

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

% *Judgment Reserved on : January 19, 2016*
Judgment Delivered on : January 27, 2016

+ **FAO (OS) 267/2014**

RELIANCE INDUSTRIES LTD.Appellant
Represented by: Mr.B.B.Sawhney, Sr.Advocate
instructed by Mr.Somiran Sharma,
Mr.Biju P.Raman and Mr.Vishnu
Sharma, Advocates

versus

M/S.VIJAY CABLE INDUSTRIES & ORS.Respondents
Represented by: Mr.Rajesh Banati, Advocate with
Mr.Vikram Advocate for R-1 and
R-2
Mr.Pramod Kumar, Advocate with
Mr.Vikas Tomar, Advocate for
UPFC

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Challenge in the appeal is to the order dated May 07, 2014 passed by the learned Single Judge dismissing IA No.7948/1998 filed by the appellant (the plaintiff) and allowing IA No.11037/2007 filed by Uttar Pradesh Financial Corporation (UPFC).

2. At the outset we must record our deep pain and anguish in the manner in which learned counsel for the parties have prosecuted the cause of their respective clients in the suit filed by the appellant, in which

defendant No.1 is M/s.Vijay Cable Industries (a partnership firm), its partners Vijay Kumar Bhatia and Tilak Raj Bhatia are defendants No.2 and 3. Priya Bhatia, a guarantor and M/s.Vijay Cables Ltd. are defendants No.4 and 5. The suit, filed in the year 1998, is under Order 34 of the Code of Civil Procedure and pleads that for goods supplied to the defendant No.1, a sum of ₹3,21,57,390/- (Rupees Three Crores Twenty One Lacs Fifty Seven Thousand Three Hundred and Ninety only) became due and payable and to secure repayment defendants No.2 to 4 created an equitable mortgage over property No.A-111, New Friends Colony, New Delhi by depositing the title deeds of the property, which comprised a perpetual lease-deed dated August 08, 1983 executed by the Delhi Development Authority in favour of one Kunti Puri, an agreement to sell dated August 28, 1996 whereunder Kunti Puri agreed to sell the property to one R.B.Gupta; and an agreement to sell dated January 19, 1988 executed by R.B.Gupta in favour of Vijay Kumar Bhatia (and we note that there was obvious typographic errors concerning the dates). Alleging that sale tax liability in sum of ₹1,58,34,482.84 (Rupees One Crore Fifty Eight Lacs Thirty Four Thousand Four Hundred Eighty Two and Paise Eighty Four only) was payable for the goods supplied and that interest in sum of ₹1,41,01,949/- (Rupees One Crore Forty One Lacs One Thousand Nine Hundred and Forty Nine only) had accumulated, total amount claimed was ₹6,20,98,822.11 (Rupees Six Crores Twenty Lacs Ninety Eight Thousand Eight Hundred Twenty Two and Paise Eleven only).

3. After the suit was filed IA No.7948/1998 was filed by the appellant pleading therein that it had learnt that UPFC was taking steps to sell the mortgaged property. Vide order dated September 14, 1998, UPFC was

restrained from selling the mortgaged property, with notice issued to the defendants.

4. Matter simply lingered on for years together with nobody bothering to either prosecute the suit nor UPFC taking any steps to file any application for having the injunction issued against it vacated. Counsel engaged by UPFC appeared in the suit proceedings as per his convenience, and we note that presence of the counsel is recorded in the order dated May 10, 1999, April 18, 2000, July 11, 2000, July 24, 2002, October 22, 2002, January 22, 2003, July 15, 2003, January 16, 2004, March 10, 2004, May 18, 2004 and thereafter on September 25, 2007 when IA No.11037/2007 filed by UPFC for vacation of the ex-parte stay against it was listed.

5. The learned Single Judge has held that though as per law an injunction could be issued against a third party (not a party to the suit), but it was an exception i.e. upon finding a fit case.

6. The learned Single Judge has thereafter reasoned that it was not a fit case for confirming the injunction, and the reasoning is in para 22 and its various sub-paras (I to VIII) as under:-

“22. As far as the merits of the injunction are concerned, I am of the view that no case for granting interim injunction restraining the UPFC from proceeding with the sale of the subject property in exercise of powers under Section 29 of the State Financial Corporations Act is made out, for the following reasons:

(I) There is no challenge in the present suit to the right of the UPFC to sell the property.

(II) As far back as on 4th September, 1998, upon public notices of sale being issued by the UPFC in the newspaper, the plaintiff became aware of the claim of the

UPFC to the said property and of the right asserted by the UPFC to sell the same and though the plaintiff applied for and obtained injunction restraining UPFC from so selling the property but the plaintiff till now i.e. for nearly 16 years has not made any such challenge, neither in this suit by seeking amendment thereof nor by filing any other proceeding. In fact, no steps for impleading UPFC as a party to this suit also were taken till this Court during the CS(OS) 1112/1998, EX.P. 126/1997 & EX.P. 96/2008 Page 14 of 19 hearing on 27th March, 2014 expressed doubts about the right of the plaintiff to sustain interim injunction against UPFC without the UPFC being a party to the suit.

(III) Even now, no application for amendment of the plaint to challenge such right/claim asserted by the UPFC has been sought.

(IV) The right even if any of the plaintiff to challenge the claim of the UPFC may now also be barred by time; however, no final opinion thereon can be expressed without the plaintiff even making such a challenge.

(V) Though UPFC also has filed a misconceived application for impleadment as a party to this suit but only for the purpose of having the stay order dated 14th September, 1998 vacated; the same thus does not compel me to take a different view.

(VI) When in the circumstances aforesaid, it does not fall for adjudication in this suit, whether UPFC is entitled to sell the property or not, this Court cannot continue any further the interim injunction restraining the UPFC from selling the said property; any continuance of the said interim order would amount to this Court injuncting during the pendency of the proceedings, what it is not called upon to injunct CS(OS) 1112/1998, EX.P. 126/1997 & EX.P. 96/2008 Page 15 of 19 on the culmination of the

said proceedings and which in my view is clearly impermissible in law.

(VII) What has emerged during the hearing is that the defendant No.2 Mr. Vijay Kumar Bhatia and the defendant No.4 Ms. Priya Bhatia acquired the New Friends Colony property vide General Power of Attorney and Special Power of Attorney dated 5th April, 1996 in favour of the defendant No.4 Ms. Priya Bhatia and Agreement to Sell in favour of the defendant No.2 Mr. Vijay Kumar Bhatia and upon introduction of the scheme for conversion of leasehold rights in the land underneath the property into freehold, got executed a Conveyance Deed of freehold rights dated 24th October, 1996 executed in favour of the defendant No.4 Ms. Priya Bhatia.

(VIII) Mortgage by deposit of title deeds was purported to be created in favour of the plaintiff by depositing with the plaintiff, the Agreement to Sell and the Power of Attorney in favour of the defendants No.2&4 and mortgage by deposit of title deeds is purported to be created in favour of UPFC by deposit of the Conveyance Deed dated 24th October, 1996.”

7. Since we are in an appeal, as per the law declared by the Supreme Court in the decision reported as (1991) 1 PTC 1 Wander Ltd. & Anr. Vs. Antox India Pvt. Ltd., an appeal against an interim order granting injunction by a learned Single Judge would require the same to be considered by the Appellate Court on the principle of law : whether the learned Single Judge has noted relevant material and applied the correct principles of law to the same.

8. The document of title in favour of Vijay Kumar Bhatia qua the mortgaged property is an agreement to sell executed in his favour by R.B.Gupta in whose favour in turn the perpetual sub-lessee had executed

an agreement to sell as also the original perpetual sub-lease. The deposit of the title deeds was on May 22, 1996 and thereafter Vijay Kumar Bhatia, as per policy of the DDA got the property converted from a leasehold tenure to a free-hold tenure and got a conveyance deed in his name from October 24, 1996. This conveyance deed was the document of title used by him for creating an equitable mortgage while obtaining a credit from UPFC.

9. We need not note the decisions relied upon by the appellant on the point that an injunction can be issued even against a third party in a suit, because the learned Single Judge has also recognized law being so.

10. The point would be : whether the facts of the instant case justify continuation of the ex-parte ad-interim injunction granted against UPFC which was not impleaded as a party in the suit till when dawn of realization came on the horizon of the appellant in the year 2014. IA No.6220/2014 was thereafter filed to implead UPFC as a party, which has been dismissed for the reason the appellant did not even bother to amend the plaint incorporating pleadings qua UPFC as also on account of delay and laches.

11. In the facts of the instant case noted by us the view taken by the learned Single Judge does not require any intervention by the Appellate Court in view of the law declared in Wander's case (supra). We may only add that an agreement to sell is not a document of title, as held by the Supreme Court in the decision reported as AIR 2012 SC 206 Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana. The so-called sales under the agreement to sell violated the terms of the perpetual sub-lease deed in favour of the original allottee because sale could be effected only with the prior permission of the superior lessor and upon payment of up to 50% of the unearned increase. No equitable mortgage could be created

by depositing the agreements to sell. Assuming that by depositing the perpetual lease-deed a mortgage could be created, as per the terms of the perpetual sub-lease even the same required the prior permission of the superior lessor. Besides, the original perpetual lessee i.e. Kanti Puri could alone have offered the title deed of her property as security or could have authorized her attorney to do so. It is not the case pleaded in the plaint that the equitable mortgage was created by Kanti Puri herself or through her attorney.

12. The appeal is accordingly dismissed with costs against the appellant and in favour of UPFC.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JANUARY 27, 2016
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