(1976) 08 DEL CK 0008

In the Delhi High Court

Case No : Company Appeal No''s. 691 and 692 of 1975

Anand Finance (P) Ltd. APPELLANT

Vs

Ram Lal Anand RESPONDENT

Date of Decision : 03-08-1976

Acts Referred:

Citation : (1977) ILR Delhi 457

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : K.K. Mehra, R.L. Roshan and R.M. Lal, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) These are two applications by Anand Finance Private Limited. One is under ss. 391 and 392 of the Companies Act (the Act) (C.A. No. 691 of 1975). The other is under s. 151, CPC (C.A. No. 692 of 1975). Both the applications were moved in November, 1975. I will deal with them separately.

(2) In the application under ss. 391 and 392 of the Act the company has said that in terms of the scheme of arrangement sanctioned by the court of July 29, 1968, respondent Ram Lal Anand was bound to hand over vacant possession of bungalow No. 88, Sundar Nagar, as it belonged to the company. He was also to hand over fixtures and furniture. It is said that Anand handed over vacant possession of the bungalow to the directors of the company at one time. The directors started letting out the building during the period when it was in the possession of the company. But when the present chairman Mr. K. K. Mehra took charge he found that Anand had once more taken illegal possession of the property in October, 1955 and since then he has continued to be in its unlawful occupation. It is then said that by reason of Anand''s illegal occupation from October, 1971 onwards a sum of Rs. 2,94,000 has become due to the company. In the application two prayers are made : (a) That Anand be directed to hand over vacant and peaceful possession of the property No. 88, Sunder Nagar, New

Delhi along with its fixture and furniture to the company; and (b) That Anand be directed to pay a sum of Rs. 2,94,000 to the company.

(3) The facts of this litigation I have set out in detail in my order dated July 28, 1976, passed on Company Application No. 151 of 1973 in H. H. Nawab Mirza v. Anand Finance (P) Ltd. This judgment is by way of postscript.

(4) The main question is about the delivery of possession. In the scheme of arrangement dated July 29, 1968, sanctioned by Andley J. paragraph 4 says : .

"With a view to avoid this dispute, Shri R. L. Anand agrees in the interest of the general body of creditors to give up all his rights in respect of the said property and to hand over the vacant possession thereof and the fixtures and furniture therein to the Directors of the Company forthwith, and the company agrees to pay a sum of Rs. 2,05,000 in such manner as the Chairman of the Board of Directors of the Company may consider fit, unless the same is adjusted in the manner provided hereafter."

(5) Under this clause Anand bound himself to hand over vacant possession to the company "forthwith". This was as early as 1968. Admittedly today he is in possession. What semblance of right has he to remain in possession of the property ? This is the question. In C.A. No. 151 of 1973 I have held that : 1. Anand is not the owner of the property. The company is the owner. 2. That Anand is entitled to get Rs. 2,05,000 from the company. 3. That the property is liable to be sold in public auction at the instance of the Bank of Baroda, a secured creditor, in terms of the scheme sanctioned by Shanker J. on May 10,1968.

(6) If Anand agreed to hand over vacant possession he cannot now remain in occupation. This is part of the scheme. The court can enforce the scheme under s. 392. This is what the court is asked to do.

(7) Mr. R. M. Lal on behalf of Anand argued that there cannot be any order against Anand for delivering the possession till he is paid Rs. 2.05,000 by the company. For his submission he relies strongly on the order of the division bench dated May 14, 1974 and submit that this being a case of reciprocal contract payment must be made to Anand before he can be asked deliver possession. Rejecting this argument the division bench said :

"This contention finds no support from the language of the settlement."

The judges went on to say :

"The two parts shall have to be performed by the parties concerned, though not simultaneously".

(8) I have already held that Anand is entitled to Rs. 2,05,000. But the question is : how is he to be paid the sum of Rs. 2,05,000 ? The company has no funds. Everything has gone to pieces. I have ordered that the property will be sold and out of the sale price Rs. 2,05,000 will be kept aside for payment to Anand. That

amount will remain in deposit in court till further orders. His interest has, Therefore, been secured so far as it lay in my power.

(9) Should Anand remain in occupation till the sale of the property ? This is another question. Mr. R. M. Lal suggested that this should be so. I do not think that will be right. The property will fetch a much better price if it is sold with vacant possession. The purchaser does not want to buy a law suit. He wants vacant possession.

(10) Anand has no right to the property. After he had agreed to the compromise in July 1968 there remained not a trace of title in him neither a right to ownership nor possession. If he once handed over the possession how can he take it back ? Under what right ? Suppose he did not hand over possession in the past. Can he retain it in the present ? I think not. All that he can argue is that he has not been paid Rs. 2,05,000. But now there is an order by the court for payment to him. On the construction of clause 4 it is impossible to resist the claim of the company for possession. It is worthy of note that Anand had agreed to hand over vacant possession and fixtures and furniture therein to the company "forthwith". As the division bench said :

"The word "forthwith" has a significance of its own, which cannot be overlooked. The agreement by the company to pay Rs. 2,05,000 was not for any payment forthwith".

(11) Therefore, Anand cannot say : "Pay me first and then I go out". He must deliver the possession of the bungalow forthwith.. Payment to him can be made after the sale of the property. This is my conclusion.

(12) I would, Therefore, order that Anand be dispossessed from the property and its possession be delivered to the Chairman Mr. K. K. Mehra. The chairman will hold possession subject to the orders of the court. He will not in any manner let, transfer or sell the property except under the orders of the court.

(13) The other prayer in this application is that Anand be directed to pay Rs. 2,94,000 to the company. I cannot try this claim of damages in proceedings under ss. 391 and 392 of the Act.

(14) Mr. Mehra referred me to s. 446 and argued that this court can try the claim as a suit under that section. I do not agree, s. 446 applies "when a winding up order has been made or the official liquidator has been appointed as a provisional liquidator." None of these conditions is present. At one stage the winding up petition was pending but never a provisional liquidator was appointed. No winding up order has been made. The company can pursue its legal remedy in the ordinary way in a civil court. I, Therefore, reject this part of the prayer.

(15) The other application is under s. 151 of the Code of Civil Procedure. In this application only interim relief was sought. On November 28, 1973, Anand gave an undertaking that he will not remove, alienate or transfer in any manner whatsoever any furniture or fixtures lying in bungalow No. 88, Sunder Nagar,

New Delhi. He also undertook that he will not part with the possession of the said bungalow. In view of the undertaking given by Anand no further orders are called for in this application. The undertaking will remain binding.

(16) The above applications are disposed of in the manner as indicated above.

