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

\+ CO.APP. 38/2014 & CM No. 13352/2014

SMT. BENU BERRY ..... Appellant

Through: Sh. Bhuvnesh Gugnani and Sh. Sonam Sharma, Advocates.

versus

JVG FINANCE LIMITED (IN LIQN. ..... Respondent

Through: Mr. Rajiv Bahl, Official Liquidator.

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

<u>O R D E R</u>

% 18.02.2016

The present appeal is directed against the order of the learned Company Judge dated 09.05.2014. It was in the course of the company's liquidation proceedings; earlier on 02.04.2014, the Court had allowed an application and directed the appellant to deposit Rs. 56,98,400/- and for later expenses, an amount Rs. 5,71,8,21/-.

The limited controversy is that the appellant was purchaser of the company's property. The Committee set up by the Court reported that the transfer in her favour was tainted by fraud. The Committee's report was dated 17.03.2006. The appellant, however, did not hand back possession to the Official Liquidator. The Company Court, later by its order of 23.01.2012, confirmed the decision of the Committee and Official Liquidator. The Official Liquidator, in these circumstances, was constrained to seek rent for the period of occupation i.e. from 2001. The learned Single Judge by the first order of 02.04.2014, accepted the Official Liquidator's claim for Rs. 56,98,400/- towards market rent. He also directed payment of advertisement charges quantified at Rs. 57,18,21/-. The appellant sought review of the impugned order. The learned Single Judge declined the contention that market rent was payable only from 21.11.2013. He however granted limited relief in the following terms:-

> *"The second contention raised by the learned counsel is with respect to the quantum of the market rent. It is submitted that the rental value assumed by the Official Liquidator is erroneous. The applicant is at liberty to contest the market rent by filing an appropriate application. To that extent, the direction for the applicant to deposit a sum of Rs. 56,98,400/- is recalled. The applicant shall file a substantive application stating all grounds with respect to the market rent within a period of two weeks, which shall be considered on merits."*

Mr. Khurana, learned counsel for the appellant contends that the impugned order is in error. He submits that the appellant cannot be faulted as she was a *bona fide* purchaser. At the most if there was no liability, it was for the period from 21.11.2013 onwards and not before. It was further submitted that the period of limitation in recovering rent is only three years and in the present case can be calculable from the date when application was moved for this purpose.

This Court has considered the materials on record. It is an undisputed fact that the Committee's decision which was confirmed later by the Official Liquidator and accepted by the Company Judge on 23.01.2012, was that the transfer was fraudulent. Despite knowledge of this, the appellant persisted not only in occupying the property but also continued with the litigation. Undoubtedly, she was allowed to continue in the premises but not on the basis of any established legal right. In the circumstances, the Court is of the opinion that the Single Judge's order determining that the time and period for payment of market rent, damages and user charges cannot be faulted.

So far as the other aspect is concerned i.e. the quantum, this Court is of the opinion that the Single Judge's order is eminently equitable inasmuch as it allows determination as to the correct amount of fair market rent after considering the relevant materials on record.

In view of the above discussion, the appeal is without merit. It is, therefore, dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 18, 2016
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