

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

O.S.A. No.20 OF 2015

JUDGMENT: (Per Hon'ble Sri Justice V. Ramasubramanian)

This Original Side Appeal arises out of the dismissal of a Company Application by the learned Company Judge in a main petition for winding up.

2. Heard Sri V.S. Raju, learned counsel for the appellant, and
Sri M. Anil Kumar, learned counsel for the Official Liquidator.

3. The M/s. Sri Poojitha Chit Fund Private Limited was ordered to be wound up by this Court in C.P. No.28 of 2010 by the order, dated 07.10.2010. The Official Liquidator attached to this Court was appointed as Liquidator of the Company.

4. Thereafter, he took possession of the properties of the company. The properties that he took possession of, included
the shops bearing Nos.10, 11 and 12 in South East Block of the
first floor in a complex located at Vijayawada, Tarapet,
Convent Street, Municipal Ward Nos.506 and 507, Asst.
No.9378A, Door No.12-10-2, admeasuring 1295 square
feet together with undivided share of land admeasuring 32

square yards.

5. After the Official Liquidator sealed the shops, the appellant herein moved an application in C.A. No.1985 of 2011 praying for removal of the seal and for handing over vacant possession.

The claim of the appellant was that he purchased the three (3) portions from the director of the company in liquidation under an agreement of sale - cum - irrevocable power of attorney, dated 20.02.2007.

The entire sale consideration had also been paid on 19.02.2007 under a demand draft. Therefore, the appellant claims to be a *bona fide* third party purchaser for valuable consideration.

6. In view of the fact that the sale in favour of the appellant had been effected more than three (3) years before the date on which the company petition for winding up was filed, the provisions of Section 441 read with Sections 531 and 531A of the Companies Act would not be attracted. Therefore, the Official Liquidator himself filed a report on 25.01.2012 seeking permission to break open the lock and handover the shops to the appellant herein. The relevant portion of the report filed by the Official Liquidator reads as follows:

“It is therefore prayed that this Hon’ble Court may be pleased to permit the official Liquidator to break open the lock’s of the Company’s Branch Offices situated at Municipal Ward No.506 & 507, Asst. No.93.78A, Door No.12-10-2, Convent

Street, Tarapet, Vijayawada in the presence of the applicant and jurisdictional Police Officials in order to make inventory of the Books of Accounts & movable Assets, if any available thereat, so as to enable the official Liquidator to take necessary immediate steps to handover the vacant premises to the applicant with the leave of this Hon'ble Court and also to pass such other order or orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case."

7. However, the learned Company Judge dismissed the application on the ground that source of purchase of the shops in the year 2007 was not disclosed properly by the appellant. Therefore, the appellant is before us.

8. The company in liquidation was Sri Poojitha Chit Fund Private Limited. Therefore, the source of funds of the appellant for purchase of the property was immaterial. If at all, any thing is material, it is the manner in which the sale consideration was spent by the company in liquidation or its directors, that is important. Therefore, the application filed by the appellant could not have been dismissed on the ground that the appellant could not disclose the source of funds. As a matter of fact, this is a case where the question of fraudulent preference does not arise. The period of limitation had already gone. Therefore, the dismissal of the application by the learned Company Judge was not correct.

9. Hence, the appeal is allowed. The order of the

learned Judge is set aside and the company application filed by the appellant shall stand allowed. The Official Liquidator shall remove the seal and handover vacant possession to the appellant at the earliest.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal, stand closed.

V.
RAMASUBRAMANIAN, J

A. SHANKAR
NARAYANA, J

June 14, 2016.

PV