

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****COMPANY APPLICATION (L) NO. 79 OF 2015****IN****COMPANY APPEAL (L) NO. 70 OF 2015****IN****COMPANY PETITION NO. 129 OF 2015****IN****COMPANY PETITION NO. 59 (MB) OF 2015**

Sun Shine Realtors Pvt.Ltd. & Ors. ...Applicants / Orgi.Appellants

vs.

Shailesh Nagindas Shah & Ors. ...Respondents

Mr.J.J. Bhatt, Senior Advocate with Mr.Mayur Khandeparkar with Mr.T.N. Tripathi, Mr.Rajesh Sharma i/b. T.N. Tripathi & Co. for Appellants.
Mr.Aspi Chinoy, Senior Advocate with Mr.Aniruddha Joshi, Mr.Nishant Sasidharan, Ms.Krishna Raja, Ms.Alisha Parekh i/b. L.J. Law for Respondent Nos.1 and 2.
Mr.D.P. Desai for Respondent Nos.31 to 35.

CORAM : S.C. GUPTE, J.

30 SEPTEMBER 2015

P.C. :

The appeal challenges an order by the Company Law Board on 1 September 2015. By this order, the CLB appointed a three member committee to run the company in place of the board of the company. The Respondent company was also directed to maintain status quo over the shareholding until further orders. As to trade activities and other functions, the committee was empowered to carry on the functions of the company pending disposal of the case.

2 *Prima facie*, the order appears to be unduly drastic in the face of an application of the original Petitioners seeking status quo of the shareholding and directions not to create third party rights over certain properties and also direction to the company to provide an offer of sale to the Petitioners to purchase any property over and above sale price fixed by the Respondent company. The main allegation of the original Petitioners appears to be that the properties have been

sold by the company, who is in real estate business, at a gross undervaluation. Similarly, there is an allegation of fraudulent appointment of three directors behind the back of the original Petitioners in a board meeting held on 5 August 2015. On these allegations, whilst appropriate protective orders could have been passed, the order appointing a committee *prima facie* appears to be a drastic order not warranted by the facts of the case. The appeal also involves a question of law as to the interpretation of Section 47 of the Companies Act, 2013 and its applicability to the facts of the case.

3 Hence, the appeal is admitted. Considering, however, the special facts of the case, the appeal will be expeditiously taken up for hearing. The appeal is, accordingly, placed for hearing on 16 October 2015 high on board. In the meantime, the impugned order dated 1 September 2015 is stayed subject to the following conditions :

(i) The Appellants shall maintain status quo in respect of the shareholding of the Respondent company and also not create any third party rights over the properties of the company without the leave of this Court;

(ii) As far as the sale transactions, which have taken place after 1 October 2014, are concerned, the buyers, who have been arrayed as Respondents to the original petition and who are also before the Court in this appeal, are directed not to create any third party rights in respect of the subject properties until the disposal of this appeal;

(iii) The Appellants shall permit Respondent Nos.1 and 2 to take full and free inspection of the entire record of the Respondent company kept at the registered office of the company. Such inspection shall be offered with immediate effect. The Respondents shall be entitled to make initials over the record and also take copies of the record, as they may desire;

(iv) Company Application is disposed of accordingly.

(S.C. Gupte, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order :