

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
IN APPEAL
FROM AN ORDER IN ITS ORIGINAL JURISDICTION
ORIGINAL SIDE

APOT/168/2023
WITH CP/553/1999
IA NO: ACO/1/2023, ACO/2/2023
RE BHARAT MARGARINE LTD (IN LIQN)
-AND-
ASHOK MONDAL @ ASHOKE KUMAR MONDAL
-VS-
THE O/L AND ANR.

BEFORE :-
THE HON'BLE JUSTICE I. P. MUKERJI
-A N D-
THE HON'BLE JUSTICE BISWAROOP CHOWDHURY
DATED : 25TH SEPTEMBER, 2023.

Appearance :
Mr. Subhankar Nag, Adv.
Mr. Swagata Datta, Adv.
Mr. Asit Kumar De, Adv.
Mr. Devranjan Das, Adv.
.....for appellant
Mr. Debdeep Sinbha, Adv.
....for respondent No. 2
Mr. Ronojit Chowdhury, Adv.
...for O/L
Mr. Deepnath Roychowdhury, Adv.
Mr. Bhaskar Dwivedi, Adv.
...for contributory

ACO/1/2023

The Court: -Sufficient cause has been shown. The marginal delay of 28 days in preferring the appeal is condoned.

We allow this application under Section 5 of the Limitation Act, 1963. The department is directed to register the appeal.

ACO/2/2023

Dag numbers 427 and 444 of the landed property of the company in liquidation in Joka is the subject matter of this application.

This is an application by one Ashoke kumar Mondal. He claims to have purchased these two parcels of land from one Mr. Sapui in 2009, 2010, bona fide, innocently and for value. At that point of time the

company was under liquidation having been wound up by orders of this court sometime in 2004.

In 2014 this purchaser had filed a suit in the learned court below at Alipore inter alia claiming title over these two dags. The said court passed an interim order in the suit restraining the respondents in those proceedings from interfering with the enjoyments of these lands by the petitioner. That interim order was continuing for a very long time.

Learned Counsel for the Official Liquidator submits that because of this interim order the said properties could not be put up for sale, although the winding up proceedings have been concluded. On this ground the application for dissolution without winding up of the Company could not be made. Mr. Deepnath Roychowdhury describes the sale as a fraudulent preference. At least the right of the applicant to enjoy such an order had to be made out prima facie, Mr. Roychowdhury, appearing for the contributory submits. Such case has not been made out. Because of the injunction order from the learned court at Alipore, the said two dags, being the property of the company in liquidation could not be sold.

We find that in this application the self-same issues are involved which are the subject matter of the Alipore Suit. The learned judge by his impugned order has observed that the suit at Alipore was filed without taking leave of this court under Section 446 of the Companies Act, 1956. By the said judgement and order he directed transfer of this proceedings to this Court. We are told that the proceedings have been so transferred.

We do not find any flaw in the impugned judgement and order. The said suit has been rightly transferred to this Court, considering the scope and purport of the Companies Act, 1956 and the power conferred on the Hon'ble Company judge to order such transfer. Such transfer would also result in expeditious trial and disposal of the suit, after adjudging the right, title and interest of the applicant.

Mr. Nag, submits that the interim order restraining interference by anybody with its clients' rights over the said land had been continuing for a very long time and that it should be directed to continue further. The learned single judge has vacated that order. We are of the opinion that in the absence of leave from this court the suit of the petitioner before the learned court at Alipore was incompetent. In that suit, the petitioner has been enjoying an interim order for a substantially long period of time.

Since this interim order has been continuing for such a long time, it shall continue till 30th November, 2023 or until further order, whichever is earlier. Before expiry of this interim order the applicant, if so advised, shall make an application before the Interlocutory or suit Court which in relation to the transferred suit is competent to hear the application and make a fresh prayer for obtaining an interim order. This application and prayer shall be considered by the court without in any way being influenced by any proceedings before the learned court below, or any prima facie findings made by that Court. This interim order will be subject to any order to be passed by the Court in the said interim application that may be made. All questions are kept open before that court.

We make it clear, that we have not gone into the merits of the dispute between the parties i.e. the right, title and interest over Dag Nos. 427 and 444 of the company in liquidation in Joka, Calcutta.

The appeal and the applications are thus disposed of.

As affidavits were not invited, the allegations contained therein are deemed not to be admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)