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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 11th December, 2015

\+ CO.APP. 64/2014

LAL BAHADUR GAUR ..... Appellant

Through : Mr. M.K. Vashisht, Advocate.

versus

SHRESTHPRIYA FINANCE & INVESTMENT LTD.

..... Respondent

Through : Mr. Rajiv Bahl, Advocate for O. L.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

CM No. 20911/2014(Condonation of delay)

For the reasons stated in the application, the elay in filing the appeal is condoned.

The application stands allowed.

CO.APP. 64/2014

1. By way of present appeal, the appellant assails the order dated 20th March, 2013 whereby the learned Single Judge has dismissed three applications being the CA Nos. 272/2013 , 273/2013 and 274/2013 passed in company petition No. 409/2003 and the order dated 18th July, 2014 whereby learned Single Judge has dismissed the company application No. 1259/2013 passed in company petition No. 409/2003 seeking recall of order dated 20th March, 2013.

2. We have heard learned counsels for the parties who have carefully taken us through the records.

3. It appears that the petition under Section 433 of the Companies Act seeking winding up of M/s Shresthpriya Finance & Investment Limited (hereinafter referred to as 'the company') respondent herein was filed by one Mr.Suman Kumar. Notice was issued of these proceedings by an order dated 1st May, 2006. The learned Company Judge appointed the official liquidator attached to the court as the Provisional Liquidator of the company. This company was officially wound up by the order dated 25th November, 2008 and the official liquidator was appointed as its liquidator.

4. In the liquidation proceedings, its ex-directors revealed the fact regarding the ownership of the properties of the company, details whereof and records had been seized by the Crime Branch, Shakarpur, Delhi in liquidation proceedings. The EOW, P.S. Shakarpur obtained further information and facts regarding the properties and filed a status report before the learned Company Judge in the liquidation proceedings.

5. On 2nd April, 2009, the court has directed the EOW, Crime Branch to depute an Investigating Officer for identification of one of the properties and for the purpose of taking possession thereof in accordance with law. After conducting a detailed investigation, the property of the company was identified as being occupied by Sh. Lal Bahadur, the appellant herein, who had claimed that he was paying rent to Sh. Gajender Singh and that he was aware that the properties stood sold to the respondent-company.

6. Pursuant to the orders dated 2nd April, 2009 and 19th May, 2010, the representative of the official liquidator along with Inspector of Delhi Police had visited the spot on 3rd June, 2010 and the property was identified as plot

of Khasra No. 333/457 situated at Khoda Colony, Ghaziabad, having been assigned a new number as Khasra No. 248, Pratap Vihar, Khoda Colony, Ghaziabad.

7. The appellant was unable to furnish any document in support of his claim before the official liquidator. As a matter of abundant caution, the official liquidator filed the company application No. 55/2011 under Section 446 of the Company's Act seeking directions to the appellant to establish the capacity in which he was occupying the said premises and to hand over the peaceful possession thereof to the official liquidator.

8. The appellant failed to appear before the court despite service, compelling the court to proceed ex-parte and note that the appellant had no document to establish the capacity in which he was occupying the premises.

9. On 29th November, 2011, the court directed the appellant to hand over the possession of the said property within three weeks to the official liquidator attached to the court. Considerable efforts were made to take possession, however, the same was obstructed by the appellant and his wife. Finally, on 25th April, 2012, the learned Company Judge after perusal of report No. 207/12, issued notice to SDM Ghaziabad and the SHO concerned for their personal appearance on 30th May, 2012 with directions to the SDM Ghazaiabad and SHO.

10. The record shows that after the order dated 29th November, 2011, the appellant was able to provide only an un-registered general power of attorney in support of his claim of title to the property. This attorney was on a stamp paper of Rs.50/- purportedly appointing him as an attorney of the company with regard to the said property.

11. It has been argued by Mr.M.K. Vashisht, learned counsel for the

petitioner that execution of the general power of attorney was a usual method for conveyance of immovable property.

12. The record further reflects that the property was seized by the official liquidator on 18th September, 2012 and since then it is in possession of the official liquidator.

13. It is pertinent to mention here that under cover of his letters dated 5th February, 2013 and 11th February, 2013, the appellant furnished the photocopy of unregistered General power of attorney, LPG connection, BSNL, electricity bills in support of his claim of title.

14. A perusal of the general power of attorney would show that the property was in the name of respondent-company and the GPA was signed on behalf of company by Sh. Inderdev Singh, Director. The GPA was not registered with the office of the Sub-Registrar and no evidence has been given for the execution of the said GPA in the year 1996.

15. We are informed by Mr. Bahl that there is no resolution of the Board of Directors of the company authorizing the execution of the general power of attorney or supporting its execution. Copy of the general power of attorney was placed before the company Judge and before us, a perusal of the same would suggest that it is a revocable power of attorney executed on an insufficiently stamped paper.

16. The appellant has till date has not provided the original GPA for verification alongwith supporting documents. At one time, the practice adopted for the sale of the properties used to be that the seller would execute irrevocable GPA for consideration accompanied by an agreement to sell, the receipts of the payments made towards the consideration amount, agreement of sell, possession letter and a Will of the seller as the chain of papers to

confirm the transfer of title and its submission with the concerned revenue authorities at the relevant time. Such attorneys and the Will were generally got registered by the Seller of the property.

17. The record also shows that even earlier pursuant to the order dated 13th February, 2002 passed in Criminal Revision Petition No. 139/2000, the property was earlier sealed by the Economic Offences Wing. Mr. M.K. Vashisht, learned counsel for the appellant is unable to point out any document to support legality of the occupation of the appellant of the said property.

18. It appears that after the property was sealed by the official liquidator on 18th September, 2012, the appellant filed the company applications application being CA Nos. 272-274/2013 praying for orders of stay.

19. These applications were opposed by the official liquidator and were dismissed by order dated 20th March, 2013.

20. It is trite that property can be conveyed only by a procedure established by law. Even otherwise, the execution of an unstamped and unregistered power of attorney has never been accepted as a conveyance of title in immovable property.

21. The appellant has neither pleaded nor relied upon any document which could ever remotely suggest the conveyance of property. So far as property of a company is concerned, its conveyance can be effected only if considered decision has been taken by the Board of Directors and the same is manifested by way of a resolution supporting the conveyance. The company was also required to authorize a person on its behalf to execute the conveyance. The appellant does not plead any such resolution.

22. The records of the company, which have been seized by the official

liquidator also does not contain any resolution authorizing Sh. Inder Dev Singh to execute any conveyance authorizing him to convey or to execute such conveyance in favour of the appellant, or any other person. Even the ex -directors who have appeared before the official liquidator have not disclosed any conveyance of the property.

23. In view of above, the findings of the learned Single Judge in the order dated 20th March, 2013 dismissing the company applications being CA Nos. 272/2013, 273/2013 and 274/2013 cannot be assailed on any factual basis or any legally tenable grounds. For the same reason order dated 18th July, 2014 passed in company petition No. 1259/2013 seeking recall of order dated 20th March, 2013 cannot be faulted with.

24. For these reasons, we find no merit in this appeal, which is hereby dismissed.

GITA MITTAL
(JUDGE)

I.S.MEHTA
(JUDGE)

DECEMBER 11, 2015
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