OD – 1

ORDER SHEET
APOT/147/2021
WITH
EC/26/2019
IA NO: GA/1/2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

AZAD TANVEER KALIM
VS
DREAM TOWER KOLKATA PRIVATE LIMITED AND ORS.

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : 23RD SEPTEMBER, 2021.

Appearance :
Mr. S. Chowdhury, Adv.
Mr. C. Gupta, Adv.
Mr. R. Upadhyay, Adv.
Ms. S. Biswas, Adv.
...For the appellant

Mr. Ratnanko Banerji, Sr. Adv.
Mr. P. Sinha, Adv.
Ms. U. Chakraborty, Adv.
Mr. S. Chowdhury, Adv.
Mr. L. Chatterjee, Adv.
Mr. D. Majumder, Adv.
Ms. A. Sinha, Adv.
...For the respondent No.1

Mr. T. Quasimuddin, Adv.
Ms. S. Chaudhuri, Adv.
...For the respondent Nos.2 to 11

The Court : We admit the appeal.

We do not think it is necessary to keep the appeal pending in this Court. We propose to dispose of it dispensing with all formalities.

The appellant before us was the respondent No.11 in the execution proceedings before the learned trial judge. He is one of the judgement debtors. The execution proceeding was levied to realize an arbitral award, inter alia, against the appellant.

It appears from the submissions made that the appellant along with his wife are the partners/stake-holders in Kzar Developers LLP, a limited liability partnership.

This limited partnership is in the process of undertaking two housing projects. One is described as Solitaire 20, at 116, Dr. Lal Mohan Bhattacharya Road, Kolkata, West Bengal – 700014. The other is La Casa Greens at 9, Convent Road, Sealdah, Raja Bazar, Kolkata, West Bengal –700014.

By the impugned judgement and order dated 17th September, 2021, a receiver has been appointed over these housing projects with a direction to take actual physical possession. The Court has further ordered :

> "Mr. Ayan Datta of the Bar Library Club is appointed as Receiver over La Casa Greens and KGC Solitaire-20 Housing Projects as stated above in paragraph 16 of the application and shall take possession of the books and accounts related to the two projects. The remuneration of the Receiver, fixed at Rs.70,000/-, shall be borne by the petitioner together with the travel and incidental expenses of the Receiver. A Chartered Accountant of the petitioner's choice shall also be appointed to audit the accounts of the said two projects for filing a report before this Court within four weeks from date. The remuneration of the Chartered Accountant shall also be borne by the petitioner.
>
> The respondent No.11 shall be at liberty to file its affidavit-in-opposition within three weeks; reply within two weeks thereafter.
>
> List this matter in the third week of November, 2021.
>
> The other respondents shall also be at liberty to file their affidavit-in-opposition within the aforesaid timeframe."

The principal issue raised in this appeal is whether a Receiver could be appointed over a property claimed to be belonging to a limited liability partnership, to satisfy an award against one of the partners.

Mr. Chowdhury, learned counsel appearing for the appellant submits that the learned judge in the impugned order has recorded that the petitioner (respondent/decree holder) was not disputing the separate juristic entity status of the partnership. Furthermore, the Court observed that the petitioner (respondent/decree holder) was only seeking to restrain the appellant "from enjoying any financial benefit" from these two housing projects. Nevertheless, the learned judge proceeded to pass the above order over the partnership business and assets.

On the other hand, Mr. Ratnanko Banerji, learned senior counsel appearing for the decree holder/respondent apprised us of the award. He pointed out the liability of the appellant under the award and how he was evading payment of the awarded sum. He also took us through the earlier proceedings as against the appellant.

Our views are as follows :

(a) In law, a limited liability partnership is a separate entity from the partners or stakeholders. Its assets are not the assets of the partners.

(b) However, it is always possible for any person to show that the real person in control of the partnership is someone and that the corporate entity is just a camouflage to conceal the real person.

(c) In the same way, a corporate entity's veil is lifted to identify its alter ego, the veil of a limited partnership can also be lifted.

(d) This exercise has not been undertaken by the said respondent till now, though it is possible that they might do so in future**.**

(e) The learned judge in the impugned order has observed that the petitioner was not seeking any relief against the limited partnership but was only interested in restraining the appellant from enjoying any financial benefits from the housing projects.

(f) The impugned order appointing a receiver to take actual possession of those two housing assets seems to be a little contradictory to the above observation made by the learned judge.

(g) However, the learned judge has justified the order by making the following observations :-

> "(2) The argument of an alleged inconsistency in the Award must also be rejected in the absence of any application being made by the respondent no.11 for setting aside the said Award under Section 34 of the Arbitration and Conciliation Act, 1996. Even otherwise, there is no ambiguity in the operative portion of the Award which makes the respondent no.11 jointly and severally liable for the principal amount of Rs.19.50 crores along with interest for the periods indicated in the said award. The commonality of Directors between the petitioner and the respondent nos.2 to 9 and respondent no.1 cannot absolve the respondent no.11 from his obligations towards the petitioner. The fact that the respondent no.11 has acted contrary to the injunction granted by the court on 17th January, 2019 is reason enough for ad interim orders at this stage."

(h) In the execution proceedings, earlier the executing Court had already passed an order of injunction restraining the award debtors from in any way dealing with their movable or immovable properties as mentioned in paragraph 35 of the execution application. Of course that did not include the subject housing projects. The respondent/decree holder has already obtained some security for the debt.

(i) Since the execution applications are pending, it is still possible for the respondent/decree holder to make out a case making the limited partnership liable for the award debt of the appellant. As of now, there is no case to make the limited liability partnership liable for the award debt of the appellant.

Appointment of a Receiver to take actual physical possession of the housing projects is thus, not called for.

(j) The execution application after filing of affidavits is posted for hearing before learned single judge in the third week of November, 2021.

Taking into account all the circumstances mentioned above, we dispose of this appeal and the connected application by modifying the impugned order to the extent that the receiver shall only take symbolic possession of the subject properties.

The direction for appointment of a chartered accountant to audit the accounts is not warranted now and is kept in abeyance for the time being and may be reconsidered by the learned single judge, at the time of final hearing of the interlocutory application.

It goes without saying that when a receiver is even in symbolic possession of a property, any disposition thereof can only be made with the leave of the Court.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

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