaon, and which properties belonged to the Company, were the subject matters of these illicit sale deeds dated 9th November 1995, i.e., 10 years after the order of winding up and liquidation, and that these sale deeds were even purported to be registered. There were in fact three sale deeds, all so registered.

7. I must note at this stage an extremely curious circumstance. This relates to Company Application (L) No. 430 of 2014, which Mr. Thorat withdrew today. That Company Application was filed by Yashomati Jain. Curiously, it is the same Yashomati who filed, through the a person named Parab and who claimed to hold a power of attorney from her, Company Application No. 540 of 2008 for revival of the Company. In the withdrawn Company Application, Yashomati sought to impeach the Power of Attorney said to have been held and exercised by Mr. Parab saying it is fraudulent and seeking a stay on the present proceedings as also the order dated 29th April 2014. In other words, cutting through this complex web of applications, Yashomati claims that the sales and transfers of the immovable properties in 1995 after the date of appointment of the Official Liquidator and the order of winding up and before the order of revival in the year 2008 are all valid. I need only note that in all this time, and even today, Yashomati has taken no steps whatsoever other than filing Company Application (L) No. 430 of 2014 to impeach that Power of Attorney. I must also note that in paragraph 10 of the Company Application (L) No. 430 of 2014, Yashomati in terms admits that the sale deeds of 9th November 1995 were executed by her husband in favour of the present 2nd Respondent.

8. As I have observed in my order dated 29th April 2014 by virtue of operation of law, including as Mr. Ankhad points out, Sections 536 and 542(2)(a) of the Companies Act, 1956, these transfers are entirely illegal, invalid and *void, ab-initio*. No title can ever have passed under those transfers. On 29th April 2014, I observed that it would be unjust to leave the company without a remedy given than it is clearly a victim in what is undoubtedly not only a fraud on company but a fraud on Court as well. I passed an order of injunction on that date against the 2nd Respondent to that Company Application, the ostensible transferee; ordered the sealing by the Sub-Registrar of Assurances of all the three sale deeds in question; and granted leave to the Company to adopt suitable proceedings in relation to possession.

9. Mr. Ankhad on the present application seeks modification of the order of 29th April 2014 *inter alia* to declare the sale deeds void and for an order of possession and to restrain the ostensible transferee, the 2nd Respondent from entering upon the suit land. Mr. Ankhad relies on paragraph 16 of the decision of the Supreme Court in *Prem Singh & Ors. v Birbal & Ors.*[1] to submit that where a document is *void ab initio*, no decree is necessary to have it set aside since it is a nullity and *non est.* He also relies on the decision of a

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1 (2006) 5 SCC 353

learned Single Judge of this Court (A.M. Khanwilkar, J., as he then was) in *Sarigam Containers Pvt. Ltd. v Magatul Industries Limited and Videocon International Limited*[2] in support of his submission that the jurisdiction of the Company Court does not cease with an order of winding up. The liquidation continues under the supervision of the Court. All issues in that regard can be brought before the Company Court and the exercise of powers by the Company Court is not in any way constrained in giving effect to the order of winding up. It is on this basis that Mr. Ankhad submits and, in my view, rightly, that an order of possession can be obtained even in the present Company Application.

10. Indeed, the matter can be viewed from the another angle. What would be the nature of the civil suit that the Company could possibly file before a civil court? The question of validity of the transferred documents / sale deeds has already been decided. It must follow as a necessary corollary that the question of possession, which can only be in furtherance of or pursuant to a transfer document, is illegal if the parent title document itself is illegal. Indeed, before the civil court, viewed in this fashion, there can be no possible *lis* at all because the only Defendant to that suit, viz., the 2nd Respondent could enter no possible defence to the action. The 2nd Respondent's claim to possession can arise only on a demonstration of the validity of the title documents or sale deeds. Once those sale deeds have found, by operation of law, to be *void ab initio* and *non est*, there could be no possible question of legitimacy of the 2nd Respondent's possession of any of these properties. The filing of a civil suit would, therefore, be an idle formality. This is

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[2] 2008 (5) Bom C.R. 112

also not a jurisdictional issue. As the decision in *Sarigama Containers* observes, the powers of the Company Court are not in any way restricted. That is a decision that I am not only in most respectful agreement with but one that binds me. In fact, were I to decline to exercise the jurisdiction that now Mr. Ankhad invites me to do, I would be completely remiss in the exercise of judicial duties and functions conferred by statute. The purpose of liquidation is to ensure that the assets of the Company are protected and are deployed for the purpose of liquidation. Where those assets have been illegally and illicitly transferred away, the Company Court must immediately step in to secure those assets for the benefit of the Company, its creditors and shareholders.

11. The position today is that the Company is not in liquidation. It has been revived. The order of appointment of the Liquidator has been set aside and that has happened some time ago. Would that mean that the Company Court is helpless and must accept a fraud or an illegality committed during the winding up and liquidation process? To hold so would, in my view, be completely unreasonable and would be contrary to the plain intent and purpose of the Companies Act. The Company Court cannot possibly ne helpless in the situation like this. Simply stated, the Company was put into liquidation by an order of the Court. It was revived by an order of the Court. If, in the intervening period between those two events, a fraud has been played both on the Company and the Court, the Court must, I think, step in to set right that wrong. Any other view would be completely unacceptable because it would mean that those attempting fraud would be allowed to get away scot free. Once again, it is noteworthy that an application for revival was made by Yashomati through a Power of Attorney and that it is this very Yashomati who now seeks to impeach that Power of Attorney and to stay the present proceedings, i.e., to validate what is admittedly and demonstrably a illegal transfer. The fraud in this case is evident on the face of record.

12. In these circumstances, the present Company Application (L) No. 277 of 2014 must be allowed. The order dated 29th April 2014 is modified in the following terms:

(a) The Three sale deeds dated 9th November 1995 and registered under the registration Nos. 4050, 4051 and 4052 in respect of City Survey Nos. 292 and 293 of the Pimprala area of Jalgaon are all declared to be illegal, null, void *ab initio* and *non est*.

(b) No title under any of these transfers passed to any third party, including the 2nd Respondent.

(c) The possession of the lands under these sale deeds by the 2nd Respondent is entirely illegal and without authority of law.

(d) Juridical position of these lands was at all relevant times with the Official Liquidator till the order of revival and, in view of the order of revival of the Company, rests with the Applicant Company today.

13. Mr. Ankhad points out that some portions of these lands may have been transferred to certain third parties. In complete fairness, he has filed an additional affidavit today and annexed particularized details of the sub-plots of Gat No. 292 and 293 that today continue to be with the 2nd Respondent and those that are apparently now in the hands of third parties. So far as the alleged possession of the 2nd Respondent is concerned, this presents no difficulty at all. The Applicant Company will, on the strength of this order, be entitled to enforce it as a decree and to recover possession of those lands listed in Part - I to the additional affidavit dated 18th April 2015 from the 2nd Respondent.

14. As regards the lands listed in Part – II of the additional affidavit dated 18th April 2015, it is entirely possible that some of those occupants may claim to have obtained possession in innocence. They are not parties to the present Application. The basis on which they have entered in possession is unknown. The Company will be at liberty to adopt such proceedings as it thinks necessary in respect of the lands listed in Part – II of the additional affidavit against the third parties mentioned in that list. It is, however, clarified that the question of validity of title passing on 9th November 1995 is one that I have already decided and is no longer open to question in civil proceedings. Consequently, when and how these third parties in these lands have come in possession is the question that remains to be decided in such civil proceedings.

15. It is also necessary to ensure that this order is executed in the manner in which it is intended. The Company will be entitled to seek police assistance in execution of this order and the police authorities in Jalgaon and particularly in the Pimprala area are directed to render all possible assistance upon an authenticated copy of this order made available to them.

16. Company Application (L) No. 277 of 2014 is disposed of in these terms with no order as to costs.

17. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)