The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Company Application Nos.1088 of 2006, 760 of 2009 and 1382 of 2014 in Company Petition No.13 of 2002

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Dated 25.03.2015

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Comp.A.No.1088 of 2006

Between:

N.V.Subba Raju

...Applicant

and

M/s.Mamatha Chit Fund (P) Ltd.,(in liqn.)

rep. by the Official Liquidator

...Respondent

Counsel for the Applicant: Mr.V.V.Ramana
Counsel for the respondent: Mr.M.Anil Kumar, Counsel for OL

Comp.A.No.760 of 2009

Between:

M/s.Mamatha Chit Fund (P) Ltd.,(in liqn.)

rep. by the Official Liquidator

...Applicant

and

1.Sri K.Narasimha Rao and another

...Respondents

Counsel for the Applicant: Mr.M.Anil Kumar, Counsel for OL

Counsel for the respondents: ---

<u>Comp.A.No.1382 of 2014</u>

Between:

M/s.Mamatha Chit Fund (P) Ltd.,(in liqn.)

rep. by the Official Liquidator

...Applicant

and

Sri N.V.Subba Raju and another

...Respondents

Counsel for the petitioner: Mr.M.Anil Kumar, Counsel for OL

Counsel for respondent No.1: Mr.VV.Ramana

The Court made the following:

<u>Common Order:</u>

Company Application No.1088 of 2006 is filed by one Mr.N.V.Subba Raju, a third party to Company Petition No.13 of 2002 to direct the Official Liquidator to vacate and handover the possession of office room Nos.222 and 223, Second Floor of Panchavati Mall situated at Narayanaguda, Hyderabad, to him.

Company Application No.760 of 2009 is filed by the Official Liquidator for appointing a Chartered Accountant to look into the affairs of the Company in liquidation and to establish the mismanagement by its previous management.

Company Application No.1382 of 2014 is filed by the Official Liquidator to hold and declare that the premises bearing Nos.222 and 223, Second floor of Panchavati Mall, bearing MCH Nos.3-5-943 to 3-5-948/222-223, situated at Narayanguda, Hyderabad (for short 'the property in question'), was purchased from the funds of the Company (in provisional liquidation) obtained from the poor investors/public and to declare that the sale deed bearing document No.1356 of 2006, dated 31-03-2006, is null and void.

Of all the above three applications, Company Application Nos.1088 of 2006 and 1382 of 2014 pertain to a common subject matter *viz.*, whether the property in question, purchased by the applicant in Company Application No.1088 of 2006, needs to be excluded from the winding up proceedings.

In his affidavit, filed in support of Company Application No.1088 of 2006, the applicant averred that he has purchased the property in question from Smt.K.Prameela, Wife of K.Narasimha Rao, under registered sale deed, dated 31-03-2006, but after knowing that the said property is in possession of the Official Liquidator, he has approached the latter along with the registered document and requested him to vacate the same and that as the office staff of the Official Liquidator advised him to approach this Court, he has filed the said application. Along with the application, the applicant has filed a copy of the registered sale deed, dated 31-03-2006, executed by Smt.K.Prameela, W/o.Sri K.Narsimha Rao, in his favour.

By Order, dated 01-04-2014, in Company Application No.760 of 2009, this Court has appointed M/s.Deva and Company as the Chartered Accountant for probing into the affairs of the Company in Liquidation.

The said auditor has submitted his report to the Official

Liquidator, who, in turn, has filed Company Application No.210 of 2015 for receiving the said report. Accordingly, by Order, dated 02-03-2015, the said report was taken on file.

In Company Application No.1382 of 2014 filed by the Official Liquidator, he has *inter alia* stated that the Company in Liquidation was engaged in the business of chit fund in the State of Andhra Pradesh; that the erstwhile management of the said Company has misutilised the money mobilized from the public at large for purchasing properties in their personal names as well as in the names of their spouses; that one such property is the property in question purchased under registered sale deed, dated 10-04-1996, in the name of Smt.K.Prameela, who is the wife of the former Managing Director of the Company in liquidation; that in order to make unjust enrichment, the wife of the former Managing Director of the Company in Liquidation has sold the said property in question to the applicant in Company Application No.1088 of 2006. He has further stated that the winding up petition was presented on 19-02-2002; that by order, dated 20-03-2002, this Court has appointed the Official Liquidator of this Court as the provisional liquidator of the Company in Liquidation; and that the property in question was sold under registered sale deed, dated 31-03-2006, only with a view to deprive the investors/public of their investments and to make unjust enrichment and personal gain by the family of the former Managing Director of the Company in Liquidation. The Official Liquidator has referred to the auditor’s report wherein it was found that the Directors of the Company in liquidation have diverted an amount of Rs.4,10,73,727/- from the Company in Liquidation.

From the respective pleadings of the applicant in Company Application No.1088 of 2006 and the Official Liquidator, the point that arises for consideration in these applications is, whether the property in question is liable to be excluded from the winding up proceedings ?

Under Section 441 (2) of the Companies Act, 1956 (for short ‘the Act’), in all cases other than those mentioned in sub-Section (1) thereof, the winding up of a Company by the Court shall be deemed to have commenced at the time of the presentation of the Petition for winding up.

Section 537 (1) (b) of the Act postulates that where any Company is being wound up by the Court, any sale held, without the leave of the Court, of any of the properties or effects of the said Company, after such commencement shall be void.

On a conjoint reading of these two provisions, it is quite evident that the winding up proceedings, in cases other than voluntary winding up of a Company, commence from the date of presentation of the petition for winding up of the Company and from that date, if any sales of the properties of the Company are held, the same are void.

Mr.V.V.Ramana, learned Counsel for the applicant in Company Application No.1088 of 2006 submitted that his client has purchased the property in question from the wife of the former Managing Director of the Company in Liquidation as she was its owner and that therefore, the above-mentioned provisions do not apply to the said sale.

At this stage, it needs to be pointed out that, in his report, the auditor has observed that the examination of the accounts of the Company in Liquidation reveals that its Directors have diverted its funds to an extent of Rs.4,10,73,727/- to Saritha Finance, which was a proprietory concern owned by its former Managing Director and the husband of the vendor of the applicant in Company Application No.1088 of 2006 . It was further observed that the said figure may further vary if cash book, ledgers and bank statements for the period prior to

January, 1998, are verified. No objections are filed to these findings either by the applicant in Company Application No.1088 of 2006 or his vendor Smt.K.Prameela. The auditor has also pointed out that during the financial years 1994-95 to 1998-99, huge funds were diverted by the erstwhile management of the Company in Liquidation to Saritha Finance and during that period itself, several properties were purchased either in the name of the former Managing Director of the Company in Liquidation or his wife Smt.K.Prameela, who was also a Director. Though there is no specific reference to the property in question, the fact, however, remains that the said property was purchased in the name of Smt.K.Prameela in the year 1996. Though, the purchaser has filed Company Application No.1088 of 2006 in the year 2006, no effort has been made by him to establish that Smt.K.Prameela had independent source of income and that she has purchased the property in question from out of such income. Interestingly, Smt.K.Prameela has also not filed any affidavit in Company Application No.1088 of 2006 stating that she has independent source of income and that the property in question was acquired by her from the said source.

In the face of the auditor's report that huge funds, collected from the chit subscribers and depositors of the Company in liquidation, were diverted to Saritha Finance, the proprietary concern of the former Managing Director of the Company in Liquidation and in the absence of any evidence, what-so-ever produced by the purchaser/applicant in Company Application No.1088 of 2006 that the property in question was purchased by Smt.K.Prameela from out of her independent source of income, the inevitable conclusion that emerges is that the property in question was also purchased from out of the funds belonging to the Company in liquidation and diverted to Saritha Finance. *A fortiori*, the property in question must be considered as the one belonging to the Company in liquidation itself.

It is quite evident from the admitted facts of the case that with a view to make personal gain, the former Managing Director of the Company in Liquidation and his wife have sold the property in question to the applicant in Company Application No.1088 of 2006, four years after the provisional liquidator was appointed by this Court. Therefore, I have no hesitation to hold that the sale of the property in question is intended to defeat the legitimate rights of the depositors and chit subscribers of the Company in Liquidation. Consequently, the sale of the property in question by the said Smt.K.Prameela *vide* registered sale deed, dated 31-03-2006, in favour of the applicant in Company Application No.1088 of 2066 needs to be declared as void and it is, accordingly, declared as such.

If the applicant in Company Application No.1088 of 2006 is a *bona fide* purchaser for valuable consideration, he is entitled to proceed against Smt.K.Prameela (Sri K.Narasimha Rao, the former Managing Director of the Company in Liquidation has since died), for recovery of the sale consideration paid by him and any other relief available to him in law.

For the above mentioned reasons, Company Application No.1088 of 2006 is dismissed, Company Application No.1382 of 2014 is allowed and Company Application No.760 of 2009 is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 25th March, 2015

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