IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application No. 2016 of 2010
[Master Industries Pvt. Ltd. & another Vs. State of Mah. & another]

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Mr. A.A. Naik, Adv., for the Applicants.

Mr. M.J. Khan, Addl. Public Prosecutor for respondent no.1.

Mr. V.G. Bhamburkar, Adv., for respondent no.2.

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CORAM : A.B. CHAUDHARI, J.

Date : 03rd July, 2015.

O R D E R:

01. Following are the Prayer Clauses [I], [ii] and [iii] in this application:-

“i) quash and set aside the common order dated 14/12/2010 [Annexure-M] passed by the Chief Judicial Magistrate, Nagpur, on applications at Exhibits 53 and 67 [Annexures-I and K] in Regular Criminal Case No. 1847 of 2008;

ii) Quash and set aside the summons dated 06.03.2007 [Annexure-E] issued by the respondent no.1 Police Station Officer, Ambazari Police Station, Nagpur

iii) allow the application at Exhibit-53 (Annexure-I) filed by the applicants in Regular Criminal Case No. 1847/2008/2008;”

F A C T S :

02. Respondent no.2 – Unique Agro Processors (India) Ltd., a Public Limited Company, went before the Board of Industrial & Financial Reconstruction [BIFR], where it was felt that revival of the respondent no.2 – Company was possible, if requisite funds could be made available. Accordingly, the respondent no.2 – Company approached the Applicant No.2, who invested funds in respondent no.2-Company, and as per the Scheme, the Share Capital was restructured by making the Share Capital invested by the applicants to the fullest extent, namely 87.8 per cent from the respondent no.2 – Company in the Applicant No.2-Company. In other words, the Applicants became the majority shareholders in respondent no.2-

Company, obviously because the Applicants invested a huge sum of Rs. 2,23,73,000-00. The first charge of the Company was also created by the respondent no.2-Company over its assets and accordingly, the Finance Company, namely State Industrial & Investment Corporation of Maharashtra Ltd. [SICOM], was asked to release the first charge in favour of Applicant No.2-Company. The original Title Deeds of the respondent no.2 – Company were in the lawful custody of Applicant No.1 – Company as a result of it becoming a majority shareholder. On 22nd November, 2006, however, the respondent no.2 – Company lodged an FIR with Police Station, Ambazari, Nagpur, stating that Applicants had unauthorizedly transferred an amount of Rs.81,00,000-00 on 29th June, 2005 from the account of Respondent no.2 – Company and, therefore, offence under Section 406, 420, 468, 471 and 472 of Indian Penal Code was registered. Police Officer tried to obtain the original Title Deeds from the custody of the Applicants which action was challenged before this Court, and this Court had made an order on 14th August, 2007 in Criminal Application No. 2077 of 2007 that the original Title Deeds should be produced by the Applicants before this Court and photo copies thereof should be given to the investigating agency and, thus, the original title deeds remained in the possession of this Court. Thereafter, the charge-sheet was filed in the Trial Court and in the Trial Court, after transfer of original Title Deed documents before it from the High Court, the aforesaid two applications were made by applicants as well as respondents, and both claimed the custody of the original Title Deeds. The learned Trial Judge rejected the application [Exh.53] filed by the applicants, but allowed the application [Exh.67] filed by the respondent no.2-Company. Hence this Criminal Application was filed and this Court had stayed the said order.

03. At the time of final hearing of this application, learned counsel for the parties advanced their respective submissions. Counsel for the applicants vehemently submitted that having 87.8 per cent of shares of the respondent no.2 – Company after investing more than Rs. 2 crores in the respondent no.2-Company, which was sick, the original Title Deeds ought to have been with the majority shareholders, i.e., the applicants, and by no stretch of imagination, could have handed over to respondent no.2, since in that event, the interest of the applicants would not at all be protected. At any rate, the respondent no.2 had shown their clear intention to sell the respondent no.2-Company without bothering about the huge investment made by the applicants as aforesaid and, therefore, there was a dishonest intention on the part of respondent no.2 in claiming the original Title Deeds. If the original Title Deeds are ordered to be given to respondent no.2, the applicants would be nowhere having invested their huge money. Even otherwise, the applicants being majority shareholders invested the money with a view to revive the respondent no.2 – Company; but the Directors of respondent no.2 want to sell that Company now without even making any arrangement for refund of the money of the applicants. Therefore, according to him, the application filed by the Applicants should have been allowed and one filed by the respondent no.2 should have been dismissed. He, therefore, prayed accordingly.

04. Per contra, learned counsel for the respondent no.2 vehemently opposed the present application and supported the impugned order. Learned counsel for the respondent no.2 submitted that the respondent no.2 – Company has not been sold to the applicants and and it has an independent existence. No assets of the respondent no.2 – Company have been mortgaged with the applicants, so that the applicants would attempt to exercise any claim for the original Title Deeds of the respondent no.2 – Company. The documents of original Title Deeds of the Company are the property of the respondent no.2 and not of applicants even assuming that the applicants had invested the sum above Rs. 2 crores. But then that by itself does not entitle the applicants to claim original title documents of the respondent no.2-Company. Mr. Bhamburkar, the learned counsel for the respondent no.2, submitted that the operations of the Company are still run by the Directors of the respondent no.2 – Company on the field and not by the applicants. To a pointed question, he submitted that the respondent no.2 wants to raise loan for satisfying the requirements for running the Company, for which original title documents are required and, therefore, the impugned order need not be interfered with. He, therefore, prayed for dismissal of the application.

CONSIDERATION :

05. Heard learned counsel for the rival parties at length. Perused the entire record so also the impugned order.

06. It is not in dispute that it was, in fact, at the hearing of BIFR proceedings it was thought that infusion of some capital or investment in the respondent no.2 – Company might result into revival thereof. Therefore, the applicants, on the request of the Directors of Respondent No.2, invested the capital in the sum of Rs. 2 crores and more and obtained eighty-eight per cent paid-up share capital of the respondent no.2-Company. Thus, the applicants are undoubtedly the majority shareholder in the respondent no.2-Company, and without protecting their interest, no order of return of original Title Deeds to the respondent no.2-Company could be made. However, this fact has been completely ignored by the learned Trial Judge. That apart, perusal of para 7 of the reply filed by the applicants in Regular Criminal Case No. 1847 of 2008 shows that the Company Law Board has passed an order of status quo in relation to the creation of any third-party rights. The order of Company Law Board obviously binds both the parties, i.e., applicants and respondent no.2. This Court had specifically asked the counsel for the respondent no.2 as to whether the respondent no.2 was ready to make refund of the entire amount invested by the applicants in respondent no.2 – Company, to which the answer was given it it was not possible.

07. In the light of these facts, I think that neither the applicants nor the respondent no.2 should be allowed to have the custody of original title deeds of respondent no.2-Company and and custody of the original Title-Deeds should remain with the Trial Judge in Regular Criminal Case No. 1847 of 2008, so that the interest of both the parties, i.e., applicants and respondent no.2, is fully protected till the decision by a competent Court of Law in the appropriate proceedings. The Trial Judge should not have directed handing over of documents to respondent no.2, since interest of the applicants is not at all protected in that case. Even the plea raised by the applicants before me that the original title documents be given to the applicants, also will have to be rejected, since equally the interest of respondent no.2 will have to be protected. In that view of the matter, I make the following order:-

O R D E R

[a] Criminal Application 2016 of 2010 is **partly allowed**.

[b] The order dated 14th December, 2010, passed by learned Chief Judicial Magistrate, Nagpur, below Exh.67 is quashed and set aside. The application [Exh.53] filed by the applicants and application [Exh.67] filed by respondent no.2 for custody of the original title documents are rejected.

[c] The original title documents presently in custody of the Trial Judge in Regular Criminal Case No. 1847 of 2008 shall continue to remain in the custody of the Trial Judge in a sealed cover and appropriately secured till the Regular Criminal Case No. 1847 of 2008 is decided, or an order from the competent Court in appropriate proceedings is made.

[d] No costs.

Judge

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