Form No. J (2)
Item No.8
Court No.26

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 1320 of 2022
With
CAN 1 of 2022
CAN 2 of 2023
CAN 3 of 2024

The State of West Bengal & Ors.
VS.
M/s. Tekpan Food & Herbal Park LLP & Anr.

For the Appellants : Mr. Sirsanya Bandopadhyay, Ld.Jr.St. Counsel
Ms. Tapati Samanta, Advocate

For the Respondents : Mr. Abhratosh Majumder, Sr. Adv.,
Mr. Reetobroto Kumar Mitra, Advocate
Mr. Aditya Kanodia, Advocate
Mr. Rudrajir Sarkar, Advocate
Ms. Shreya Trivedi, Advocate

Heard on : August 8, 2024

Judgment on : August 8, 2024

DEBANGSU BASAK, J.:-

In Re: CAN/3/2024

1. CAN/3/2024 is an application for condonation of delay.

2. Department reports delay of 18 days in making and filing the appeal.

3. For the ends of justice, the causes shown in the application for condonation of delay are accepted as sufficient and the delay in making and filing the application is condoned.

4. CAN/3/2024 is allowed.

5. By consent of the parties the appeal is taken up for final hearing.

6. Appeal is at the behest of the State and directed against an order dated June 22, 2022 passed in W.P.A. 5350 of 2021.

7. Learned Junior Standing Counsel appearing for the State submits that, an immovable property in respect of which a company (now in liquidation) was possessing leasehold interest was put up for sale along with other assets of the company (in liquidation) by the Official Liquidator. He draws the attention of the Court to sale notice issued by the Official Liquidator, in this regard.

8. Learned Junior Standing Counsel submits that, one Chaudhry & Sons (Forgings) Private Limited participated in the sale of the assets of the company (in liquidation) along with the other bidders. Such Chaudhry & Sons (Forgings) Private Limited was declared as the highest bidder. He refers to the order confirming the sale in favour of the Chaudhry & Sons (Forgings) Private Limited dated May 7, 2007, passed by the Company Court.

9. Learned Junior Standing Counsel submits that, thereafter for a period of about 12 years, Chaudhry & Sons (Forgings) Private Limited did not obtain any document executed by the Official Liquidator with regard to the transfer of the immovable property concerned. Chaudhry & Sons (Forgings) Private Limited was put in possession of the property concerned on June 8, 2007 by the Official Liquidator. Sale according to him stood completed in favour of the Chaudhry &

Sons (Forgings) Private Limited at least on June 8, 2007 where it was put in possession and on payment of entire consideration.

10. Learned Junior Standing Counsel submits that subsequently the Company Court passed an order dated February 28, 2019 allowing nomination in favour of the present respondents. Thereafter, the present respondents applied for registration of a deed of assignment. Such application for registration was considered where the registering authority ascribed the market value of the immovable property sought to be assigned.

11. Learned Junior Standing Counsel submits that although Chaudhry & Sons (Forgings) Private Limited can claim the benefit of the ratio laid down in 2010 (3) Cal LT 119 (State of West Bengal vs. Sati Enclave Pvt. Ltd. & Ors.), the benefit of such ratio is not available to the respondents. He contends that the transaction of assignment between the Chaudhry & Sons (Forgings) Private Limited and the respondents herein is not an open market sale. It was not undertaken by the Company Court or any officer authorized by it. Wide publicity was not given prior to entering into such transaction.

12. Learned Junior Standing Counsel relies upon (2022) SCC Online Calcutta 863 (Ballyfabs International Limited vs. State of West Bengal & Ors.) and submits that Sati Enclave Pvt. Ltd. (supra) considered in Ballyfabs International Limited (supra). It considered the sale undertaken under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

13. Learned Senior Advocate appearing for the respondents submits that the respondents are the assignees of an immovable property put up for sale by

the Company Court. The Company Court allowed the assignment in favour of the respondents by an order dated February 28, 2019. Therefore, the respondents are entitled to the benefits of the ratio of Sati Enclave Pvt. Ltd. (supra).

14. Learned Senior advocate appearing for the respondents submits that in the event Chaudhry & Sons (Forgings) Private Limited applied for registration in 2019, then such purchaser was entitled to the benefit of Sati Enclave Pvt. Ltd. (supra). As the nominee of such purchaser his clients are also to the benefits of the ratio of Sati Enclave Pvt. Ltd. (supra).

15. Learned Senior advocate appearing for the respondents submits that, in view of the ratio laid down in Sati Enclave Pvt. Ltd. (supra) and in view of the fact that the property was sold in a public auction conducted by the Company Court after giving wide publicity thereof, the Registering Authority did not possess any jurisdiction under Section 47A of the Indian Stamp Act, 1989 to claim that the market value of the immovable property went up than for which it was sold and demand stamp duty at the enhanced price.

16. On the aspect of the value of the immovable property concerned, learned Senior advocate appearing for the respondents submits that the company (in liquidation) was enjoying leasehold rights. Company Court sold the unexpired period of the leasehold rights to Chaudhry & Sons (Forgings) Private Limited. Chaudhry & Sons (Forgings) Private Limited assigned the remaining unexpired period of the lease in favour of the respondents.

17. Referring to various documents learned Senior advocate appearing for the respondents submits that, the documents downloaded from the website of

the lessee, i.e. West Bengal Infrastructure Development Corporation Limited (WBIDCL), the lease premium in respect of the 1 acre is specified by WBIDCL to be Rs.30.65 Lakh. The immovable property concerned herein is about 08 acres. Therefore at best, the value of the immovable property is slightly above of Rs.2.5 Crores. If one adjusts the period of lease which expired out of the total period of 99 years then the value of the immovable property will be less than the value at which the respondents sought to obtain the assignment of the leasehold rights.

18. Learned Senior Advocate appearing for the respondents submits that, the respondents are seeking registration of the deed of assignment on the basis of the sale price of the immovable property as affirmed by the High Court on May 7, 2007. Since the purchase price was Rs.1.98 Crores, then the value of the immovable property by calculating value of the property on the basis of the lease premium makes the value of the expired value of the lease even less for the purpose of the deed of assignment.

19. Learned Senior Advocate appearing for the respondents relies upon Section 2 (16B) of the Indian Stamp Act, 1989 on the aspect of a market value in this regard. He also refers to Rule (3) of the West Bengal Stamp (Prevention of under Valuation of Instruments), Rules, 2001.

20. Learned Senior Advocate appearing for the respondents submits that there is no basis for the Registering Authority to claim that market value of the immovable property is more than Rs.32 Crores as on date of presentation of the deed of assignment. He submits that, his clients should be allowed to move the appropriate authority under the provisions of Rule 4 and 5 of the West Bengal Stamp (Prevention of under Valuation of Instruments), Rules, 2001.

Alternatively the Court may call for the records to evaluate whether fixation of valuation on the date presented for registration by the Registering Authority is correct or not.

21. Kanoria Wisconsin & Centrifugal Ltd. went into liquidation in C.P. No.66 of 1988. Assets of such company (in liquidation) were put up for sale by a sale notice issued by the Official Liquidator dated January 2, 2007. Assets of such company (in liquidation) included leasehold area of more or less 8.24 acres.

22. Chaudhry & Sons (Forgings) Pvt. Ltd. participated in the sale of assets of the company (in liquidation) including leasehold rights. Chaudhry & Sons (Forgings) Pvt. Ltd. was declared as the higher bidder in respect of the assets of the company (in liquidation) by the Company Court on May 7, 2007. Official Liquidator made over possession of such property in question to the purchaser on June 8, 2007.

23. Chaudhry & Sons (Forgings) Pvt. Ltd. did not obtain any registered instrument from the Official Liquidator in respect of such sale. It, however, applied before the Company Court by way of an application being C.A. No. 303 of 2018 filed in C.P. No. 66 of 1988 for assignment of its rights as purchaser in favour of the respondents. Such application was allowed by an order dated February 28, 2019 by the Company Court.

24. Thereafter, the respondents applied for a query report in respect of the stamp duty payable for registration of the deed of assignment to be executed by the Official Liquidator in favour of the respondents terms of the Undervaluation Rules, 2001. The registering authorities issued a query report dated October 2, 2019 in respect of such query of the respondents. Registering authorities fixed

market value of the property in respect of which the deed of assignment was sought to be registered at Rs.32.52 Crores.

25. Although, the Undervaluation Rules of 2001 read with the Indian Stamp Act, 1899 allows the respondents statutory alternative remedy with regard to the fixation of valuation, the respondents chose not to avail such route. The respondents applied under Article 226 of the Constitution of India assailing the query report dated October 2, 2019 by way of a writ petition which gave rise to the impugned order.

26. Learned Single Judge allowed the writ petition primarily on the ground that, the increase in the market value of the property from Rs.1.95 Crores to Rs.32.52 Crores within space of one month was arbitrary and untenable. Learned Single Judge also found that, the appellants before us did not come up with any credible explanation for the same and therefore, proceeded to quash the query report impugned in the writ petition.

27. There is time difference of at least 12 years from the date of confirmation of the sale in favour of the Chaudhry & Sons (Forgings) Pvt. Ltd. on May 7, 2007 and the date on which, the query report was generated that is on October 2, 2019. A period in excess of 12 years elapsed from the date of confirmation of the sale.

28. The issue whether the provisions of Section 47A of the Indian Stamp Act, 1899 read with Rule 3 of the Undervaluation Rules, 2001 are applicable to an instrument created pursuant to an order of sale passed by a Civil Court was considered by the Special Bench in Sati Enclave Pvt. Ltd (supra). It held as follows:-

> ***"29.*** *In view of the above discussion, our conclusions are as under:-*
>
> *(1) On a correct interpretation of the provisions of section 47A read with section 2 (16A) of the Indian Stamp Act, 1899 as applicable to the State of West Bengal and the West Bengal Stamp (Prevention of Under-valuation Instruments) Rules, 2001, the sale conducted by the Court or conducted by the Court through its officers which qualifies to be an open market sale as contemplated in section 2 (16B) of the Act cannot be the subject-matter of exercise of powers by the registering authority under sub-sections (1) & (2) of section 47A of the Act.*
>
> *(2) For a Court sale to satisfy the requirements of an open market sale, the following conditions shall be satisfied:*
>
> *(a) There must be wide publicity of the proposed sale and particularly there shall be publication of advertisement in at least one newspaper having wide circulation in the concerned city/ town/ district.*
>
> *(b) The purchaser of the property must not be connected with or related to the authority/ officer conducting the sale.*
>
> *(3) The above conclusions will equally apply to sale's conducted by the Company Court after publication of advertisement in a widely circulated newspaper."*

29. ***Ballyfabs International Limited (supra)*** was rendered in the context of sale undertaken under the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules of 2002. It extended the benefits of the ratio of Sati Enclave Pvt. Ltd. (supra) to a sale conducted by the authorized officer in

exercise of powers conferred under Rule 8 of the Security Interest (Enforcement) Rules, 2002. It held as follows:-

> ***"17.*** *The reference is answered in the following:*
>
> *(a) The sale conducted by the authorized officer in exercise of the powers conferred under Rule 8 of the Security Interest (Enforcement) Rule, 2002 by public auction or by inviting tenders from the public would be regarded as the sale in the open market and the price so accepted shall be the price which it would fetch if sold in the open market under Section 47A of the Stamp Act. The sale must be conducted by making a wide publication at least in one newspaper widely circulated in the particular city/town/district where the property is situated.*
>
> *(b) The authorized officer shall not have any relation or connection with the intending purchaser.*
>
> *(c) Let the writ petition be placed before the Single Bench having determination for disposing of the writ petition in the light of the answers given to the reference."*

30. Both ***Sati Enclave Pvt. Ltd. (supra)*** and ***Ballyfabs International Limited (supra)*** protects the purchase price obtained in a sale conducted by a Court or authorized officer, as the case may be, in the market value for the purpose of assessing the stamp duty payable on the deed presented for registration in respect of such sale. The sale by the Court or the authorized officer is protected, albeit on fulfillment of the criteria laid down. Subsequent transactions between the purchaser and third party are not protected.

31. Sale conducted by the Company Court is considered as open market sale provided it satisfies criteria of being conducted after wide publicity and the purchaser not being related with the person or persons putting up the property for sale, in view of the ratio laid down in ***Sati Enclave Pvt. Ltd. (supra).***

32. In the facts of the present case, the benefit of the ratio of Sati Enclave Pvt. Ltd. (supra) is available to Chaudhry & Sons (Forgings) Pvt. Ltd. who purchased the properties on May 7, 2007 for registering a deed in respect of such purchase from the Official Liquidator. Chaudhry & Sons (Forgings) Pvt. Ltd. did not obtain any document registering such purchase from the Official Liquidator.

33. Transactions between Chaudhry & Sons (Forgings) Pvt. Ltd. and the respondents were not undertaken by the Company Court. Sale between the Official Liquidator and Chaudhry & Sons Pvt. Ltd. stood completed before the Company Court and such sale transaction alone is protected by the ratio of Sati Enclave Pvt. Ltd. (supra). Chaudhry & Sons Pvt. Ltd. and the respondents entered into a transaction without the intervention of the Company Court and the Official Liquidator. Such transaction does not form part of the sale or the confirmation of sale undertaken or made by the Company Court.

34. Chaudhry & Sons (Forgings) Pvt. Ltd. applied before the Company Court for execution of a document of assignment between the Official Liquidator and the respondents with Chaudhry & Sons (Forgings) Pvt. Ltd. being the confirming party therein. Such prayer for the nomination was allowed by the Company Court by the order dated February 28, 2019.

35. The order dated February 28, 2019 of the Company Court cannot be construed to mean that the ratio of the Sati Enclave Pvt. Ltd. (supra) was extended to the transaction between Chaudhry & Sons (Forgings) Pvt. Ltd and the respondents. Such transaction is independent of the confirmation of sale made by the Company Court. Order dated February 28, 2019 was not passed after fulfillment of the criteria of wide publicity for the transaction between Chaudhry & Sons (Forgings) Pvt. Ltd and the respondents. Company Court did not conduct such transaction.

36. Market value of the immovable property concerned obviously appreciated between the initial confirmation of sale in favour of Chaudhry & Sons (Forgings) Pvt. Ltd. on May 7, 2007 till October 2, 2019 when, a deed of assignment was sought to be registered in favour of the present respondents.

37. Sale notice governing the sale by the Company Court specifically stated that, no purchaser will be allowed to bid in the auction in the name of the nominee/nominees. Therefore, in terms of such sale notice no bidder could participate on behalf of a nominee. Here, it is not the claim of the respondents that Chaudhry & Sons (Forgings) Pvt. Ltd. participated in the auction sale before the Company Court on their behalf.

38. Transaction between the Official Liquidator and Chaudhry & Sons (Forgings) Pvt. Ltd. stood concluded on the confirmation of the sale by the Company Court as also such purchaser applying with the terms and conditions laid down in the order confirming the sale.

39. Transaction of assignment or the claim for nomination in favour of the respondents is a separate transaction and was not undertaken in the process of

the Company Court putting up the immovable property for sale. It is outside such sale. Therefore, on such ground also, ratio of ***Sati Enclave Pvt. Ltd. (supra)*** is not attracted so far as respondents are concerned.

40. So far as the quantum of valuation of immovable property is concerned, we find that, the property belongs to WBIDCL. WBIDCL prescribed a lease premium of Rs.30.65 Lakhs per acre. Lease premium cannot be equated with the market value of an immovable property which is put up for sale. The registering authorities proceeded on the basis of the market value of the immovable property. The basis of arriving at such a decision by the registration authority as noted in the query report was capable of being challenged under the provisions of the Act of 1899 read with the Undervaluation Rules of 2001 framed thereunder. Respondents chose not to challenge that quantification through the statutory alternative route available to them.

41. The scope of enquiry in a writ petition is limited. There is no material placed on record to substantiate that the quantification of the market value of the property is perverse.

42. So far as the prayer for liberty to challenge the valuation fixed through the statutory alternative route is concerned, firstly, the respondents choose not to avail of such route. Secondly, the respondents would be required to obtain a fresh query report as the one improper, outlived its efficacy by reason of lapse of time, in respect of which the respondents contributed. If and when the respondents applies for registration on the basis of a new query report for registration of the deed of assignment, the respondents are at liberty to avail of

such remedies as are available to them in law, if they are aggrieved by the valuation fixed, if so advised.

43. In such circumstances, we set aside the impugned order dated June 22, 2022 passed in WPA 5350 of 2021.

44. MAT 1320 of 2022 along with connected applications are disposed of without any order as to costs.

(Debangsu Basak, J.)

45. I agree.

(Md. Shabbar Rashidi, J.)

Sd/CHC