IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO. 592 OF 2016
IN
COMPANY PETITION NO. 1031 OF 2000

Shri Gangji Narayan Patel, Karta of
Gangji Narayan Patel HUF & Ors. .. Applicants

In the matter between :

M/s. Gangji Premji Trading Limited .. Petitioner
Vs.
M/s. Ravi Teak (India) Pvt. Ltd. .. Respondent

Mr.M.S. Dehlvi i/b Paashuram Gujar for applicants.
Mr.Muralidharan V.C. a/w. Mr.Kaushal Parsekar i/b Joy Legal Consultants for original petitioner.
Mr.Pola Raghunath, Deputy Official Liquidator present.

CORAM : K.R.SHRIRAM, J.
DATE : 6TH FEBRUARY 2018

P.C.

1 This is an application for directing the official liquidator to remove the seal of commercial unit being Unit No.5, Ground Floor in building known as Vardhaman Industrial Complex admeasuring about 1170 sq.ft. (Built up area) in the Vardhaman Industrial Complex Co-operative Society Ltd., at Village Panch Pakhadi, Thane (West), Pin-400 601 (the said premises) that was put on 25th July 2002 and hand over possession to applicants.

2 On 20th June 2007, the company-M/s. Ravi Teak (India) Pvt. Ltd. had been ordered to be wound up.

3 It is the case of applicants that said premises was purchased by applicants from one Ramesh Devjibjai Patel in the year 1999 by executing a Deed of Assignment, dated 15th November 1999. The deed of assignment is registered with the Registrar of Mumbai vide registration No. 6503 of 1999 dated 15th November 1999. A copy of the registered deed of assignment is annexed to the application. As per the deed of assignment, the consideration payable for the said premises was Rs.12,00,000/- and applicants paid a sum of Rs.2,50,000/- at the time of entering into the deed of assignment. The balance amount of Rs.9,50,000/- was to be paid before December 1999. It is the case of applicants that applicants paid the balance amount before December 1999. Applicants had, soon after premises was sealed by the official liquidator, taken out a similar application being company application No.826 of 2002. It should be noted that the attachment happened sometime in July 2002. It is stated in the affidavit in support of the current company application that due to internal disputes within the family of applicants, applicants chose to withdraw company application No. 826 of 2002 with liberty to file fresh application. This Court, by an order dated 21st February 2003, permitted withdrawal of the application with liberty to file afresh. Applicants, thereafter, lodged this application on 13th May 2016 and has filed a copy of the deed of assignment therewith along with Public notice that was given in Marathi

newspaper 'Tarun Bharat' on 6th October 1999 and other documents.

4 The original petitioner is opposing this application on the ground : (a) there has been a delay of 15 years ; (b) when the official liquidator's representatives visited the said premises on 25th July 2002 for attachment of the said premises, the security guards informed the representatives of the official liquidator that the premises was occupied by one Ramesh D. Patel, the original ex-director of the company (in liquidation) and they were also informed by the Manager and Secretary of the Society that the said premises belongs to the Ex-director of the company ; (c) As per the deed of assignment, balance consideration of Rs.9,50,000/- was to be paid before December 1999 and there is no evidence that it has been paid and the deed of assignment was conditional and was only an agreement to sell; and (d) The possession of the said premises is with the Ex-directors of the company and the Ex-directors are trying to defraud petitioner in collusion with applicants.

5 The official liquidator has filed an affidavit dated 9th January 2018 narrating the events that transpired. To the affidavit is annexed a copy of a letter dated 13th May 2013 received by the official liquidator from Vardhaman Industrial Complex Premises Co-operative Society Ltd. (the society) where the said premises is situated stating that the Share

Certificates are in the name of Ramesh D. Patel and others but Ramesh D. Patel and others have made a registered Sale Agreement with applicants and others and the agreement was admitted for transfer on 18th December 1999 but not transferred by the society as society dues, municipal Tax (property tax) etc. are unpaid.

6 I have heard the counsel for applicants, original petitioner and also considered the affidavits and documents annexed thereto. The deed of assignment is registered. As per the deed of assignment, a sum of Rs.2,50,000/- was paid. The balance of Rs.9,50,000/- has been paid by applicants between 8th November 1999 and 26th December 1999. Annexed at Annexure I to the affidavit in rejoinder of Gangji Narayan Patel affirmed on 29th September 2017 is a statement and photocopy of bank statement issued by Development Credit Bank Ltd. Hasanabad Branch stating that a total amount of Rs.9,50,000/- has been paid from the accounts of four persons, viz., Valji Naran Patel (HUF), Liladhar Valji Patel (HUF), Naran P. Patel (HUF) and Gangji Naran Patel (HUF).

7 The letter dated 13th May 2013 from the society to the Deputy Official Liquidator also confirms that the registered deed of assignment/registered Sale Agreement was lodged with the society on 18th December 1999 for transfer to applicants but the society did not transfer.

Therefore, I am satisfied that this is not a fraudulent or collusive transaction as alleged by original petitioner because (a) the deed of assignment is a registered document; (b) there is documentary evidence to show that the entire consideration has been paid before December 1999; and (c) the agreement has been already lodged with the society on 18th December 1999 for transfer to applicants.

Moreover, the said premises was never in the name of the company (in liquidation). Admittedly, it was in the name of Ex-director of the company and the counsel for petitioner was unable to show anything which permitted petitioner to pierce the corporate veil. In fact, there is no such averment either in the affidavit in reply. This will take care of all the defences raised by original petitioner leaving the delay aspect to be dealt with.

8 It has to be noted that soon after the liquidator sealed the premises sometime in July 2002, applicant had lodged company application No. 826 of 2002. That application was withdrawn pursuant to an order dated 21st February 2002 and the Court had given a liberty to petitioner to file a fresh application.

9 Undoubtedly, applicants took a further 15 years to file this application but have given an explanation in paragraphs 12 and 14 of

affidavit in support as to why applicants did not take out this application earlier. I am inclined to accept the application particularly because I am satisfied that there is no collusion between applicants and the Ex-directors of the company to show that the said premises actually belongs to applicants and not the company (in liquidation).

10 In the circumstances, the application is allowed in terms of prayer clause (a) except the bracketed portion which read as "*and hand over the vacant possession of the same to the present applicants*". Prayer clause as granted, will therefore read :

> *(a) That this Hon'ble Court be pleased to direct the Official Liquidator to remove the seal of commercial unit being Unit No.5, Ground Floor in building known as Vardhaman Industrial Complex admeasuring about 1170 sq.ft. (Built up area) in the Vardhaman Industrial Complex Co-operative Society Ltd., at Village Panch Pakhadi, Thane (West), Pin 400 601 which was sealed on 25th July 2002.*

11 It is clarified that the liquidator will remove seal from the said premises and it will be open to applicants to take possession from the society after complying with the requirements of the society and satisfying any other authority, which has sealed the premises, that might have any claim against the said premises.

Application accordingly disposed.

12 Mr. Muralidharan appearing for original petitioner seeks stay of the order by four weeks.

Stay granted.

(K.R. SHRIRAM, J.)