

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.422 OF 2017
IN
OFFICIAL LIQUIDATOR'S REPORT NO.168 OF 2013
IN
COMPANY PETITION NO.229 OF 1992

Dilip Parulkar .. Applicant(Third Party)

In the matter between

Reserve Bank of India

.. Original Petitioner

v/s.

Laxman Mahadeo Devare

(The Liquidator) Bank of Karad Limited

(in Liquidation) & Ors.

.. Respondents

Mr. Shilpan Gaonkar a/w Chirag Dave, Dnyaneshwar Jadhav i/b. M/s.
Legasis Partners for the applicant.

Mr. Mayur Khandeparkar a/w Shakib Dhorajiwala, Ms. Tasneem
Zariwala i/b. Vidhi & Partners for the respondent no.1.

Mr. Hrushi Narvekar i/b. Seema Hunnurkar for respondent no.2.

Mr. Vivek V. Salunke for respondent nos.3 to 5.

CORAM : A. K. MENON, J.

DATED : 12TH JANUARY, 2022.

(THROUGH VIDEO CONFERENCE)

P.C. .

1. By this application, the applicant seeks setting aside of an order dated 24th December 2013 and rejecting Report No.168 of 2013 filed by the Official Liquidator in the above company petition. The applicant also seeks a declaration that a Sale Certificate dated 11th April 2014 issued by the Official Liquidator pursuant to the impugned order is null and void ab initio and to set aside the said Sale Certificate. Certain other reliefs are claimed in relation to mutation entries in the alternative. However, at the hearing of this application today, Mr. Gaonkar has restricted the relief sought to prayer clauses (a) and (b). The respondents in the application are (i) the Reserve Bank of India, the original petitioners at whose instance Bank of Karad Ltd. was ordered to be wound-up, (ii) Liquidator of Bank of Karad, (iii) legal heirs of one Giriraj Chudasama and the remaining respondents 3 to 5 are purchasers of the property, which forms subject matter of the Sale Certificate. The application is opposed by all the respondents—the main contestants are the purchasers of the property.

FACTS .

2. The applicant, an individual, is said to be a resident of Pune and claims to have acquired the plot admeasuring 90 R bearing survey no.95/8, Old No.95/1/2 in village Susgaon, Taluka Mulshi, District Pune.

The plot was acquired from the original respondent no.2 (late Chudasama) (sine deceased) and the applicant claims to be in possession as on date. He claims under a registered Sale Deed dated 9th October 1989. Late Chudasama is alleged to have perpetrated a fraud in collusion with some other respondents to secure the order and the sale certificate impugned in this application. It transpires that on 24th December 2014, this court allowed Official Liquidator's Report No.168 of 2013 (OLR) in terms of prayer clause (a), accepting the recommendations of the Official Liquidator. The OLR sought approval by a compromise proposal made by late Chudasama who had guaranteed a loan availed of by one M/s. Drillwell, a proprietary concern of one Vijay Mahajani. Since the principal debtor had not repaid the loan, the bank filed a recovery suit before the Civil Judge, Senior Division, Pune. The claim was about Rs.15.95 lakhs. The bank being under liquidation is stated to have continued its efforts to recover the amount, it attached the property being subject matter of this application. The guarantor then who offered to pay over a sum of Rs.10 lakhs, to be recovered from sale proceeds of the plot. Late Chudasama represented to the bank that he was owner of the plot which was not cultivable, non-accessible being without an approach road. However, respondent nos.3 to 5 were interested in purchasing the plot despite

being a hill top / hill slope. The report represented that the title in the plot vests in Bank of Karad and late Chudasama had undertaken to give an NOC if they proceed to sell the plot to respondents 3 to 5 and recover the sale proceeds in full and final settlement of the loan outstanding. Thus, the compromise proposed acceptance of Rs.10 lakhs as full and final settlement towards book outstanding of Rs.7.56 lakhs. This was a report that was placed before the court. The prayer clause (a) of the report, which is allowed, reads as under :-

“(a) Considering the fact that the owner and guarantor Mr. Chudasama has agreed to allow us to sell the land for recovery of our dues, the Liquidator can accept from the prospective buyers Shri Nitin Balasaheb Chandere, Shri Harichandra Dattu Galande and Shri Raju Kanhu Kalje, all three residents of Village Sus, Taluka Mulshi, District Pune, an amount of Rs.10,00,000/- by way of sale proceeds of the aforesaid land towards full and final settlement of the dues to be paid by the prospective buyers within two months from the date of intimation of sanction by the liquidator and subsequently, withdraw the suit and release the Bank’s Charge.”

3. Similar proposals are said to have been made in other cases in Liquidator’s Report No.163 of 2009 and 164 of 2010. The orders passed by the court have been relied upon in the subject report. The court was thus persuaded to accept the liquidator’s recommendations

and the liquidator executed a Sale Certificate on 11th April 2014, copy of which appears at Exhibit A-2.

4. It is the case of the applicant that the plot could not have been sold by the Liquidator since it was purchased by the applicant prior to the compromise having been arrived at. Reliance is placed on the Sale Deed dated 9th October 1989 executed between the applicant, respondent no.2 and one Ankush Dandekar, a contesting party which in no uncertain terms, constitutes conveyance of the agricultural plots. The applicant claims to have purchased the property being an agriculturist himself. It is therefore contended that the Liquidator could not have acquired any title, late Chudasama having been divested of his right in the property in 1989.

5. Mr. Gaonkar, learned counsel appearing on behalf of the applicant submitted that late Chudasama appears to have played a fraud on the court apparently in collusion with respondents 3 to 5 and had led the Liquidator to believe that the plot was owned by him. Mr. Gaonkar submits that the plot was allegedly sold for a sum of Rs.10 lakhs when the real value of the plot was about Rs.1.30 crores. He submits that it is unbelievable that property of that value could have been sold at such a low price and that itself indicates fraud. He submits that the court was

misled into believing that a compromise was arrived at between late Chudasama on one hand and respondents 3 to 5 on the other hand which would benefit the bank in liquidation inasmuch as the bank had an opportunity of recovering its dues by accepting the sale proceeds from respondents 3 to 5 and late Chudasama relieved of his obligation as a guarantor. He submits that the court was never informed of the fact that the plot had been sold to the applicant. Respondent no.2 was well aware of this fact, yet suppressed this information from the Liquidator and the court and hence had perpetrated a fraud.

6. On behalf of the Liquidator, at the outset, Mr. Khandeparkar submitted that the present application is not maintainable and the relief that the applicant seeks can only be granted by Civil Court. According to Mr. Khandeparkar, the applicant is aggrieved by purchase of property by respondent nos.3 to 5, the applicant having set up a claim of title prior to the sell in favour of respondent nos.3 to 5 which would be required to file a suit and seeks such orders in the suit. It is not possible to seek relief in the form of present application.

7. Mr. Khandeparkar submitted that there is no occasion to set aside the order dated 24th December, 2013 since the order merely allows a report whereby the Liquidator sought to appropriate an amount of Rs.10

lakhs towards all debts owed to the company in liquidation from M/s. Drillwell. In the process of recovering debts due to the company, late Chudasama had offered to sell the property said to be belonging to him to respondent nos.3 to 5 and from the consideration payable a sum of Rs.10 lakhs was agreed to be paid to the Liquidator to the credit of the company in liquidation, such that, late Chudasama would be relieved of his obligations under the personal guarantee. Mr. Khandeparkar therefore submitted that the order need not be set aside.

8. Mr. Khandeparkar, however, conceded that the Liquidator appears to have made an error in presuming that the company in liquidation had title over the property in question and they are such proceed to issue a sale certificate whereas the fact of the matter is that it was late Chudasama who had claimed to be the owner of the property.

9. Mr. Khandeparkar also submitted that the Liquidator does not wish to enter upon the controversy relating to the title of the property and that the rival claims of the applicant and the respondent nos.3 to 5 was a subject matter between them. The Liquidator has meanwhile received the sale proceeds and which had been appropriated. It was not possible now to achieve status quo ante in the facts and circumstances of this case.

10. On behalf of respondent no.2, Mr. Narvekar submitted that the original respondent had expired and he now represents the legal heirs of late Chudasama. His submissions were limited to the point of maintainability of the application since according to him his clients have no personal knowledge of the various dealings of the respondent no.2 in relation to the plot. He submitted that for want of knowledge and alleged acts of respondent no.2, his submissions are restricted to whatsoever was stated on oath by late Chudasama in his affidavit in these proceedings. However, in principle, he submitted that the present application is liable to be dismissed. He submitted that there is great amount of delay in approaching this court. The applicant has not come forward with clean hands inasmuch as it is contended by the applicant that the plot was sold to the applicant in October 1989 and he became aware of the acquisition of plot by respondent nos.3 to 5 at least as of March 2015 but has filed the present application only in May 2017 more than two years after knowledge of the order passed by this court. In support of his contentions, he has invited my attention to Exhibit A-1 which is a copy of the order dated 24th December, 2013 which copy is seen to be downloaded presumably by the applicant or his Advocate on 26th March/August, 2015. Thus, the applicant was obviously unaware of the fact that an order has been passed and that the order pertained to

the plot in question as otherwise, there was no occasion for the applicant to download this particular order passed in this very report. He therefore submits that the contention of the applicant in his affidavit that he has diligently following up for inclusion of his name in the land records is of no avail. Furthermore, Mr. Narvekar pointed out that the applicant has admittedly approached the Civil Court in seeking to raise an attachment levied by the Civil Court. This conduct therefore disentitled the applicant from seeking any relief in the present application.

11. Mr. Narvekar further submitted that although the applicant has in paragraph 4(o) and 4(p) sought to contend that he received information regarding the attachment proceedings from the Civil Court, Pune, on 5th April, 2016 and that he thereafter took steps diligently and promptly, the applicant has feigned ignorance of the order passed by this court on 24th December, 2013 by seeking shelter under the fact that he received copies of proceedings only on 28th September, 2016 when in fact he knew about the proceedings at last in March/August 2015.

12. The main contest is by respondent nos.3 to 5 who are the purchasers represented by Mr. Salunke. The learned counsel for the respondent, submitted at the outset, that application is barred by limitation being belated. According to him, respondent nos.3 to 5 are

bonafide purchasers for value. Mr. Salunke submitted that the application is not maintainable having been filed period of three years after the order dated 24th December, 2013. According to Mr. Salunke, the applicant had not even sought condonation of delay and unless delay was condoned, the above application should not be entertained. He submitted that this court may dismiss the application. Moreover, any application for recall of an order ought to have been filed from 30 days of the order and the application being filed only on 19th May, 2017 is not only time barred considering the relief of recall but even otherwise it is filed more than three years after the impugned order and hence, is not maintainable.

13. Mr. Salunke further submitted that the sale in favour of his clients has occasioned on 11th April, 2014 in fact the applicant had knowledge of this purchase at least as on 3rd May, 2014 because he made an application to the Talathi at Mulshi District, Pune, on 3rd May, 2015 seeking inclusion of his name in the land records. This submission is a proof of the fact that as purchaser he was claiming to be entitled to the plot. Apart from the application being beyond time, generally, speaking date of knowledge as of May 2014 cannot be disputed and in these circumstances, he contended that the only remedy the applicant has filed a suit under Section 31 of the Specific Relief Act. Mr. Salunke

submits that the present application ought not to be entertained since the specific relief cannot be granted by virtue of the present application.

14. The next submission of Mr. Salunke is that the applicant should not be allowed to assail the sale in this manner. Article 59 of the Limitation Act would apply and that mandates a period of three years from the date of cause of action as the cut off period for filing the suit. The period of three years is to be computed from the date of first knowledge and that would be 3rd May, 2014. Period of three years then expired on 2nd May, 2017 and even by this reckoner the application is barred by law of limitation. Mr. Salunke then submitted that the challenge to the same transaction apart from time barred also cannot be sustained because the respondent nos.3 to 5 however, bonafide purchasers for value.

15. Mr. Salunke has invited my attention to the affidavit of Laxman Mahadeo Devare, the Liquidator of Bank of Karad. Mr. Salunke sought to impress upon the court the fact that the Liquidator had taken all steps in accordance with law. The Bank had advanced a loan to M/s. Drillwell re-payment of which was duly guaranteed by late Chudasama. A suit has been filed for recovery of the bank dues part of which had been recovered. Late Chudasama as guarantor and in order to satisfy the

claim of the bank, sought to sell the said plot to respondent nos.3 and 5 who agreed to pay over the sale proceeds to the Official Liquidator. He invited my attention to paragraph 14 of the affidavit, Mr. Salunke sought to persuade me to hold that the applicant had notice of the fact of intending sale of the property since the affidavits sets out that the applicant and respondent no.2 were good friends and business partners and it is seen that notice of recovery had been issued in August 1989. The affidavit of bank alludes to the malafide intention of respondent no.2 and the applicant to make the recovery to bank's due.

16. Mr. Salunke then invited my attention to the affidavit in reply filed by Raju Kanhu Kalije. In that affidavit, my attention is invited to paragraph 13 which sets out that the applicant was aware of the various transactions for the purposes of carrying out the measurement of the plot of the applicant. The applicant had given the names of the present respondent nos.1 and 2 to the TILR, Mulshi, District Pune, and pursuant thereto, notices were given to the owners and occupiers of adjoining properties but the department indicate that the bank was in possession of the plot which respondent nos.3 to 5 had acquired and applicant was only feigning ignorance. Mr. Salunke submitted that the bank was well and sufficiently entitled to enter into the agreement in favour of his clients and the present application is but a belated attempt to deprive the

respondent nos.3 to 5 who are bonafide purchasers for value. Mr. Salunke therefore submitted that there is no occasion to entertain the present application for all the aforesaid reasons.

17. Mr. Gaonkar, in rejoinder submitted that the case of respondent nos.3 to 5 must be rejected since they have perpetrated a fraud ably assisted by late Chudasama. My attention was invited to Exhibit U to the application which is a "*Taba Sathekhat*" dated 4th July, 2013. This document he submitted was evidence of agreement to pay a sum of Rs.3 lakhs over and above the sum of Rs.10 lakhs paid to the Liquidator. This agreement clearly evidences the fact that respondent nos.3 to 5 had taken search of all prior documents and the respondent nos.3 to 5 would obviously have discovered the sale deed under which the applicant claims. The fact that respondent nos.3 to 5 proceeded with the alleged transaction without considering this document speaks volumes of the said respondents conduct. Assuming the said respondents were unaware of the prior sale, if respondent nos.3 to 5 had taken proper search of the land records, they would have noticed sale deed being registered in favour of the applicant. Apparently, the respondents proceeded without undertaking any detailed search of the land record or took search yet feigned lack of knowledge. Merely, relying on Index-II extract would be of no assistance. Mr. Gaonkar further

submitted that the allegations of collusion between late Chudasama and the applicants are baseless. He therefore submitted that the application is liable to allowed.

18. Mr. Salunke placed reliance on the decision of *Janatha Textiles and Ors. v/s. Tax Recovery Officer and another*¹ in support of his contention that respondent nos.3 to 5 are purchasers for value without notice and that purchasers of premises in auctions cannot be deprived of their rights that the purchasers in the present case cannot be disturbed as their third party rights whose interest in auction property continues to be protected even after the underlying decree is set aside. According to Mr. Salunke, even if the order dated 24th December, 2013 is set aside the sale cannot be affected. The sale was absolute. Mr. Salunke therefore submitted that the courts having recognized the superior right of an auction purchaser, the respondent nos.3 to 5 cannot be deprived of the property.

19. Having heard the learned counsel for the parties at considerable length, the core issue that arises is whether the applicant was the owner and this is a fact that none of the respondents have disputed. The next question that would arise in the face of a valid sale of property in favour of the applicant by virtue of the sale deed dated 9th October, 1989

1 (2008) 12 SCC 582

whether he can be deprived of his right to ownership and possession by virtue of an obvious act of misrepresentation and suppression by late Chudasama. Late Chudasama was alive when this application was filed. He has also filed an affidavit in reply dated 6th March, 2018 which he admits to have purchased the plot. He claims that the applicant was a good friend and approached him to purchase the plot. Thereafter negotiations ensued and late Chudasama sold the plot to the applicant under Sale Deed dated 9th October, 1989 which was registered with the Joint Registrar in the year 1990. The Sale Deed empowered the applicant to delete the name of the late Chudasama and to effect changes in the revenue records. Late Chudasama declared that he did not have any right, title or interest in the plot. After having sold the plot, he did not have any information and had not made any enquiries and hence did not cause to enter the name of the applicant. He admits that he was a guarantor in respect of the loan taken by Vijay Mahajani but he contends that he has never mortgaged the plot or any plot thereof to the bank or execute any document in relation to the property in favour of the bank.

20. According to late Chudasama he *“came to know that the present applicant had given his consent in writing for handing over possession of the property to the Bank of Karad.”* The deponent also states that

applicant did not raise objections to the attachment of the property by the bank. He contends that the applicant had knowledge of the developments. Meanwhile, the bank's name had been entered in the 7/12 extracts as a holder of "other rights". In 2014, officers of the bank informed him that the plot had been attached and the bank's name has been entered as owner sometime in 1992. He was told that the property was required to be sold and that his signature would be required for the same. The deponent has further stated that the bank allegedly informed him that if he does not cooperate, it would amount to contempt of court. He was allegedly assured by the bank that they became the owners of the property and in this manner he affixed his signature in good faith on document as required by the bank. It is in 2014 that the bank officers asked him to attend to the office of the Sub-Registrar and obtain further signature failing which he was threatened with being held in contempt of court. Thus, he once again signed as required by the bank. The contentions of late Chudasama in my view are dishonest and he had perjured himself in having made statements which were false to his own knowledge.

21. The fact that the property had been sold to the applicant is admitted in no uncertain terms. The transfer of property took effect upon execution of the sale deed as required by law. A "Sale" defined

under Section 54 of the Transfer of Property Act, 1882. It contemplates transfer of tangible immovable property. The transfer of tangible immovable property of the value of one hundred rupees and upwards can be made only by registered instrument. In the present case, the price for the plot was mentioned in the sale deed and there is no doubt that the agreement was a registered instrument, Thus, fully compliant with Section 54 of the Transfer of Property Act, even late Chudasama in his affidavit admits so. Once the sale deed was registered, it is deemed to be known all the other parties including the Liquidator. There is a presumption that they would have constructive notice of the sale in favour of the applicant by virtue of registration of the Sale Deed under Section 17 of the Registration Act. Respondent nos.3 to 5 were legally deemed to be aware of and were capable of ascertaining the registration of the sale deed. It is not the case of the Liquidator that the transfer from late Chudasama to the applicant was a fraudulent transfer as contemplated under Section 53 of the Transfer of Property Act to default or delay the claims of the bank. No doubt late Chudasama as a guarantor would be construed as a creditor but that is not the case with which the Liquidator had approached the Company Court when filing the Report.

22. If the transfer had been made without consideration, it would be

once again susceptible to doubt. In the case at hand, it is not the case of any of the parties that the transfer by late Chudasama to the applicant was invalid. Thus, there is a sale absolute in favour of the applicant. The registration of the sale deed is also admitted. Thus, the document is also in compliance of the requirement of the Registration Act. What one really has to consider is whether given the applicants' status as owner of the property, late Chudasama could have, under any circumstances, offered the same for sale to respondent nos.3 to 5 and in my view the answer must be in the negative. There is of course the contention of late Chudasama contained in his affidavit in reply that the applicant had consented to the sale of the plot in order to enable the respondent no.2 to be discharged from his liability as guarantor. The so-called consent appears to be a figment of the deponent's imagination. Nothing on record indicates any intention of the applicant to consent the sale and indeed which cannot, for the simple reason that the applicant is constituted absolute owner of the property upon the execution and registration of the sale deed. Late Chudasama had no legal authority to support the sale document in favour of the respondent nos.3 to 5.

23. As we have seen from the '*Taba Sathekha'* late Chudasama entered into an agreement with respondent nos.3 to 5 probably

suppressing the sale deed in favour of the applicant. In that agreement, late Chudasama agreed to receive additional consideration over and above the sum of Rs.10 lakhs which was initiated to be paid to the bank in liquidation. The additional consideration of Rs.3 lakhs was payable not to the applicant but to late Chudasama. Thus, respondent nos.3 to 5 also were aware of the fact that their representation to the bank in liquidation was incorrect. Obviously, respondent nos.3 to 5 also saw merit in suppressing the true facts from the office of the liquidator. In this manner, the transfer proceeded with the liquidator acting, ostensibly under a mistaken impression. The Liquidator could not execute a valid sale certificate and could not have sought an order from the court in the manner which he did. The report of the liquidator contemplated not only acceptance of a sum of money in full and final settlement of the suit claim but unlike what Mr. Khandeparkar submitted, the report sought permission “*to sell the plot for recovery of all dues.*” Thus, the court was misled into knowingly or unknowingly passing the order dated 24th December, 2013.

24. In the course of submissions of counsel, I called upon Mr. Salunke to satisfy me as to how a sale certificate could be executed by the Liquidator on behalf of the bank in liquidation under which the liquidator declared that pursuant to payment of Rs.10 lakhs by the

purchasers, respondent nos.3 to 5 had become the owners of the property having been sold to them “*with consent of the original owner and guarantor*”. Late Chudasama was no doubt the guarantor but he ceased to be the owner of the property since October 1989. A fact that is reiterated in his own affidavit in these proceedings. The legal heirs of late Chudasama cannot be heard to say otherwise. Mr. Narvekar’s submission that the applicant had not come with clean hands would require to be dealt with. However, the fact remains that the entire transaction has demonstrated the dishonesty of late Chudasama along with the Liquidator’s casual approach in having proceeded on the basis that he had acquired rights in the property.

25. Mere inclusion of the liquidator’s name in the 7/12 extract under the column “Other rights” would not vest the property in nor to deal with the property. Attachment of the property after the property is transferred to the applicant was itself bad. Sale by the Liquidator was null and void. In fact, the recovery suit by the bank was filed only on 23rd January, 1990 and the attachment was clearly questionable. What is surprising is that the Liquidator has executed a sale certificate without holding the character of the owner of the property. As a consequence of attachment, late Chudasama was incapable of effecting the sale since he lacked any right in the property. In that view of the matter, there is no

doubt that having perpetrated a fraud on the Liquidator and the court, late Chudasama has also misled the respondent nos.3 to 5 into behaving that they would acquire proper right, title and interest to the plot. The conduct of respondent nos.3 to 5 in ably assisting the respondent no.2 to suppress the real transaction between the parties is also remarkable. However, what we are now concerned with is whether the relief sought by Mr. Gaonkar ought to be granted. On one hand, there is the issue of delay. Mr. Salunke's firm opposition to condonation of delay and there is the submission of Mr. Khandeparkar that the amount received by the Liquidator cannot be subject matter of any restitution since this has already been appropriated. That is an aspect on which I do not propose to make any observation since the limited scope of the present application is to set aside the order dated 24th October, 2013 which has undoubtedly caused prejudice to the applicant who is sought to be deprived of his property and without authority of law.

26. There is not an iota of evidence to support the contention of late Chudasama that the applicant had consented to the sale. Despite Mr. Salunke's attempts to persuade me to hold that the applicant is aware of all developments including the fact that respondent no.2 was initiating the sale of plot and Mr. Narvekar's attempt to demonstrate allegedly unclean hands with which the applicant has approached this court, I

am unable to hold in favour of respondent nos.3 to 5 that the delay that has occasioned is unpardonable.

27. In my view, the applicant has made out a good case on merits. He has explained the various steps that he undertook right from the outset. After purchasing the property and having been put in possession, he applied on 20th May, 1990 requesting the Talathi to enter his name in the 7/12 extracts. Copy of his application is annexed at Exhibit C. None of the respondents have assailed this document. While this remains pending, he has explained that in 1992 he was unaware of the suit. He learnt of the attachment which was obviously incorrectly levied after the suit was filed in January 1990, since by then the property had already been sold to the applicant. The order of attachment of this property would obviously have been incorrect since late Chudasama was divested of all right title and interest upon execution of the Sale Deed in 1989. The attachment was allowed only on 16th January, 1991 and it is in those circumstances, apparently unknown to the applicant vide mutation entry dated 15th February, 1992 against the bank's name to be entered in the 7/12 extract under the column of "other rights". In fact, what was ought to have been entered is the fact of attachment because the bank did not "*hold*" the property in the sense that would confer upon its ownership rights.

28. The applicant has stated that he had applied to the Civil Court on 9th June, 1992 for raising attachment and for permission to cultivate the plot. That application remained pending. He believed that his Advocate would be pursuing the matter and in September 2011 he once again filed an application before the Talathi to record his name. Later, pursuant to applications under the RTI Act, he learnt from the records collected that the records had been transferred to this court pursuant to the order of winding up. This led to him to learn of further developments. He then sought certified copies of the entire suit proceedings as stated in paragraph 4(p), 4(q) and 4(r).

29. No doubt, there is no separate prayer for condonation of delay. However, I am satisfied that there is no wanton delay in approaching this court. The objections on the basis of the application being time barred, raised by Mr. Narvekar and Mr. Salunke cannot deprive the applicant of his rights. The legal position that fraud vitiates all is no longer res integra. In *S.P.Chengalvaraya Naidu v/s. Jagannath*² and *A.V. Papayaa Sastry and Ors. v/s. Government of A.P. & Ors.*³ the court had held that fraud vitiates all judicial acts whether in rem or in personam and that the order or decree obtained by fraud is treated as nullity

² (1994) 1 SCC 1

³ (2007) 4 SCC 221

whether by court of first instance or by the final court. The order and the Liquidator's Report in this case is clearly obtained by fraud and is vitiated by fraud. The decisions in the case of *Chengalvaraya Naidu* (supra) and that line of decisions do not require any further reiteration in this order. This is a fraud played on the court by respondent no.2 and with the liquidator as a seemingly unsuspecting party having filed the report and having obtained an order thereon under the mistaken belief that he was entitled to sell the property. The property could not have been subject matter of sale or even attachment, given the fact that the respondent no.2 was divested of all right, title and interest in the property.

30. The legal submissions canvassed by Mr. Salunke firstly revolve around the delay in approaching the court and the absence of a prayer for condonation of delay. Secondly, it is his case that the present application is not competent since a suit will have to be filed in view of Section 31 of the Specific Relief Act. He then contends that in any event the Article 59 of the Limitation Act would apply and by that reckoning even a suit would be barred by limitation. The present application is therefore clearly barred by limitation. According to Mr. Salunke, as a bonafide purchaser his clients' rights cannot be set to nought by this

application. In my view *Janatha Textiles (supra)* is of no assistance to the Respondents 3 to 5.

31. On the first aspect of condonation of delay, while it is true that no prayer seeking condonation of delay is incorporated, the delay in approaching this court has been to my mind satisfactorily explained as set out above and in my view the applicant cannot be denied relief on that ground alone. In *Ganpatbhai Mahijibhai Solanki v/s. State of Gujarat and others*⁴ the Supreme Court considering the maintainability of a petition under Article 226 delays and laches, held while condoning the delay that in cases of fraud and suppression of material facts, the aspect of merits may also be taken into consideration while adjusting equities. In the present case, it is apposite to consider the adjustment of equities considering the late Chudasama for perpetrating a fraud and even assuming there is unexplained delay, the delay deserves to be condoned. On merits the applicant has a good case. It is supported by an affidavit of late Chudasama and the questionable conduct of the purchasers and the casual approach of the Liquidator. The applicant sought to raise an attachment levied. He followed the proceedings to the office of the Liquidator and this court and has in my view taken the right steps.

4 12 SCC 353

32. I am not persuaded to hold that a suit must necessarily be filed in view of Section 31 of the Specific Relief Act in the facts and circumstances of the case. The transaction as between late Chudasama and respondent nos.3 to 5 has its foundation in a classic case fraud viz. "*suppressio veri*" and "*suggestio falsi*". Late Chudasama suppressed the truth of having sold the plot to the applicant for the respondent nos.3 to 5 and probably the liquidator. He falsely suggested that he was competent to sell the plot and he acted in this false statement by consenting to the sale. The fraud not only misled the Liquidator but also the court. The court was not apprised true set of facts. The Liquidator sought to rely upon the orders passed in other Liquidator's Reports whereby in order to arrive at a settlement of the claims against the company, a compromise proposed was accepted by the court.

33. The Liquidator's approach was one of achieving closure to the suit and recovery proceedings. In these circumstances, it is evident from the deposition of late Chudasama, it may be possible that the respondent nos.3 to 5 may be taken by surprise but that is not a case which strictly falls under Section 31 inasmuch as the cancellation of the sale certificate is being sought only and if the order of this court on the report is set aside. The order allowing the report in my view, must be set

aside since it was obtained by fraud. Once the order is set aside, the sale certificate which has its foundation in that order cannot survive and it is not necessary to relegate the applicant to a trial in a suit.

34. The very foundation of the Sale Certificate was the order of this court passed on the Liquidator's Report. If that order is set aside as having been obtained by fraud, the principles culled out in the various judicial pronouncements such as those in Chengalvaraya Naidu (supra) and that line of judgments will apply. On the aspect of limitation, even the suit will be time barred if the period of three years is computed from the date of knowledge or if this application appears barred by limitation, fraud permeates this transaction and vitiates all acts. The discretion of this court to set aside such an order and as a consequence decide the fate of the sale certificate cannot be doubted. The Limitation Act and Article 59 would apply in case a suit required to be filed to set aside the sale certificate but in view of fact the sale certificate cannot survive if the order on the Liquidator's Report is set aside, the question of applying Article 59 does not at all arise. Mr. Narvekar's submissions on the aspect of the applicant approaching this court with unclean hands must be rejected in view of the explanation of the various steps taken and as canvassed by Mr. Gaonkar. Mr. Khandeparkar's contention that the monies received by the Liquidator

and appropriated ought not to be paid back is an aspect that need not detain us because the Liquidator cannot get such a relief or clarification in this application. This is a matter to be left to the parties who may adopt appropriate proceedings if so advised. The upshot of above is that the applicant succeeds.

35. In view thereof, I pass the following order;

- (i) Order dated 24th December, 2013 is recalled.
- (ii) Report no.168 of 2013 is rejected.
- (iii) Undated Sale Certificate at Exhibit A-2 registered under no.HVL-22-3191 of 2014 is cancelled with consequential action to be taken by the sub-registry to update the registration record accordingly.
- (iv) No costs.

At this stage, Mr. Salunke representing respondent nos.3 to 5 request that the order be stayed and accordingly the same shall remain stayed for a period of six weeks from today.

(A. K. MENON, J.)