

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No. 2247 of 2020 (O&M)

Date of Decision: 14.12.2020

Universal Precision Screws

...Petitioner

Vs.

Canara Bank and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

**Present : Mr. Shailender Jain, Sr. Advocate with
Mr. Manish Jain, Advocate,
for the petitioner.**

**Mr. Gurdeep Anand, Advocate,
for the respondent-Bank.
(Presence marked through video conference).**

ARUN MONGA, J. (ORAL)

1. Instant revision petition has been filed by the plaintiff-petitioner against the impugned Appellate Court order dated 12.09.2019 (Annexure P-2) dismissing its appeal against interim order dated 01.03.2019(Annexure P-1) whereby the trial Court dismissed his application to restrain the defendant-respondents Bank from interfering in the suit land measuring 41 *kanals*, during pendency of the civil suit.

2. Brief facts first. The plaintiff Universal Precisions Screws Limited(for brevity, vendee) filed a civil suit for declaration and consequential relief of permanent injunction against the defendant Bank on the broad averments that the suit land was earlier in the name of M/s Lakshmi Precision Screws Limited(for brevity, the vendor) and relevant record was also in their favour. The land was free from encumbrances as per the revenue entries. The vendee purchased the same for a valuable consideration of Rs.1,44,87,500 vide registered sale-deed dated 19.08.2016. The amount was paid through bank

transaction and possession was delivered to it. In this regard, vendor not only passed a resolution of the Board of Directors but also communicated the same to the Bombay Stock Exchange and National Stock Exchange of India. The vendee thereafter started raising construction of its Unit on the suit land. Later, respondent Bank issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(for brevity, 2002 Act) in respect of the suit land showing the same to be under Pari Pasu Charge of defendant Bank. According to the plaintiff-vendee, that is is totally incorrect.Claiming to be the *bonafide* purchaser, he plaintiff filed civil suit. An application under Order 39 Rules 1 and 2 was filed for restraining the defendant Bank from interfering in his peaceful possession over the suit land.

3. The suit was contested by the Bank. It was claimed that the transaction between the vendee and vendor is a *sham* transaction as all the persons who were at the helm of affairs of vendee and vendor are the same and are of one family. The suit land had already been mortgaged by vendor Lakshmi Precision in favour of M/s Karvy Financial Services Limited against a loan transaction and a charge thereof was created with respondent Bank. Since there was default in payment of loan amount, M/s Karvy Financial Services initiated recovery proceedings under 2002 Act by filing a petition against vendor before the competent authority, wherein proceedings had been started to take the possession of the suit land. Both the vendee and the vendor in collusion with revenue authorities did not let the fact of mortgage incorporated in the revenue record. It is averred that just to frustrate the right of M/s Karvy Financial Services and defraud it, the said transaction has been made by vendor in connivance with vendee-plaintiff firm.

4. The prime argument of learned counsel for the petitioner is that the petitioner is the *bonafide* purchaser of the suit land for valuable consideration.

After verifying about the validity of title and non-existence of any encumbrance/hindrance, the petitioner had purchased the suit land and hence plaintiff cannot be ousted therefrom that too for any financial liability of its vendor.

5. On the other hand, learned counsel for the respondent Bank sought to justify and have supported the impugned orders passed by the Courts below.

6. Having heard learned counsel for the petitioner and learned counsel appearing for respondent Bank, I am of the opinion that no grounds are made to interfere in exercise of revisional jurisdiction of this Court.

7. It is borne out from records that the persons managing the affairs of the vendor company and the persons who are the partners in the vendee firm are the same and from one family. In fact, one of the family members acting as an authorized person on behalf of vendor company executed a sale deed in favour of vendee-plaintiff through another family member who acted as an authorized representative. Learned Appellate Court observed as under:-

“10. From the above arguments, it is apparent that the parties concede that the appellant had purchased the property in dispute from M/s Lakshmi Precision Screws Limited per registered sale-deed No.1197 dated August 19, 2016 for valuable consideration. The appellant further claims that there was no entry in the revenue record regarding the charge over the property. Since the land was unencumbered, it had forged ahead with the deal. It has further been urged that the vendor-M/s Lakshmi Precision Screws Limited had held a meeting of the Board of Directors on August 13,2016 wherein a resolution was passed regarding the sale and intimation was also sent to the Bombay Stock Exchange Limited, Mumbai and National Stock Exchange of India Limited, Mumbai per letter dated August 13,2018. During the course of arguments, learned counsel for the appellant further argued that execution of a sale deed in its favour was intimation to the general public. He also pointed out that since the purchase, the appellant had raised construction at the spot, but no one including the respondents had ever resisted such

construction. He has thus urged that the respondent could now not claim any right to interfere in the possession of the appellant under the pretext that it had a charge over the property as they are deemed to have knowledge about the relevant facts and title of the appellant.

11. *It was rightly pointed out by the learned counsel for the respondents that the partners of the appellant firm are all members of the same family and their names are duly detailed in the constitution of the firm. They are also the persons managing the affairs of the vendor company. Meaning thereby that the members of the same family are acting as authorized persons/ representatives of the vendor company to execute the sale deed in favour of the appellant firm which is being represented by other family members. Keeping in view the facts and circumstances of this case, it would be appropriate to state that though the two companies were independent parties, they had a common interest with each other. Since members of both these firms belong to the same family, it cannot be said that they were altogether different.”*

8. The Appellate Court below while placing implicit reliance on **Tata Engineering and Locomotive Company Ltd. Vs. State of Bihar¹** and **Life Insurance Corporation of India Vs. Escorts Ltd.²**, rightly concluded that *prima facie* it cannot be accepted that the vendee was not in knowledge of the suit land being mortgaged with M/s Karvy Financial Services as the persons who are in the managing affairs of the vendor company and the persons who are the partners in the vendee firm are same and one family and to circumvent the financial liability, the sale transaction has been shown in connivance of the vendor and the vendee. It was observed thus:-

“14. In such type of litigation, what must be considered is the substance and not the form of the transaction. It can thus safely be stated that the corporate veil may be lifted to prevent a fraud or improper conduct which prima facie appears to have been the case

¹ 1964(6) SCR 885

² 1986(1) SCC 264

in the instant proceedings. How can the appellant plead innocence or lack of knowledge about the position when the persons who were at the helm of affairs in the appellant firm and the vendor firm were the same persons? The actual share holding of the two companies being identical, in fact both the firms had a common interest. The argument advanced on behalf of the bank that the transaction by these parties were done with an intent to protect their business interest cannot be outrightly rejected. In this backdrop, the prima facie case is clearly against the appellants, even though as per record, it is the registered owner of the firm. Since there is a loan against the vendor company and at the time of sale of the property in favour of the appellant, the property was mortgaged with M/s Karvy Finance Services Limited, the conduct of the concerned officials of the appellant and its vendors left much to be desired. They cannot plead ignorance of the factum of the mortgage. The learned trial Court rightly opined that since the money at stake was public money, the Court was bound to protect it. The learned Trial Court was also alive to the fact that there are elements of criminality involved in the transaction which the said Court shall consider at the appropriate stage. The learned Trial Court had fairly and justly opined that there was no prima facie case and balance of convenience also did not lie in favour of the appellant firm. No irreparable loss or injury would be caused to the appellant in case the injunction as prayed for is not granted. Therefore, the learned Trial Court was fully justified in declining the prayer for injunction. This Court has no reason to interfere with the findings made by learned Trial Court.”

9. No fault could be found with the order passed by trial Court while dismissing the application under Order 39 Rules 1 and 2 and the order of appellate Court dismissing the plaintiff's appeal. Revision petition is dismissed. However, on the insistence of learned Senior counsel for the petitioner, it is made clear that observations made by the trial Court as well as the Appellate Court in the impugned orders herein shall be treated as prima facie in nature for the purpose of deciding the injunction application only and the trial

Court shall proceed on the basis of independent evidence without being influenced by those observations.

DECEMBER 14, 2020
Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable	Yes/No