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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO. 446 OF 2014
IN
COMPANY PETITION NO. 204 OF 2010

Katherine Kumar ...Applicant
In the matter between
Balyasny Asset Management LP ...Petitioner
Versus
The Official Liquidator, High Court, Bombay & Ors. ...Respondents

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Mr. Mayur Khandeparkar, *i/b Mr. Rakesh Sawant, for the Applicant.*
Mr. Hamed Kadiani, *with Mr. Parth Jain, i/b DSK Legal, for the original Petitioner.*
Ms. Yogini Chauhan, *Dy. Official Liquidator, present.*

CORAM: G.S. PATEL, J.
DATED: 18th March 2016

PC:-

1. This is an application by the divorced wife of one of the ex-directors of the Company in liquidation. The relief sought is in respect of Flat No. 332, 3rd Floor, Clover Water Garden Cooperative Hosing Society, Building No. 3, Pune 411 014. The Applicant seeks an order that this flat is not an asset of the company and further that the order of symbolic possession be set aside.

2. An Additional Affidavit dated 15th February 2016 is filed by the Applicant.

3. It is necessary to note a few facts. The Applicant was married to one Mr. Vinit Kumar, then a director of the Company. On 29th October 2003, the Company purchased this flat. A home loan was taken through the Company from Standard Chartered Bank. This flat was required to be purchased by Mr. Vinit Kumar in compliance with the terms of a decree for his divorce from the Applicant. That decree was dated 6th February 2002. On 6th January 2004, Mr. Vinit Kumar delivered possession of the flat to the Applicant.

4. By its letter dated 11th November 2009, the Standard Chartered Bank, which gave the housing loan, wrote to the Respondent and agreed to a foreclosure of that loan. The Company then under cover of its letter dated 25th November 2009 sent a cheque to the Standard Chartered Bank making full payment against that loan and foreclosed it. Thus, by November 2009 the housing loan was fully paid off. This was also informed to Mr. Vinit Kumar. The Applicant then asked Mr. Vinit Kumar to register the sale agreement in her name. Keeping in mind the foreclosing of the loan and no dues certificate issued by the Standard Chartered Bank, Mr. Vinit Kumar paid an amount of Rs. 5,00,000/- to the Company on 1st July 2009 and thereafter an amount of Rs. 38,93,680/-. There were certain reimbursements and adjustments also made and these are set out in paragraph 11 of the further Affidavit. By its letter dated 15th January 2010, the Company confirmed receipt of the amount of Rs. 38,93,680/- and also confirmed the adjustments requested. Thereafter, on 22nd July 2010, Mr. Vinit Kumar forwarded a cheque of Rs. 20,00,000/- to the Company leaving an outstanding of only Rs. 3,67,781/-. Mr. Khandeparkar for the Applicant states that even this amount has now been paid. In other words, the entire amount paid by the Company for purchase of the flat has now been repaid to it by Mr. Vinit Kumar. In the meantime, the flat itself is registered in the name of the Applicant. The share certificate too stands in her name.

5. The present winding up Petition was filed on 22nd April 2010 and an order of winding up was made on it on 13th July 2012.

6. I can see no reason to deny the Applicant the relief sought. It seems clear to me that the flat was bought not for the Company or any of its directors but that the Company was only a vehicle through which one of its directors bought the flat in settlement of his personal matrimonial issues. The Company is not put to any loss. It has received back the entire consideration paid for the purchase of that flat. It would indeed be most inequitable if the Company was to retain both the remuneration and the flat itself.

7. For the reasons that I am unable to understand, this Company Application is being opposed both on behalf of the unsecured creditor as also on behalf of the Official Liquidator. The opposition is without substance. It does not take into account the reimbursement made by Mr. Vinit Kumar or how this can possibly be correctly reflected in the Company's books, since this is clearly reimbursement for the purchase price of the flat originally paid out through the Company.

8. The Company Application is made absolute in terms of prayer clauses (a), (a1) and (b).

9. The Official Liquidator is directed to restore the possession fully to the Applicant. The Applicant will remove the board of the Official Liquidator acting on an authenticated copy of this order.

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

(G. S. PATEL, J.)