Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 312 OF 2017
IN
COMPANY APPLICATION NO. 304 OF 2017

The Provident Investment Company Ltd …Appellant
Versus
Mukund Limited & Anr …Respondents

WITH
NOTICE OF MOTION NO. 1591 OF 2017
IN
APPEAL NO. 312 OF 2017

SHEPHALI SANJAY MORMARE

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The Provident Investment Company Ltd …Appellant
Versus
Mukund Limited & Anr …Respondents

Mr Pravin Patel, *for the Appellant.*

CORAM **G.S. Patel &**
Prithviraj K Chavan, JJ.
DATED: **27th June 2022**

PC:-

1. The Appeal is directed against an Order of 23rd June 2017. An application is made for an adjournment. We are not inclined to grant this adjournment. The Appeal itself is now five years old. It cannot be kept pending indefinitely.

2. The impugned order was passed on a Company Application filed by the Provident Investment Company Limited ("**PICL**"), a Government of Madhya Pradesh undertaking. It is PICL that is in appeal before us. The Petitioning Creditor in the Company Petition was a company, Mukund Ltd, and the Respondent was Devidayal Industries Limited ("**DIL**"). PICL sought an order against the Official Liquidator of DIL asking that the Official Liquidator should hand over and deliver quiet, vacant and peaceful possession of open land admeasuring 3743.21 sq mtrs, Survey No. 194/1 (Part) at village Majiwada, Taluka and District Thane. PICL also sought payment of Rs.19,800/- and interest from the date of the Application until realization. The Official Liquidator meanwhile filed Report seeking a direction for a reduction of the reserve price of Rs.22 crores in respect of the property of the company in liquidation or alternate directions.

3. The undisputed facts are that under a Lease Agreement of 1st July 1968, PICL granted a 60-year demise or lease to DIL over this land. The lease period is to end on 1st July 2028.

4. By an order of 21st November 2006 in the present Company Petition, DIL was directed to be wound up. The Official Liquidator proceeded to take possession of various assets of DIL including, importantly, this leasehold open land. The Official Liquidator invited claims. He received seven. Some he rejected. Pursuant to certain orders that need not detain us, the Official Liquidator sold three residential flats at Thane and one at Chembur. Then on 26th February 2012 on an Official Liquidator's Report, the Court fixed a reserved price of Rs. 30 crores with regard to the property in question and permitted the Official Liquidator to sell it by public auction. The Official Liquidator made several attempts but that sale never materialised. The Official Liquidator got no offers. That is why the Official Liquidator made a first report on 11th February 2014 seeking a reduction in the reserved price from Rs 30 crores.

5. The Court did lower the reserve price. Pursuant to another order of 11th October 2015, the Court directed the Official Liquidator to advertise the sale of Lot No.3 by public auction. Public Notices were issued. Again, there were no offers. The Official Liquidator submitted yet another Report of 14th October 2015, now asking for a second reduction of the reserved price, this time from Rs. 22 crores.

6. Before the learned Single Judge, Senior Counsel for PICL invited attention to the Lease Deed and claimed that DIL was in default of rent since 1st April 1993. It was argued that the land was outside the purview of the Maharashtra Rent Control Act 1999 since it was vacant land. Parties were thus governed by the Transfer of Property Act. Reliance was placed on Section 111(g) of the Transfer of Property Act which provides for determination of the lease. The submission was that since the lessee was being wound up, the lease in favour of the lessee Respondent had to came to an end by operation of law. It was submitted that the Official Liquidator had no right to dispose of the leasehold interest in this property.

7. The learned single Judge considered all submissions at length. He dismissed PICL's company application. We are unable to find fault with the view of the learned Single Judge. It is true that much law was cited before the learned Single Judge, but two factors should be enough for us today. There is absolutely no doubt that the Applicant-Lessor, PICL has at no point terminated the lease in question. It is one thing to allege that there has been a default, but a mere allegation is not sufficient. A lessor can resume possession of demised land in one of only two ways: either under an ejectment or eviction decree of a court of competent jurisdiction or on surrender by the Lessee. The kind of application PICL brought is unsustainable because it proceeded on the footing that the lease had came to an end 'by operation of law'. In essence, PICL sought an ejectment decree from the company court in the company application. That could never be maintained. It could only be done in a civil suit in a court of competent jurisdiction. The Applicant-Appellant has not only never determine the lease, but it has also not filed any civil suit. Further, the fact that the company is in liquidation or even wound up does not end the lease or automatically. Leasehold rights are valuable rights, as the learned Single Judge correctly observed. The Official Liquidator was bound to take charge of all assets and bound to deal with them under the directions of the Court in accordance with law. This would include the leasehold rights. The Official Liquidator was represented before the learned Single Judge and correctly pointed out inter alia that the lessor-lessee relationship does not end only because the company goes into liquidation. The application by PICL, prima facie, was misconceived.

8. The impugned order is an elaborate and careful consideration of all the submissions that were canvassed. Ultimately, the learned Single Judge exercised his discretion and weighed the rival submissions one against the other. The same law that applies in regard to appeals from interim and ad-interim orders will obviously have to apply in the context of a Company Application. Specifically we are mindful of the views of the Supreme Court in *Wander Limited v Antox India Pvt Ltd,*[1] *Mohd Mehtab Khan v Khushnuma Ibrahim Khan,*[2] and *Shyam Sel & Power Ltd & Anr v Shyam Steel Industries Ltd,*[3] a line of authority that have also been approved elsewhere including in *Monsanto Technology LLC v Nuziveedu Seeds Ltd.*[4] This unbroken line of authority clearly spells out that there are limits and constraints on what an Appellate Court is permitted to do in appeals from interim orders of this kind. Unless it be shown that the impugned order is arbitrary, capricious or perverse, and the view taken by the learned Single Judge is not even a plausible view, the Appeal Court will not interfere. It will not substitute its view for that of the learned Single Judge merely because another view is possible.

9. We make it clear that the impugned order is not a final determination of any rights or claims that PICL may make. That

1 1990 (SUPP) SC 727.

2 (2013) 9 SCC 221.

3 2022 SCC OnLine SC 313.

4 (2019) 3 SCC 381.

order, as also the present one, is confined to PICL's Company Application.

10. On the basic facts as noted above and the fundamental law in that regard, we find no reason to interfere.

11. We however, make it clear and clarify that neither the impugned order nor our order will be construed as an assessment on merits on any civil suit that the Appellant may file and which will be decided on its own merits. All contentions on both sides (including jurisdiction and limitation) are expressly kept open.

12. With this, the Appeal is dismissed.

13. The Notice of Motion will not survive and dispose of as infructuous.

(Prithviraj K Chavan, J) **(G. S. Patel, J)**