THE HON'BLE SRI JUSTICE S.V. BHATT

COMPANY APPLICATION Nos.1676 & 1677 OF 2008

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COMMON ORDER:

One Tummala Penta Vijaya Lakshmi, resident of Pallamalli Village, Cheemakurthy Mandal, Prakasam District, A.P., is the applicant.

The application is filed under Section 446(2) (D) of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 (for short, the Act and Rules respectively).

The prayers in these applications are as follows:

Company Application No.1676 of 2008:

> "…..to declare and hold that the agricultural lands admeasuring Ac.2.46 cents in Survey No.51/1; Ac.1.34 cents in Survey No.51/2; Ac.3.76 cents in Survey No.51/3; Ac.2.15 cents in Survey No.52/1 and Ac.2.30 cents in Survey No.53/1 total land admeasuring Ac.12.02 cents and situated in Narasimhapuram Village, Markapuram Mandal, Prakasam District as my personal property and consequently direct the Official Liquidator to lift attachment and pass……"

Company Application No.1677 of 2008:

> "…..to stay the auction notice dated 04.12.2008 published in 'Enaadu' Telugu newspaper on 07.12.2008 and 'Saakshi' Telugu newspaper on 08.12.2008 and all consequential auction proceedings in so far as they affect my lands admeasuring Ac.2.46 cents in Survey No. 51/1; Ac.1.34 cents in Survey No.51/2; Ac.3.76 cents in Survey No.51/3; Ac.2.15 cents in Survey No.52/1 and Ac.2.30 cents in Survey No.53/1 total land admeasuring Ac.12.02 cents and situated in Narasimhapuram Village, Markapuram Mandal, Prakasam District and……"

The applicant is claiming right and title to the following agricultural land at Narasimhapuram Village:

Sy.No.51/1	-	Ac. 2.46 cents
Sy.No.51/2	-	Ac. 1.34 cents
Sy.No.51/3	-	Ac. 3.37 cents
Sy.No.52/1		Ac. 2.15 cents
Sy.No.53/1		Ac. 2.30 cents
Total		Ac. 12.02 cents

(hereinafter referred to as application schedule property)

On 15.03.2016, the application was listed for hearing before this Court and was directed to be posted on 29.03.2016. These applications along with a few other applications were listed on 22.04.2016 and it was again directed to be listed on 25.04.2016.

The application was taken up for hearing on 26.04.2016. There was no representation for the applicant and on 28.04.2016, the application was listed under the caption 'for dismissal'. On 28.04.2016, there was no representation and again at the instance of one of the applicants, the matter was listed on 29.04.2016. On all the above dates, Mr.Venkateswara Rao was not present.

The circumstances relevant for disposal of these applications are as follows:

One Jamili Prasada Rao is the complainant in C.D.No.240 of 2002. Jamili Prasada Rao is brother of the applicant herein. He is also applicant in Company Applications Nos.1674 and 1675 of 2008.

The applicant alleges that on 08.07.2002, Jamili Prasada Rao entered into an agreement with Vijetha Agro Farms (India) Limited, the company in liquidation (hereinafter referred to as 'Company'), whereunder the Company had undertaken to repay a sum of Rs.1,56,130/- to the brother of applicant. The sum covered by the agreement is allegedly paid by applicant's brother to depositors of the Company. The application schedule property was offered as security for discharge of the amount paid by applicant's brother. It is averred that the agreement binds the Company to execute a regular sale deed in favour of the applicant's brother, in case of default of repayment of Rs.1,56,130/-. The applicant's brother filed C.D.No.240 of 2002 on the file of the District Consumer Forum, Ongole, Prakasam for a direction to the opposite party to pay complainant a sum of Rs.4,88,200/- with interest at 18% per annum from 08.08.2002 till realization and also for a direction to the opposite party to pay complainant a sum of Rs.50,000/- towards damages caused to the complainant. On 11.03.2003, C.D.No.240 of 2002 was allowed. P.P.No.23 of 2003 in C.D.No.240 of 2002 was filed in the District Consumer Forum, Ongole for a direction to the Managing Director of the Company ***(emphasis added)*** to execute sale deed in favour of applicant's brother. Shorn of other details, it can be stated that on 29.03.2003, the President, District Consumer Forum executed sale deed in favour of applicant's brother and the sale deed was registered as document No.412 of 2003 with Sub-Registrar, Markapuram, Prakasam District. The applicant's brother pursuant to sale deed dated 29.03.2003 claims to have got his name mutated in the revenue records, obtained pattadar passbook and entered his name in adangal. On 07.05.2007, the representatives of Official Liquidator sealed the gate of the application schedule property. On 10.05.2007, the applicant addressed representation to the Official Liquidator to delete the application schedule property from the seizure. It is by reference to these happenings, in immediate past, the applicant alleges that she enquired and has come to know that C.P.No.128 of 2005 was filed in this Court for winding up of the Company. On 04.12.2006, the Company was ordered to be wound up and Official Liquidator was appointed.

According to applicant, the application schedule property could not have been attached by the Official Liquidator treating the application schedule property as property of the Company. The sale deed dated 29.03.2003 in favour of applicant's brother is genuine and *bona fide*. The sale transaction had taken place much earlier to filing of the company petition, and the winding up order dated 04.12.2016. On account of completed sale transaction, the application schedule property cannot, by any stretch of imagination, be treated as property of the Company. The sum and substance of applicant's case is that an agreement on 08.07.2002 was executed by the Company in favour of her brother. The Managing Director of the Company committed default in complying with agreed terms. C.D.No.240 of 2002 was filed and it was allowed on 11.03.2003. In P.P.No.23 of 2003, the President, District Consumer Forum, Ongole executed sale deed in favour of the applicant's brother. Therefore, the applicant prays for removing the seizure of application property.

The applicant, incidentally, as already noted, seeks stay of auction of the application schedule properties.

On 26.06.2009, the Official Liquidator filed common report in Company Application Nos.1674 and 1677 of 2008. The Official Liquidator opposes the prayer for deletion of application schedule property and stay of auction contemplated in the year 2008.
On merits, he contends that the ex-management of Company diverted and misutilized depositors' funds to its sister concerns.
The properties of the Company were attached by the Government of Andhra Pradesh. CC1/FD/2006 is pending on the file of Principal District and Sessions Judge, Guntur. The Official Liquidator refers to diversion of amount from the accounts of the Company to individuals and sister concerns; mismanagement of funds and assets of the Company.

The attention of this Court is drawn to the order dated 27.04.2016 of this Court in Company Application No.1012 of 2008.
In response to the said order, the District Consumer Forum has made available the original record in C.D.No.240 of 2002 and P.P.No.23 of 2003.

Section 446(2) of the Companies Act reads as follows:

> "The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of- (a) any suit or proceeding by or against the company; (b) any claim made by or against the company (including claims by or against any of its branches in India); (c) any application made under section 391 by or in respect of the company; (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company; whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960".

The Apex Court in **SUDARSAN CHITS (I) LTD V. O.SUKUMARAN PILLAI & ORS**[1] and a full bench of Delhi High Court in **LIFE INSURANCE CORPORATION OF INDIA. V. ASIA UDYOG (P.) LTD** [2] have summarized the jurisdiction of Company Court under Section 446(2) of the Act.

The applicant has moved the instant applications for the prayers referred to above and there is no dispute about the jurisdiction of this Court to enquire into and decide the prayer of applicant for exclusion of the application schedule property from the properties administered by Official Liquidator.

This Court is conscious of the fact that while deciding the prayers in these applications, this Court does not and could not sit as a Court of Appeal against the judgment of the District Consumer Forum, but can certainly examine the claim of title of applicant, transfer of application schedule property, the legal and binding nature of the orders of the District Consumer Forum in C.D.No.240 of 2002 and P.P.No.23 of 2003 vis-à-vis the Company. Mr.Anil Kumar appearing for the Official Liquidator was permitted to go through the original record and assist the Court.

The applicant admits that the application schedule property belongs to the Company. The applicant prays for exclusion of the application schedule property on the ground that the applicant acquired title by transfer through a deed executed by the President, District Consumer Forum and prays for exclusion of the property from attachment, administration and sale of the application schedule property in C.P.No.128 of 2005. In view of the above admitted fact position, and fact in issue viz., whether the applicant has acquired title to application schedule property, the outcome is dependant upon the documents relied upon by the applicant and its legal effect in conveying title in favour of applicant. In the considered view of this Court, since the applicant wants exclusion of these properties from the administration of Official Liquidator, the burden is on the applicant to prove transfer of title of application schedule property in favour of applicant's brother in the manner known to law and thereafter claim title.

The applicant relies upon registered sale deed dated 29.03.2003 executed by the President, District Consumer Forum for and on behalf of one Ramakrishna Singh, Managing Director, Vijetha Group of Companies for a sum of Rs.1,56,130/- (Annexure 'B'), pattadar passbook (Annexure 'C') and Adangal for 1416 F**.**

The original records in C.D.No.240 of 2002 and P.P.No.23 of 2003 are examined by this Court. The original file discloses the following facts/circumstances:

On 27.11.2002, the applicant filed C.D.No.240 of 2002 against one Ramakrishna Singh, Managing Director, Vijetha Group of Companies, Guntur, as opposite party but not against the Company. The prayers are to direct the opposite party therein to pay applicant herein a sum of Rs.4,88,200/- with interest at 18% per annum from 08.08.2002 till the date of realization. The applicant prayed for Rs.50,000/- damages from the opposite party. On 11.03.2003, C.D.No.240 of 2002 was allowed. The operative portion reads thus:

> "In the result, petition is allowed directing the opposite party subject to condition that is the opposite party registered the attached property as ordered in I.A.52/2002 in favour of the complainant within 2 months from the date of this order. Otherwise the complainant could receive the amount of Rs.4,88,200/- and Rs.25,000/- with interest at 12% per annum from the date of this petition i.e., from 26.11.2002 till the date of realization with costs of Rs.1,000/-."

The prayers are accepted against Ramakrishna Singh, but not against the Company in liquidation.

The applicant filed P.P.No.23 of 2003 and prayed for executing a regular sale deed in favour of her brother. The District Consumer Forum in purported authority under the Consumer Protection Act read with Rules sent draft sale deed to the

Sub-Registrar, Markapuram, Ongole District. It is relevant to note that the draft sale deed refers to sale consideration as Rs.1,56,130/- and vendor is shown as Ramakrishna Singh, Managing Director. It is certainly matter of curiosity that Annexure 'B' denotes sale consideration as Rs.1,56,130/- and substantial extent is sold and sale deed executed by the President, District Consumer Forum.

The original record evidences the following circumstances:

(a) The agreement dated 08.07.2002 was not executed by the Company viz., Vijetha Agro Farms (India) Limited but someone claiming to be the Managing Director of Vijetha Group of Industries. According to the statement of affairs of the company, Ramakrishna Singh was not the Managing Director of the Company in 2002-2003. Therefore, in a transaction completely unconnected with the business of the Company, the application schedule property is sold.

(b) The consumer dispute was filed against Ramakrishna Singh in his alleged capacity as Managing Director of Vijetha Group of Industries but not against the company i.e., Vijetha Agro Farms (India) Limited. The jurisdiction of District Consumer Forum cannot go this far to pass orders against opposite party with one description, perform the duties of a civil Court for specific performance of agreement of sale and execute sale deed in favour of applicant while performing the alleged duty of opposite party in C.D.No.242 of 2003.

This Court, in exercise of its jurisdiction under Section 446(2) of the Act, could certainly go into the binding nature of orders referred to above and record a finding thereon. Such enquiry is initiated by the applicant and this Court, therefore, examines the foundation of applicant's claim with reference to original record in C.D.No.242 of 2003. In the considered view of this Court, none of the steps taken right from 08.07.2002 till the execution of sale deed dated 29.03.2003 are against the Company as it is not a party. The agreement was not executed by the Company and rightly Consumer Dispute Case No.240 of 2002 was not filed against the Company. There was no order, much less executable order against the Company. The impermissible action of District Consumer Forum viz., without proper verification of the title to the property and executing sale deed in favour of the applicant's brother cannot be construed as conveying title from the Company to applicant herein. Further, the application is filed with false and fabricated allegations. As already noted with emphasis, the case is filed as if the Company suffered orders before the District Consumer Forum and in execution of such valid orders, the application schedule property was transferred in favour of the applicant's brother. After perusing the material, this Court is of the view that the averments are false, incorrect and contrary to original record in C.D.No.240 of 2002. Having regard to the above consideration, this Court holds that the applicant failed to establish conveyance or acquisition of title of application schedule property from the Company. The orders, execution and registration of sale deed are all relatable to individual, representing group of companies. Material is placed on record to show that there is no legal entity as Vijetha Group of Industries. Once there is no legal entity as Vijetha Group of Industries, some unauthorized and clandestine understanding with Ramakrishna Singh does not take away the title of the Company. The title claimed by applicant is belied by the basic document relied on by the applicant. In other words, the applicant failed to discharge the burden cast on him. The applications fail and are liable to be rejected.

Accordingly, Company Application Nos.1676 & 1677 of 2008 are dismissed. The application schedule property shall continue to be under winding up process of the Company, and the proceeds are realized to discharge the liabilities of the Company.

S.V.BHATT, J

Date:29.04.2016
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[1] AIR 1984 SC 1579

[2] (1984) 55 Comp Case 187 (FB)