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

Reserved on: 03.05.2016
Pronounced on: 13.07.2016

\+   **CO.APP.4/2014, C.M. APPL.2831/2014**

ACHYUT KUMAR SHARMA …………Appellant

Through: Sh. Barun Kumar Sinha with Sh. Abhay Kumar and Sh. Tenzing Tsering, Advocates.

Versus

J.V.G. FINANCE LTD. AND ORS. ……..Respondents

Through: Sh. Deepak Khosla, Advocate, for Sh. V.K. Sharma, Ex-CMD of the respondent company.

Sh. Kirti Uppal, Sr. Advocate with Sh. Amit Goel, Sh. Sidharth Chopra and Sh. Vimal Duggal, Advocates.

Sh. Rajiv Behl, Advocate, for Official Liquidator.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT
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1. This company appeal, under Section 483 of the Companies Act, 1956 ("the Act") is directed against an order of the Company Judge dismissing the appellant/applicant's application to set aside an auction directed by order dated 17.05.2006 (in CP 265/1998) for sale of property at village Konaghatta, Khasba Hobli, Doddaballapur, Bangalore with Regd. Nos.684/97, 686/97, 687/97, 685/97, 691/97, 688/97, 681/97, 683/97,

689/97, 690/97, 693/97, 694/97, 682/97, 692/97 and 695/97 ("the suit property"). The suit property was sold to the auction purchaser M/s. Metro Nirvana; cancellation of the auction and subsequent fresh auction was sought. As a consequence, an order was passed on 31.07.2006 which directed the company to hand over possession of 13.5 acres of land that belonged to it, to the auction purchaser, namely M/s. Metro Nirvana. The appellant/applicant claims that he is the absolute owner of the suit land and has further claimed restoration of possession.

2. M/s JVG Finance Ltd ("the Company") was provisionally ordered to be wound up by Court on 05.06.1998; thereafter the final winding up order was passed on 29.08.2003 and an Official Liquidator was appointed for the company by that order. Further to a sale proclamation, the suit property, which belonged to the company in liquidation was sold through auction on 17.05.2006. The land was sold to M/s. Metro Nirvana for a sum of ₹ 2,05,00,000/-; the entire amount was paid by the auction purchaser on 31.07.2006. The Applicant/appellant filed CA No.1315/2006 on 24.08.2006 seeking his impleadmentas a necessary party in the company petition. It was contended that the applicant had purchased 21 acres of land out of which 16.9 acres were wrongly sold to the auction purchaser on 17.05.2006. The applicant produced, along with the aforesaid application, the copies of sale deeds dated 22.04.1995, 24.04.1995 and 06.05.1995 executed in his favour. It was contended that he purchased the lands with the assistance of one C. M. Chopra, a broker. After buying the land a registered general power of attorney (GPA) was executed by the applicant in favour of C.M. Chopra. Further pleadings by way of supplementary affidavits were filed by the

applicant, who also pointed out that mutation of the said lands were in his favour.

3. The Official Liquidator opposed the impleadment, denying the applicants' *bona fides* and authenticity of his claim as the owner of the land. The Official Liquidator doubted if indeed the sale deeds were executed in 1995 in favour of the applicant. It was further pointed out that since the land was sold under orders of this court by public auction and the auction purchaser was also put in possession, no purpose would be served in impleading the applicant in the winding up proceedings. It was alleged that the applicant was merely trying to delay the proceedings at the instance of vested interests. Apart from these, the Official Liquidator relied on the affidavit dated 21.11.1999 filed by one V.K. Sharma, the ex-Managing Director of the company in liquidation, which affirmed that the lands in Bangalore which were put to sale belonged to the company in liquidation and that the lands were held under the name of Achyut Kumar Sharma, S/o Bharat Prasad Singh, R/o No.222, III Main, Jeevan Kendra Layout Cambridge Road, Ulsoor, Bangalore-560008. The entire amount of sale consideration was paid by the applicant in cash, as pointed out by the Official Liquidator and the applicant failed to disclose the source of his funds. The payment to the sellers were unverifiable because they were not by cheques or drafts. The original title deeds relating to the land were in the possession of V.K. Sharma who submitted them before the Court. The applicant had claimed in the application that the General Power of Attorney given to C.M. Chopra was cancelled on 18.12.2005. The said Mr. Chopra was an employee of the company in liquidation and the address in

Cambridge Layout, Ulsoor, Bangalore shown in the title deeds was in fact the residential address of C.M. Chopra.

4. CA No.1315/2006 was opposed by Mr. V.K. Sharma, the ex-Managing Director of the company in liquidation. In the reply filed by him it was urged that if the applicant was the real owner of the property, he would have raised objections even at the time when the Official Liquidator took possession of the property, much prior to the date of auction. It was stated that the property belonged to the company in liquidation even though the sale deed was in the name of Achyut Kumar Sharma. On 14.09.2005, V.K. Sharma made a statement in Court, in the presence of the applicant, that the land was purchased out of the funds of the company in liquidation and was so purchased in the name of the applicant only as a nominee of the company. It was thus pointed out that before the auction took place on 17.05.2006 this Court was aware that the land belonged to the company in liquidation, though standing in the name of the applicant. As a consequence the Court rejected the applicant's plea for stay of the auction sale. V.K. Sharma disputed the applicant's claim that he was an agriculturist. He highlighted that there was no proof or evidence in support; nor did the applicant reveal the source of such huge funds for purchasing the land. V.K. Sharma also disputed the claim of the applicant that the latter asked for return of the original documents entrusted to him (V.K. Sharma) by the applicant for verification.

5. The learned Company Judge, on 13.07.2010 recorded the following order, in C.A.1315/2006: -

"This application has been moved by Mr. Achyut Kumar Sharma, praying that he be allowed to intervene in the matter and be impleaded as a party. The reliefs the applicant seeks are as follows:

"[i] allow/ permit the intervener herein to be impleaded as party and consequently thereof permit/ allow the intervener to make necessary submissions before this Hon'ble Court towards the final adjudication and decision in the above captioned matter pending before this Hon'ble Court,

[ii] take the present application on record of this Hon'ble Court for the kind and appropriate consideration of this Hon'ble court;

[iii] grant an opportunity of hearing to the authorized counsel on behalf of the applicant/ intervener, to make necessary submission in the larger interest of justice and equity;....."

Counsel for the applicant has tried to support the aforesaid reliefs by alleging that some property belonging to the applicant was sold in a public auction by this Court without notice to his client. This submission is vehemently opposed by counsel for the auction purchaser and also by counsel for the Official Liquidator. I might notice that no substantive relief with regard to any property allegedly belonging to the applicant, which is supposed to have been sold by this Court in a public auction, has been prayed for. Nor has any restitution thereof been sought. In fact, even the particulars of the actual property stated to be belonging to the applicant, and sold erroneously at the public auction held on 17th May, 2006, have not been given in this application. Further, I might notice that the date of the auction mentioned in this application is 24th May, 2006. On that date, in fact, no auction took place. The auction which the applicant appears to be referring to is probably the one which took place on 17th May, 2006. Thereafter, it was open to the applicant to take any remedy that may have been available in law, but he does not seem to have pursued any such remedy.

Counsel for the applicant has cited no precedent where, under similar circumstances, any party can be impleaded in these *proceedings under the Companies Act 1956, and that too, at this stage. To my mind, this application is entirely devoid of merits and the same is dismissed with costs of Rs.11,000/- to be deposited in the account of the company (in liquidation) within two weeks from today.*

6. An appeal was filed against the above order before the Division Bench (Comp. A No.26/2010). This appeal was disposed of on 21.12.2010; the Division Bench permitted the applicant to withdraw the appeal and granted liberty to him to approach the Company Court with a fresh application mentioning all necessary details especially with regard to the property on which he claimed ownership. Further to the liberty granted, the appellant/Applicant moved a fresh application. This application reiterated the same facts, but sought more reliefs from the Court. The applicant relied, in addition to the report of the SFIO (Serious Frauds Investigating Office) and submitted that sufficient evidence was led before that body regarding the sources of his income for the purchase of the land in 1995 and that SFIO accepted it.

7. The auction purchaser pointed out that the auction took place on 17.05.2006 and possession was given to the auction purchaser on 21.08.2006, after the applicant did not file any application claiming ownership over the land. It was contended had the applicant's claim been genuine, he would have moved for restoration of possession and cancellation of sale soon after the provisional liquidator took possession of the land. It was pointed out that for a period of six years the applicant took no steps and it could not be said that he was unaware that his land has been taken possession of by the provisional liquidator and was the subject matter of the

auction sale. It was pointed out that despite four additional affidavits filed by the applicant in Company Application No.1315/2006 this Court was not satisfied about the genuineness of the applicant's claim. No new fact was brought out in the present application. It was urged that the present application was filed on 16.08.2011 when the applicant came to know that the sale deed was to be executed in favour of the auction purchaser under orders of this Court passed on 10.05.2011, which established the falsity of the claim. It was urged that the details set-out in the form of a table in paragraph 12 of the report of the SFIO completely tally with the details given in the General Power of Attorney executed by the applicant in favour of C.M. Chopra, which proves that the applicant's claim was false. The SFIO has also recorded in paragraph 20 of their report that the original title deeds were given to V.K. Sharma.

8. By the impugned order, the learned single judge considered the various circumstances and concluded that the reliefs claimed could not be granted. Some of the Company Judge's findings are as follows:

> *"As rightly pointed out on behalf of the auction purchaser, no new fact or development which is crucial to the decision has been brought to my notice, persuading me to hold that the applicant is the real owner of the land. The only relevant or crucial document which has come on record after the earlier order passed by the learned Single Judge in Company Application No.1315/2006 is the report of the SFIO. I have carefully gone through the report as well as the annexures thereto. By order dated 29.11.2012 this Court directed the SFIO to investigate the title to the lands and the stand set up by the OL that the property was purchased out of the funds of JVG Finance Ltd. (in liquidation). Pursuant to this direction, the SFIO obtained copies of the record from the OL and issued*

summons to both Achyut Kumar Sharma, the applicant herein, and V.K. Sharma, Managing Director of the company in liquidation. V.K. Sharma did not appear before the SFIO, but the applicant appeared and a statement was recorded from him by the SFIO. He also placed certain documents through letter dated 26.02.2013. The SFIO first issued summons to 35 persons from whom the applicant claimed to have purchased the lands. Ten persons responded to the summons by either appearing before the SFIO or by sending replies. Out of five persons who appeared before the SFIO, one of them (Munikalappa) refused to sign the statement. Five persons out of 35 sent in their replies.

15. The SFIO thereafter went to Bangalore to record the statements of all the 35 persons since they were all residents of Bangalore rural district. Only 5 persons appeared at the camp office for recording their statements. Their statements are annexed to the report of the SFIO.

16. The SFIO obtained the relevant documents from the Sub-Registrar concerned. It also perused the balance sheets, bank statements and other relevant records of the company in liquidation.

17. In an attempt to verify the income tax return stated to have been filed by the applicant, a letter was written by the SFIO to the income tax authorities but there was no response. The bank accounts of the applicant, one from Allahabad Bank, Baddopur Branch, Pandarak, Patna and the other from HDFC Bank, Exhibition Road, Patna were obtained by the SFIO. It was seen that the account in Allahabad Bank was opened on 12.03.2008 on which the Kisan credit loan of Rs.3 lakhs was taken. The account with HDFC Bank was opened on 16.01.2003. Both these dates are much later than the dates on which the lands were stated to have been acquired by the applicant. The SFIO has also found that the entire payment of Rs.17,00,000/- for the purchase of the lands was made in the year 1995-96 in cash. Therefore, the opening of the bank accounts several years later *or the filing of the income tax return for a later year does not establish the source of the funds.*

18. Another important finding of the SFIO in its report is that Achyut Kumar Sharma, the applicant stayed in Bangalore for 3 to 4 months and persuaded some agriculturists to sell the land to him. They sold the land to him on the strength of a certificate obtained by him from the Sub-Registrar in Bihar showing that he was an agriculturist. Achyut Kumar Sharma in his statement before the SFIO, explained that since the law and order situation at Bihar at the relevant time was not good, his family suggested investing in lands elsewhere, which prompted him to buy the lands near the Bangalore. He further explained that he purchased the land out of the cash representing the savings lying at home. He also explained that monies belonging to his father and brother were also utilised. He was, however, categorical that he had not withdrawn any amount from the bank account. After categorically stating so before the SFIO, he sent a letter to the SFIO on 26.02.2013 enclosing affidavits from seven persons from whom he claimed to have taken loans to purchase the lands. The SFIO found that during the proceedings before it, Achyut Kumar Sharma had not stated anything about any monies being borrowed by him from friends and relatives for purchasing the lands. The affidavits were also noticed to be in the same style. The applicant claimed to have taken loans amounting to Rs.7,15,000/- from these seven persons. They were summoned by the SFIO but none of them appeared. Five of them replied giving excuses for not appearing. All of them stated that they did give a friendly loan to the applicant. The SFIO, however, observed that from a plain reading of the letters, it appeared to them that the replies were written by the same person. Thus, the identity and creditworthiness of these persons have not been established by the applicant. They were not even mentioned before the SFIO in the course of the proceedings before it. Clearly, the story trotted out by the applicant that he took friendly loans from seven persons in Bihar was an afterthought. In addition to this the SFIO has also remarked that all the letters received from *the seven persons appeared to have been written by the same person. Thus, there is no evidence to show the nature and source of the monies used for the purchase of the lands by Achyut Kumar Sharma, the applicant.*

19. It is also very important to note that Achyut Kumar Sharma himself admitted before the SFIO that he gave the original title deeds relating to the lands to V.K. Sharma within a few months after he purchased the lands. He stated that he knew V.K. Sharma as he had meet him in an investor meet. He claimed to have made a deposit of Rs.75,000/- in the JVG Group, but could not produce any evidence in support of this claim before the SFIO. As an explanation for giving the address of the guest house of the JVG Group in Bangalore as his local address in the sale deeds, Achyut Kumar Sharma stated before the SFIO that when he met V.K. Sharma in the investor meet, he told him that he needed a local address to purchase the land and V.K. Sharma readily offered the address of the guest house of the JVG Group. According to Achyut Kumar Sharma's statement on oath before the SFIO, V.K. Sharma had taken the original title deeds of the lands for verification and that he had assured that he would pay a good price for the lands. In other words, Achyut Kumar Sharma had stated before the SFIO that he had left the original title deeds with V.K. Sharma, the Managing Director of the JVG Group of companies, on the latter's assurance to buy the lands. However, when asked whether he got back the title deeds when the lands could not be sold to V.K. Sharma, he has stated that he tried to obtain the documents back but he could not contact V.K. Sharma. This is clearly unbelievable. One is asked to believe that Achyut Kumar Sharma handed over the title documents to V.K. Sharma but simply omitted to get them back. Undisputedly the title deeds were with V.K. Sharma who handed them over to this Court. There is no reason why the title deeds to the lands should be in the possession of V.K. Sharma, if Achyut Kumar Sharma is the real owner of the lands as claimed by him. It should also be noted that in the affidavit submitted by V.K. Sharma before this Court on 29.11.1999 giving details of the assets of JVG Finance Ltd., the lands in *question were included as assets of the company. In the said affidavit, it was also stated by him that the lands were purchased by JVG Finance Ltd., the company in liquidation, from its own funds but in the name of one Achyut Kumar Sharma under registered sale deeds dated 22.04.1995, 24.04.1995 and 06.05.1995; in all there were 15 sale deeds. The possession of the sale deeds with V.K. Sharma, instead of with the applicant who claims ownership over the lands, read with his affidavit dated 29.11.1999 submitted before this Court, clearly shows that the lands belonged to the company in liquidation and not to Achyut Kumar Sharma. V.K. Sharma has also stated in the affidavit that the funds came out of the company in liquidation, of which he was the managing director. It is also relevant to note that in the sale deeds the residential address of Achyut Kumar Sharma shown was in fact the address of the guest house of the JVG Group of companies in Bangalore. Coupled with this is the further fact - and a very crucial fact at that - that Achyut Kumar Sharma had executed a general power of attorney in favour of C.M. Chopra who was an officer in the employment of the JVG Group of companies. This is a registered general power of attorney which was later sought to be revoked by an unregistered document. These facts, taken together with the fact that Achyut Kumar Sharma was wholly unable to prove the nature and source of the monies utilised for purchasing the land, can lead to the only conclusion that the lands in question actually belonged to the company in liquidation.*

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22. In addition to the above I find merit in the contention of the learned counsel for the auction purchaser that the applicant did not challenge the action of the provisional liquidator, who took possession of the lands and also put it to auction, for a period of six years. Moreover, the present application was filed on 16.08.2011 when the applicant came to know that the sale deed was about to be executed in favour of the auction purchaser pursuant to the orders of this Court passed on 10.05.2011; this *actually reinforces the contention that the applicant is merely indulging in delaying tactics.*

23. Taking the entire conspectus of the facts and the conduct of the applicant, it seems to me that the applicant has been indulging in delaying tactics and trying to thwart the proceedings before the company court by taking frivolous and repetitive objections. His earlier application in Company Application No.1315/2006 was dismissed against which he filed an appeal before the Division Bench. He simply withdrew the appeal but obtained liberty to approach the company court again with a fresh application mentioning all necessary details with regard to the lands. In the fresh application, which is the present one, there is nothing of vital importance which was not submitted in the affidavits and the additional affidavits filed in support of the earlier Company Application No.1315/2006 which was dismissed by the learned Single Judge with costs of Rs.11,000/-. In the course of the arguments before me, no vital fact which was not brought to the notice of this Court earlier, was brought to my notice. The only new document is the report of the SFIO which was claimed to be in favour of the applicant. I have already held that there is no reason to hold that the report of the SFIO is in favour of the applicant. In these circumstances, I have no option but to accept the plea taken by Mr. Rajiv Bahl, the learned counsel for the OL that the present application should be dismissed with heavy costs."

9. The appellant's counsel urges the grounds in support of the appeal; he claims that the Company Judge misdirected himself and recorded erroneous findings. It is pointed out that facially, the impugned judge itself records that the appellant is a *benamidar* or nominal owner/name lender. If such a position is accepted, the appellant had to succeed, in view of the express provisions of the Benami Transactions (Prohibition) Act, 1988 (hereafter "the Benami Act"). It was pointed out that Section 4 enacts a bar against the enforcement, through claim – or defense of *"any right in respect of any*

property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property." The bar is absolute; the transaction of sale contained in the sale deeds of 1995 clearly shows that the applicant is owner. In such case, the so called *benami* owner is deemed to be the real owner and any action by one claiming to be the "real" owner who alleges to have funded the transaction, is barred. It is also urged that the applicant moved this court earlier, but was permitted by the Division Bench to file a fresh application. Learned counsel relied on the decision reported as *Valiammal v Subramaniam* AIR 2004 SC 4187 to urge that since the Sale deeds designated the applicant as the purchaser, he is deemed to be the owner. It was also stressed that at no point of time did the Company ever enter the suit property as part of its assets in the returns and balance sheets prepared and compiled at the time.

10. Learned counsel for the Liquidator, Mr. Behl, and counsel for the ex-director, Mr. Deepak Khosla, urge that this court should not interfere with the order of the learned Company Judge, who considered all the circumstances in great detail. It was urged that the earlier application was dismissed on merits. The Division Bench did not interfere with or set aside the earlier dismissal. What the Division Bench, in the appeal preferred by the present appellant, permitted was liberty to file a fresh application. The new application filed merely reiterated all the facts contained in the previous application, but also sought the relief of setting aside the sale and restoration of possession. These reliefs could have been claimed in the earlier application, which had suffered dismissal. That dismissal had attained finality. The principles of constructive

res judicata clearly applied. Besides, nothing prevented the applicant from approaching the court within the time prescribed i.e. 3 years - by virtue of Article 137 of the Schedule to the Limitation Act, from the relevant date in 2006, for setting aside the auction sale. He became aware of it – as is evident from the previous application. The application was, therefore, clearly time-barred.

11. It was urged by Mr. Khosla, counsel for the ex-Director, in addition, that the Benami Act does not apply, in view of Section 4 (3) (b) which excepts the bar contained in Section 4 (1) (from the recovery of benami property), i.e *"where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity."*It is pointed out that a full reading of the SFIO report would show that not only was the applicant not in possession of funds, but that the property was held, if at all, by him in his capacity as trustee of the Company's funds.

Analysis and Conclusions

12. The above factual discussion reveals that the applicant was aware when the possession of property was taken from him, in 2006. The very same year, on 24th August, 2006, he sought to be impleaded. However, for reasons best known to him, he did not claim the relief of setting aside the sale, on ground that he was the owner. The application filed (for impleadment, which contained all the averments made in support of the new application for cancellation of the sale) was rejected on merits, by the order dated 13th July, 2010. The appeal filed by the applicant did not set aside the said order; rather

it permitted the filing of a fresh application. The new application- which is the subject matter of the present appeal, reproduced the same facts and circumstances which the applicant had averred in the previous application, i.e., CA No.1315/2006. In addition, the applicant had produced a copy of the SFIO report. The threshold question is whether the applicant can be heard on the merits.

13. The first bar urged by the respondents to the maintainability of the new application is constructive *res judicata.* For this purpose, it would be useful to notice that the relief of declaration and cancellation (of the sale deed) was available and could have been sought in CA 1315/2006. The applicant omitted to claim that relief. Yet, all the factual details on the basis of which such relief could be claimed, were pleaded. The Court, after examining the merits of the application rejected it. That the Division Bench permitted withdrawal of the appeal by granting liberty to the applicant to approach for appropriate relief afresh did not mean that what could have been asked, and was deemed to have been abandoned (i.e the constructive *res judicata* principle) could nevertheless be sought. This is because of Explanation IV to Section 11, CPC, whose principles apply to the present proceedings. The said Explanation reads as follows:

> *"Explanation IV.- Any matter which might and ought to have been made ground of defense or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."*

The Supreme Court has explained this principle as follows in *Forward Construction Co. v Prabhat Mondal*1986 (1) SCC 100:

"an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence."

Later, in *Alka Gupta v Narender Kumar Gupta* 2010 (10) SCC 141, it was stated that:

"even though a particular ground of defence or attack was not actually taken in the earlier suit, if it was capable of being taken in the earlier suit, it became a bar in regard to the said issue being taken in the second suit in view of the principle of constructive res judicata. Constructive res judicata deals with grounds of attack and defence which ought to have been raised, but not raised, whereas Order 2 Rule 2 of the Code relates to reliefs which ought to have been claimed on the same cause of action but not claimed."

The applicant was aware and presumably advised as to his rights when the previous application was filed. Yet, no relief that the auction sale was invalid, because the title vested in the applicant, was sought. Having abandoned the relief at the relevant time, the said applicant cannot now seek it.

14. The second, equally substantial *rationale* for denying relief- urged by counsel for respondents, is that the application seeking for directions to set aside the auction purchase is time-barred. In the decision reported as *Md. Noorul Hoda v Bibi Raitunnisa & Ors* 1996 (7) SCC 766, the Supreme Court held that when the plaintiff wishes to establish a title to a property which cannot be established without avoiding the decree or an instrument that

stands an insurmountable obstacle in his way, which otherwise binds him, though not a party, he has to necessarily seek a declaration and have the decree or instrument cancelled, set aside or rescinded. It was held that Section 31 of the Specific Relief Act, 1963 regulates suits pertaining to cancellation of an instrument. It enacts that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled.

15. Ownership of a property is transmitted by a registered sale deed as per Section 54 of the Transfer of Property Act, 1882. Every sale deed has an effect of divesting the transferor of the ownership of the property and the vesting of the ownership in the transferee. A sale deed by which ownership in an immovable property are transferred can be ignored only where it is *void ab initio*. In all other cases where it is pleaded that sale deed is a voidable document because it ought not to have been executed or that there is a fraudulent transfer of title by means of the particular sale deed or for any reason which makes the transfer voidable, it is necessary that a claim has to be filed for cancellation of such a sale deed within a period of three years from the date a person comes to know of execution and existence of the sale deed which goes against the interest of such person. This is the enacted by Article 59 of the Limitation Act, 1963.The Supreme Court in the judgment reported as *Prem Singh vs. Birbal* 2006 (5) SCC 353 has held that Article 59 applies to voidable transactions and not void transactions. If the said *ratio* were to be applied to this case, it is evident that the applicant should have sought for recall and setting aside of the auction sale, immediately after his

dispossession. In not doing so, within the time (3 years from date of knowledge) and in preferring an application in that regard after 5 years, the applicant sought a relief that was time-barred in law.

16. As regards other grounds, the SFIO report itself clarifies that the applicant/appellant was unable to show that he had sufficient sources of income to purchase the suit lands. Though the company did not list the suit properties in the returns and annual reports filed by it, nevertheless the address of the GPA holder is shown to be that of the company's office in Bangalore. The Court is also of the opinion that there is merit in the company's contention that the money for purchasing the property was defrayed by it; the sale deeds of the suit property too were with Shri V.K. Sharma- over 11 years after purchase. If indeed the applicant's claims were genuine, he would have taken steps to secure back such title deeds.

17. Having regard to the above findings, this Court is of opinion that the appeal cannot succeed; it is accordingly dismissed with no order as to costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JULY 13, 2016