

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAO) NO.86 OF 2014
IN
COMPANY PETITION NO.5 OF 1997

Sanjay s/o Yashwant Gharve
Aged about 65 years,
Occ: Driver, R/o House No.1506,
Adarsha Nagar, Shivaji Road,
Mahad, Dist. Raigad. **APPLICANT**

...V E R S U S...

Sanjivani Saving & Investment
(India) Ltd., through Official Liquidator,
Office of Company Liquidator, 2nd Floor,
Indian Bureau of Mines Building,
Opp: V.C.A. Ground, Civil Lines,
Nagpur – 440 001. **NON-APPLICANT**

Mr. I.J. Damle, Advocate for Applicant.
Dr. Anjan De, Advocate for Respondent.

CORAM: **ROHIT B. DEO, J.**
DATE: **8th MARCH, 2021.**

ORAL JUDGMENT:

This application is preferred in the disposed of company petition seeking a direction to the Official Liquidator to handover the possession of the property, which is described as half portion of City Survey 1721 admeasuring 3 gunthas

situated at Mahad, District Raigad. The applicant Mr. Sanjay Yashwant Gharve contends that the said property was owned by his father Mr. Yashwant Gharve, who expired on 17.12.2005. Mr. Sanjay Gharve contends that on 22.09.1998 he received summons from the Crime Branch, Pune intimating that the Crime Branch intends to take possession of the said property in deference to the order passed by the Bombay High Court. The Crime Branch directed the applicant not to deal with the said property till further order from the High Court.

2. The applicant contends that on 21.02.2007 the officers of the Criminal Investigation Department, accompanied by the Official Liquidator, approached the applicant and directed him to handover the possession of the said property. The applicant contends, that he is uneducated and a simpleton and believed the representation of the said officers that his father had sold the said property to Sanjivani Saving & Investment (India) Ltd. The applicant contends that he was further assured by the officers that the property shall be released after further order by the Court. The applicant contends that in such circumstances he signed the document

dated 21.02.2007.

3. The applicant contends that he came to know after inquiry that his father had not executed sale-deed in favour of the company and further that the entire consideration was not paid. The applicant has placed on record copy of the agreement dated 18.03.1994.

4. The applicant contends that since there is no registered document executed in favour of the company nor is possession and ownership otherwise transferred, the property may be handed over to him.

5. The Official Liquidator filed affidavit in response dated 10.03.2014 and the relevant portions read thus:

2) That the Official Liquidator most respectfully submits that as per the document dt. 18/03/1994 the property under reference was to be sold by one Mr. Yashwant Gharve to the Company for consideration of Rs.2,55,000/-. Copy of the document is marked as Exhibit-“A”.

3) That the Company i.e. Sanjeevani Savings Investment (I) Ltd., (In Liqn) by orders of Hon’ble High Court dt. 11/12/1998 came under liquidation and thereafter the Official Liquidator took possession of the maximum of properties of the Company at instance of CID Pune.

4) That as per the statement dt.

11/09/1998 of Shri Yashwant Gharve to CID Pune, an amount of Rs.2,05,000/- was received by him from the Company towards the said property. The copy of the statement is marked as Exhibit-“B”.

5) That the present property was taken in possession by the Official Liquidator from office of CID, Pune as per the Panchnama recorded by CID Pune dt. 22/09/1998 the applicant informed the CID that the present property was sold to the Company before passing of winding up order. Copy of the panchnama is marked as Exhibit-“C”.

6) That the property under reference is presently in possession of Official Liquidator.

6. The applicant filed rejoinder dated 07.07.2014 reiterating that the title has not passed in favour of the company. The applicant, while not disputing the existence of an agreement to sell, states that no further payment was made by the company to his deceased father. The applicant contended that the signatures of his deceased father were taken on some blank papers and therefore, it cannot be said that his deceased father received Rs.2,05,000/- from the company.

7. The Official Liquidator filed sur-rejoinder dated 23.09.2015, the relevant portions of which read thus:

2) That the Official Liquidator most respectfully submits that as per the statement

dt/ 11/09/1998 recorded before Sub-Inspector of Police Flying Squad, Pune, that Late Shri Yashwant Gharve father of applicant had made statement that he has received an amount of Rs.2,05,000/- from the Company towards the part payment of consideration of the said property.

3) That the present property was taken in possession by the Official Liquidator from office of CID, Pune as per the Panchnama recorded by CID Pune dt. 22/09/1998 and to the effect that applicant was informed the CID Pune that the present property was sold to the subject Company (In.liqun) by the applicant's father before the passing of winding up order.

4) That the Official Liquidator most respectfully submitted that the Applicant may refund Rs.2,05,000/- along with interest @ 18% p.a. with effect from 18/03/1994 till the date of the de-seal if ordered by this Hon'ble Court and if applicant is agree to deposit Rs.2,05,000/- along with interest @ 18% p.a. from the 18/03/1994 till the date of de-seal of the order of Hon'ble Court, then the Official Liquidator has no objection to the de-seal the property and to hand over the possession to the Applicant, or if the applicant is not willing to refund the amount he may file his claim for the balance price consideration with the Official Liquidator.

5) That the Official Liquidator most respectfully submitted that if the applicant is not agree on the above proposal, then this Hon'ble Court may be pleased to permit the Official Liquidator to conduct fresh valuation of the property from the approved valuer on the panel of the Official Liquidator to enable the Official Liquidator to sell the property by public auction and to direct the Applicant to file his claim before the Official Liquidator for balance amount of Rs.50,000/- as per the statement dated 11/09/1998 of Late Shri

Yashwant Gharve made to CID Pune.

8. The Official Liquidator then filed on record praecipe dated 19.09.2018 which reads thus:

That the Official Liquidator attached to this Hon'ble High Court and the Liquidator of M/s. Sanjeevani Savings & Investment (I) Ltd (In Liqn) most respectfully begs to submit as under :-

1) That CAO No.86 of 2014 is pending before this Hon'ble Court for directions to the Non-Applicant for De seal and hand over the vacant possession of the property situated at Survey No.1721 Mahad, Distt. Raigad (MH).

2) That the official liquidator filed the reply vide St.No.3124/14 dated 10/03/2014 alongwith Exhibit in CAO No.86 of 2014 and also filed the rejoinder submission/reply vide st.No.10507/15 dated 23/09/2015.

In view of the above the Official Liquidator may be permitted not press the rejoinder submission/reply vide st.No.10507/15 dated 23/09/2015 and consider the reply vide st. No.3124/14 dated 10/03/2014.

9. It is not in dispute that the deceased father of the applicant executed an agreement dated 18.03.1994 in favour of the company. The gist of recitals in the agreement is that the said property along with the construction shall be transferred/sold to the company for total consideration of Rs.2,55,000/- and earnest amount of Rs.10,000/- is paid by

the company. The balance amount of Rs.2,45,000/- were payable in April 1994 and June 1994 in installments of Rs.1,00,000/- and Rs.1,44,000/- respectively.

10. It is an admitted position on record that the sale-deed is not executed in favour of the company. It is trite law, that in view of the provisions of Section 54 of the Transfer of Property Act, 1882, an agreement to sell does not of itself, create any interest in the property. The learned counsel for the applicant Mr. Indranil Damle has invited my attention to the decision of the Supreme Court in *Nevada Properties Private Limited through its Directors v. State of Maharashtra and another* (2019) 20 SCC 119 to buttress the submission that the power of the police officer to seize “any property” under Section 102 of the Criminal Procedure Code, 1973 (Code) does not include the power to seize immovable property. The said decision upholds the view of the Full Bench of this Court. However, it would not be necessary to dilate on the power under Section 102 of the Code, in as much as, the Official Liquidator is justifying the right to possess the said property in view of the provision of Section 456 of the Companies Act, 1956 (Act). The factum of the police effecting the seizure of

the property pales into significance in as much as the right to continue to hold the said property flow from Section 456 of the Act, is the submission of the Official Liquidator.

11. Section 456 of the Act reads thus:

456. Custody of company's property.— (1) *Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator [or the provisional liquidator, as the case may be,] shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.*

[(1-A) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon, after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

(1-B) For the purpose of securing compliance with the provisions of sub-section (1-A), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used

such force as may in his opinion be necessary.]

(2) All the property and effects of the company shall be deemed to be in the custody of the [Tribunal] as from the date of the order for the winding up of the company.

12. The seminal issue is whether the said property can be treated as the property or effects or actionable claim to which the liquidated company was entitled, as would enable the Official Liquidator to take custody thereof. In my considered view the answer must clearly be in the negative. In view of the material on record, it is safe to proceed on the assumption that the deceased father of the applicant did agree to sell the property and received earnest of Rs.10,000/- (Rupees Ten Thousand only). The statement dated 11.09.1998 of the deceased father of the applicant Mr. Yashwant Gharve which is recorded by the State Investigation Department, Pune, and which is placed on record by the Official Liquidator, is to the effect that out of the total consideration of Rs.2,55,000/- Late Mr. Yashwant Gharve received amount of Rs.2,05,000/-, from time to time. It is then stated that in the property which is the subject matter of the agreement, the company functioned for two years and the property is vacant since the last two to three years and the keys are in the custody of Mr. Yashwant

Gharve. Mr. Yashwant Gharve purports to admit that the company is the owner of the property.

13. The applicant has not specifically traversed the contents of the said statement and in the rejoinder the applicant denies the statement for want of knowledge. The applicant further alleges in the rejoinder that the Criminal Investigation Department obtained the signature of his deceased father on some blank papers. In the absence of a specific denial, it would be safe to further assume that in addition to the earnest amount of Rs.10,000/- the deceased father of the applicant received Rs.1,95,000/- and the total amount received from the company as part consideration is Rs.2,05,000/-. The fact that the deceased father of the applicant received Rs.2,05,000/- from the company may not justify the taking over of the custody of the said property. In the absence of a registered document or in the absence of any document suggesting that the company was placed in possession of the property in part performance of the agreement, it cannot be said that the company has any interest in the property. In such a situation Section 456 of the Act does come not into play.

14. The learned counsel Mr. Indranil Damle states, on instructions, that the applicant shall deposit with the Official Liquidator the amount of Rs.2,05,000/- within ten weeks. The statement is accepted as an undertaking to the Court.

15. In the light of the finding recorded *supra*, that the agreement to sell dated 18.03.1994 purportedly executed by the deceased father of the applicant in favour of the company, did not create any right or interest in the property, the custody of the property could not have been taken over by the Official Liquidator in purported exercise of power under Section 456 of the Act.

16. This application is allowed in terms of prayer clause (d) which reads thus:

(d) Allow the present application, whereby directing the non-applicant to release / de-seal the property situated at survey no.1721 Mahad, District Raigad and handover vacant and peaceful possession to the applicant.

JUDGE