

IN THE HIGH COURT OF JUDICATURE AT PATNA

Company Appeal (DB) No.11 of 2015

In

COM PET 2 of 1975

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1. Chitra Tyagi wife of Shamsheer Tyagi, daughter of Shri Yaduvash Narain Singh.

2. Shri Yaduvash Narain Singh, son of late Shri Raghuvansh Narain Singh, Both residents of House no. 422, Sector no. 29, Noida(U.P.)

....Objectors/ Appellant/s

Versus

1. Maksudpur Refrigeration Industries Pvt. Ltd. (In Liquidation) through Official Liquidator, High Court, 4th floor, A wing Maurya Lok Complex, Dak Bunglaw Road, Patna-1.

2. The Official Liquidator, High Court Patna, 4th floor, A wing Maurya Lok Complex, Dak Bunglaw Road, Patna-1.

.... Respondent/s

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with

Company Appeal (DB) No.14 of 2015

IN

COM PET 2 of 1975

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The Maksudpur Institute Of Research And Education In Natural And Social Science (MIRENS), the mortgagee, a nonprofit Trust having its operational headquarters at Maksudpur Garh, Village-Maksudpur, Khizirsarai, District-Gaya through its trustee Ajai Singh, resident of Maksudpur Garh, village-Maksudpur, District-Gaya.

....Mortgagee Appellant/s

Versus

1. M/s Maksudpur Refrigeration Industries Pvt. Ltd. (in Liquidation) represented through the Official Liquidator.

2. Official liquidator attached to the Hon'ble High Court of Judicature at Patna.

3. M/s United Bank of India, Fraser Road, Patna.

.... Respondent/s-Liquidator

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Appearance :

(In COMP. APP.(DB) No.11 of 2015)

For the Appellant/s : Mr. Binod Sinha, Advocate

Mr. Binod Kumar Singh, Advocate

For the OL : Mr. Alok Agarwal, Advocate

For the Intervenor : Mr. K. K. Sinha, AA1

Mr. Brisketu Sharan Pandey, Advocate

Mr. Prince Kumar Mishra, Advocate

(In COMP. APP.(DB) No.14 of 2015)

For the Appellant/s : Mr. K.D. Chatterjee, Sr. Advocate

Mr. Anupa Nand Jha, Advocate

For the OL : Mr. Alok Agarwal, Advocate

For the Intervenor : Mr. K. K. Sinha, AA1

Mr. Brisketu Sharan Pandey, Advocate



Mr. Prince Kumar Mishra, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER
(Per: **HONOURABLE DR. JUSTICE RAVI RANJAN**)

12 25-07-2017

Heard parties.

Both the appeals are directed against the order dated 06.05.2015 passed in Company Petition no. 02 of 1975 and OLR no. 74 of 2015 dated 05.05.2015. The stand of the appellants of Company Appeal no. 11 of 2015 is that they are the co-owners of plot no. 7015 (old), 757 (new), Holding nos. 51 and 74 (old), 63(new), ward no. (1) (old) / 3 (new) appertaining to Khata no. 210 of Gaya Municipality measuring 1.08 acres. However, the land is sought to be auction sold at the behest of the official liquidator. It is contended that a direction has been given by the impugned order to auction sale the property of the Company in liquidation without hearing and deciding the objection petition filed on behalf of the appellants though such objections were invited by the court.

The case of the appellant of Company Appeal No. 14 of 2015 is that it should have been heard on the point of auction sale and then only actual order should have been passed after disposing of his objection petition. It is claimed that the appellant



is the secured creditor under subrogation of the United Bank of India with respect to the said land and as such, land cannot be auction sold. However, at the same time, it is claimed that it was a party to the proceeding when the order dated 13.08.2004 was passed in Company Petition No. 02 of 1975. After winding up order of the company in liquidation passed on 31.10.1975, official liquidator was appointed and all the assets of the company came in his possession.

From perusal of the order dated 13.08.2004, as appended to the Company Appeal No. 14 of 2015, it appears that the Court held that according to Section 446 of the Companies Act, when a winding up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall commence, or if pending on the date of the winding up order, shall be proceeded with against the company save and except any leave of the Court and subject to such terms as the Court may impose.

Thereafter, learned Company Judge has held that all the lands affected by the auction purchase and subsequent purchase in favour of the third party were to be nullified in view of the aforesaid provisions of law. The relevant paragraph of the aforesaid judgment is extracted as under for better appreciation :-



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“ In view of the clear terms and the mandate of the law, before proceeding with the certificate case, leave of the court was a must. If the leave of the Court is not sought then the proceedings would be void ab initio and the possession of the company over the property would not be lost. The certificate proceeding relating to auction sale of the aforereferred land is held to be void. It is accordingly annulled. Consequently all subsequent sales affected by the auction purchaser or subsequent purchasers in favour of the third party also stand nullified.”

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(emphasis is supplied)

Finally, the official liquidator was directed to take possession of the property and if he finds any difficulty, he may execute the order of this Court through agency of the District Judge, in accordance with law. The appellants have appended the document dated 28.09.2004 claimed to have been signed by the official liquidator, the representatives of official liquidator, the Secured Creditor, i.e., United Bank of India as well as representative of the appellants and one person, namely, Ajay Kumar Singh . This document clearly goes to show that Ajay Kumar Singh had accepted that he would provide the present level of protection and maintenance through his authorized staff and continue to protect the assets of the said company on behalf of the official liquidator on his own cost till disposal of the property of the company. The relevant passage from Annexure-3 is extracted



as under :-

“Hence, it has been decided in presence of Secured Creditor that the Intervenor should continue to provide the present level of protection and maintenance through his authorized staff and continue to protect the assets of the said company on behalf of official liquidator on his own cost till disposal of the property of the company.”

The document having been signed by the appellant as well as the Secured Creditor (the United Bank of India) and having been brought on record by the appellant, would definitely be binding upon him. The order of the learned Company Judge dated 13.08.2004, as contained in Annexure-2, was put under challenge in Company Appeal no. 16 of 2004 filed by one of the appellants, namely, Mr. Rameshwar Prasad Narain Singh. The appeal was also dismissed observing that the opinion of the Court would be for the purpose of the appeal only and since the true owners are not before the Court, the same will not be binding upon them. The appeal was put under challenge before the Apex Court but the Special Leave Petition was also dismissed in limine vide Annexure-6 to the Company Appeal no. 14 of 2015.

Thus, in our view, the appellant cannot raise the issue of legality of the order, as a petition was filed by the official liquidator in his presence at the time of taking over possession of the land and building of the company in liquidation which he was



required to take in view of Annexure-3. Now, since he was facing problem and obstruction was being made in scientific measurement of the property, therefore, an application was filed for issuance of an order to Shri Ajay Singh to vacate the land and building for proper valuation of the property. Accordingly, on such application having been filed, the impugned order has been passed by the learned Company Judge.

Thus, in our view, now the appellant of the Company Appeal no. 14 of 2015 cannot challenge the order on the ground that he has no subrogation what the actual Secured Creditor had and therefore he can challenge the said order on behalf of the Secured Creditor because the Secured Creditor was one of the signatories of Annexure-3. The Secured Creditor cannot now question the taking over of possession by official liquidator in terms of the direction of the Company Judge vide Annexure-2 which has been upheld up to the level of the Apex Court specially when the Secured Creditor is also a signatory to Annexure-3.

Now coming to the case of the Company Appeal no. 11 of 2015, Mr. Binod Kumar Singh, learned counsel for the appellants, has submitted that he is the joint owner of the said plots which have been given to the appellants in a Partition Suit. In fact, he was allotted share to the extent of 33.33%. Thus,



being owner of the part of the property, without giving them opportunity of hearing, the impugned order should not have been passed.

This Court sees no reason as to why these appellants preferred the appeals against the order directing possession to be taken over by the liquidator in terms of power under relevant statute as also in terms of the order dated 13.08.2004, appended as Annexure-2 to the Company appeal No. 14 of 2015 which has been upheld up to the Hon'ble Apex Court. The order merely directs that the official liquidator will take possession of the property. It does not say that the objection filed by the appellant would not be considered at any point of time rather it is stated in so many words in the impugned order that learned counsel for the parties have agreed that since the objection petition at flag-192 filed by Smt. Chitra Tyagi and others goes to the root of the matter with regard to the right and title of the company over 1.08 acres of land, hence, the said objection petition should be considered first and only thereafter the question of considering other applications would arise. There is no denial at all by the learned Company Judge for consideration of his objection.

In such situation, we are of the view that both the appeals appear to have been filed by way of dilatory tactics by the



appellants.

Accordingly, both appeals are dismissed. However,
there would be no order as to costs.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

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