(2007) 08 AP CK 0065

In the Andhra Pradesh High Court

Case No : C.M.A. No. 397 of 2007

Anupama Homes India Pvt. Ltd. APPELLANT

Vs

Sri P. Shouri Raja RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, 151
Constitution of India, 1950 — Article 227
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 6 ALD 145 : (2007) 6 ALT 122

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : C.V. Mohan Reddy, for the Appellant; D. Prakash Reddy, for Respondent Nos. 1 and 2 and S. Ravi, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—This civil miscellaneous appeal is directed against the order dated 15.05.2007 passed in I.A.No.1353 of 2007 in O.S.No.2218 of 2005 on the file of II Additional Chief Judge, City Civil Court, Hyderabad, whereby and where under the learned Additional Chief Judge allowed the petition filed by the defendants 2 and 4 (viz., P.Showri Raja and P.Roja Rani) under Order 40, Rule 1 C.P.C. and appointed Sri Rama Sharma Susarla as receiver to take possession of the properties of M/s.Anupama Homes Private Limited, preserve them till the disposal of the suit and allow the conduct of the company affairs in accordance with the arrangements made in C.R.P.Nos.5768, 5792 and 6756 of 2003 as reiterated in C.R.P.No.1481 of 2005.

2. The appellant is the plaintiff and the respondents 1 to 4 herein are the defendants 1 to 4 in O.S.No.2218 of 2005 on the file of II Additional Chief Judge, City Civil Court, Hyderabad. Originally, the suit was filed on the file of the Junior Civil Judge, West and South, Ranga Reddy District, as O.S.No.194 of 2003. The said suit came to be transferred from the file of the Principal Junior Civil Judge,

West and South, Ranga Reddy District, to the file of I Additional Senior Civil Judge, City Civil Courts, Hyderabad, to be tried along with O.S.No.693 of 2003 as per the Order dated 03.08.2005 passed in C.R.P.No.1481 of 2005, and renumbered as O.S.No.2218 of 2005.

3. The plaintiff is a company incorporated under the Companies Act, 1956. It is engaged in the real estate business. The plaintiff represented by its Managing Director-P.Jaya Prasad Raja filed the suit-OS.No.2218 of 2005 (old O.S.No.194 of 2003) for perpetual injunction against the defendants restraining them, their henchmen and agents etc. from interfering with its peaceful possession and enjoyment of the properties, more fully described in the suit schedules A to C. A-Schedule property admeasuring Ac.5.35 guntas comprising Survey Nos.455/P, 456, 460/1 and 2, situated at Poppalguda village, Rajendranagar Mandal, Ranga Reddy District; B-schedule property admeasuring Ac.3.15 guntas comprising Survey No. 91 Part, situated at Nanakramguda village, Seri Lingampally Mandal, Ranga Reddy District; and C-schedule property admeasuring Ac.9.09 guntas comprising Survey Nos.116, 118, 119, 120, 129 P of Manikonda Jagir village and Survey Nos.5, 6, 7 and 8 of Pokalwada village, Rajendranagar Mandal, Ranga Reddy District. It is averred in the plaint that the defendants resigned from the Board of Directors of the plaintiff company on 08.02.2003 and thereby the defendants ceasedto be the members of the Board of Directors of the plaintiff-company with effect from 08.02.2003. The plaintiff filed I.A.No.452 of 2003 seeking for temporary injunction. The said I.A. came to be dismissed on 04.04.2003. The plaintiff assailed the order dated 04.04.2003 passed in I.A.No.452 of 2003 by filing an appeal being C.M.A.No.98 of 2003 on the file of V Additional District Judge, Ranga Reddy district. The said appeal came to be dismissed on 07.02.2005. The plaintiff assailed the judgment passed in C.M.A.No.98 of 2003 by filing CRP NO. 1481 of 2005 under Article 227 of the Constitution of India. The said C.R.P. came to be disposed of on 03.08.2005 with certain directions. The operative portion of the said order reads as under:

Inasmuch as the controversy in this CRP also is in relation to the management and administration of the assets of the petitioner company, this Court is of the view that the same arrangement needs to be ensured. Further, to avoid confliciting judgments, both the suits need to be heard by the same. The parties agree for transfer of OS No. 194 of 2003. Once the suit is transferred, the arrangement that was ordered in the earlier CRP would hold good for the purpose of both the suits. Hence, the CRP is disposed of directing that:

a) The O.S.No.194 of 2003, on the file of Principal Junior Civil Judge, Hyderabad, West and South, Ranga Reddy District, shall stand transferred to the Court of I Senior Civil Judge, City Civil Court, Hyderabad to be tried along with O.S.No.696 of 2003;

b) The arrangement directed by this Court in CRP Nos.5768, 5792 and 6756 of 2003 shall hold good for the parties in both the suits;

c) The affairs of the company shall be run and conducted with the participation of V.Ranga Rao, Dr.V.Anupama Chowdary, P.Jaya Prasad Raja and Smt. P.Vijaya Lakshmi as regards the holding of meetings. So far as day-to-day affairs are concerned, they shall be dealt with jointly by V.Ranga Rao and P.Jaya Prasad Raja;

d) The left over works said to be in relation to certain flats, which were already sold, can be attended to by Sri Jaya Prasad Raja at his own risk and cost, without any commitment or obligation on the part of the company. It is made clear that no material belonging to the company shall be used for this purpose. This arrangement shall be subject to the outcome of the suit; and

e) The trial Court shall dispose of the suits, uninfluenced by any observations made in I.A., CMA or the CRP.

4. For completion of narration of facts, a reference to O.S.No.696 of 2003 on the file of I Senior Civil Judge, City Civil Court, Hyderabad is also required to be made. The said suit was filed by V.Ranga Rao and Dr.V.Anupama Chowdary and P.Souri Raja against P.Jaya Prasad Raja, P.Vijaya Lakshmi and 10 others for declaration to the effect that the resolution passed by them in the meeting convened on 25.02.2003 and 05.03.2003 are true and correct. They also moved two interlocutory applications being I.A.Nos.906 and 907 of 2003. More precisely, I.A.No.906 of 2003 is filed for temporary injunction restraining the defendants from entering the project sites at various places named therein and I.A.No.907 of 2003 is filed to restrain the first defendant-V.Jaya Prasada Raja from purchasing or selling plots, houses, buildings and other assets of the company or to otherwise deal with the assets. The trial Court dismissed both the applications. Thereupon, the plaintiffs therein filed C.M.A.Nos.196 and 197 of 2003 on the file of the Chief Judge, City Civil Court, Hyderabad, assailing the order passed in I.A.Nos.906 and 907 of 2003. The learned II Additional Chief Judge, City Civil Court, Hyderabad, allowed C.M.A.No.196 of 2003 granting relief of injunction against the defendants 2 to 12 in respect of certain items of property, but rejected the same against the defendant No. 1-V.Jaya Prasad Raja while dismissing the C.M.A.No.197 of 2003. The plaintiff filed CRP No. 5792 of 2003 against the Order passed in CMA No. 193 of 2003 insofar as denial of the relief against the first defendant and whereas, the defendants filed CRP No. 6756 of 2003 aggrieved by the order passed in CMA No. 196 of 2003. The plaintiff also filed CRP No. 5768 of 2003 aggrieved by the orders passed in CMA NO. 197 of 2003. All the CRPs. Came to be disposed of by a common order dated 19.07.2005. The relevant portion of the said order reads as under:

The nature of the business undertaking by the Company comprises of acquisition of sites, developing them either by making them into plots or undertaking constructions, and disposing of the same, to the intending parties. Before the present controversy arose, the Board of Directors of the Company comprised of mostly all persons closely related to each other. Whatever may have been the justification or otherwise in making an attempt to induct respondents 3 to 12, the fact remains that petitioners 1 and 2 and respondents 1 and 2 were undeniably on the Board of Directors. Having regard to the nature of the activity undertaken by the company, it is not in the interest of any of the parties, to bring activity of the company to a halt.

Therefore, this Court is of the view that the affairs of the company can be permitted to be carried out, subject to certain conditions. Having regard to the facts and circumstances of the case, the Civil Revision Petitions are disposed of with the following direction and arrangement:

a) The affairs of the company shall be run and conducted with the participation of petitioners 1 and 2 and respondents 1 and 2 as regards the holding of meetings. So far as day-to-day affairs are concerned, they shall be dealt with jointly by petitioner No. 1 and respondent No. 1.

b) The left over works said to be in relation to certain flats, which were already sold, can be attended to by the 1st respondent at his own risk and cost, without any commitment or obligation on the part of the company. It is made clear that no material belonging to the company shall be used for this purpose. This arrangement shall be subject to the outcome of the suit. The parties undertake to cooperate with the trial Court for early disposal of the suit. The pleadings are said to be complete and that the petitioners are ready with their affidavits in lieu of chief-examination. In that view of the matter, the trial Court shall endeavour to dispose of the suit within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

5. The plaintiffs in the suit (OS No. 693/2003) filed C.C.No.1291 of 2004 while the C.R.Ps. were pending disposal complaining violation of the interim orders in CRP No. 5768 of 2003. The said C.C. came to be dismissed on 14.02.2005. Another contempt case being C.C.No.275 of 2005 came to be filed for violation of the orders dated 02.04.2004 passed in CMP NO. 2571 of 2004 in CRP NO. 5768 of 2003. The said contempt case came to be dismissed on 24.10.2005 in view of the disposal of the C.R.P. itself on 03.08.2005. In pursuance of the orders passed in CRP No. 1481 of 2005, the suit being O.S.No.194 of 2003 pending on the file of the Principal Junior Civil Judge''s Court, Hyderabad West and South, Ranga Reddy District, came to be transferred to the file of I Senior Civil Judge, City Civil Court, Hyderabad and renumbered as O.S.No.2218 of 2005. The trial in the suit commenced and plaintiff examined two witnesses on its behalf and chief-affidavit of PW.3 has been placed on record. Whileso, on 16.04.2007, the defendants 2 and 4 viz., P.Showri Raja and P.Roja Rani filed I.A.No.1353 of 2007 in O.S.No.2218 of 2005 under Order 40, Rule 1 r/w. Section 151 CPC seeking appointment of Receiver to take possession of the properties of the company for the conduct, protection and preservation of the same pending disposal of the suit. It is alleged in the affidavit filed in support of the petition that P.Jaya Prasad Raja has illegally and without any authority executed antedated unregistered sale deeds dated 03.04.2003 with regard to 1759 sq. yards nominally. It is also averred in the affidavit that P.Jaya Prasad Raja executed various documents

antedated in favour of K.Bhaskar Reddy and the said K.Bhaskar Reddy got the documents validated at the office of the District Registrar of Assurances, Ranga Reddy District. In a way it is the case of the defendants 2 and 4 that P.Jaya Prasad Raja has illegally and without any authority executed nominal documents in favour of K.Bhaskar Reddy. For better appreciation, I may refer paras.21 to 24 of the affidavit filed in support of the petition and they are thus:

21. I submit in respect of property in Survey Nos.116, 118, 119, 120, 129 P, 130 P, Manikonda Jagir Village and in Survey Nos.5, 6, 7 and 8 of Pokalwada village an extent of Ac.1.12 guntas stands vested in the Company not having been sold by the Company. I submit that Mr.P.Jayaprasad Raja has illegally and without any authority and claiming to represent the Company, which he is not authorized to do, has purported to transact and convey the said property to Mr. K.Bhaskara Reddy S/o.K.Bikshapathi Reddy, R/o.Puppalaguda village and Mr. K.Srikanth Reddy s/o.K.Krishna Reddy by an antedated unregistered Sale Deed dated 05.04.2003 which was validated vbide File No. 8400/E/06, dated 15.09.2006 at the office of the District Registrar of Assurances, Ranga Reddy District.

22. I submit that in respect of a further extent of Ac.1.04 gts. In Survey Nos.116 and 118, Manikonda Jagir Village which stands vested in the Company not having been sold by the Company, Mr.P.Jayaprasad Raja has illegally and without any authority and claiming to represent the Company, which he is not authorized to do, has purported to transact and convey the said kproperty to Smt. K.Anasuya, W/o.Mr.K.Laxmaiah by an antedated unregistered Sale Deed dated 25.11.2002 which was validated vide File No. 07/03/DC/FS dated 24.10.2003 at the office of the Deputy Collector, Flying Squad, Zone IV, Commissioner & I.G. of Registration and Stamps.

23. I submit that the said Smt. K.Anasuya, W/o.Mr.K.Laxmaiah has purported to execute an Agreement of Sale cum General Power of Attorney dated 11.06.2004 in favour of Mr.K.Venkatesh S/o.K.Laxmaiah vide Document No. 6503/2004 at the office of the Joint Registrar, District Registrar''s Office, Ranga Reddy.

24. I submit that in respect of a further extent Ac.0.36 Gts. In Survey Nos.119, 129 & 130 Manikonda Jagir Village which stands vested in the company not having been sold by the Company, Mr.P.Jayaprasad Raja has illegally and without any authority and claiming to represent the Company, which he is not authorized to do, has purported to transact and convey the said property to Mr.K.Venkatesh, s/o.Mr.K.Laxmaiah, by an ante dated unregistered Sale Deed dated 25.11.2002 which was validated vide File No. 8/03/DC/FS dated 24.10.2003 at the office of the Deputy Collector, Flying Squad Zone IV, Commissioner & I.G. of Registration and Stamps.

6. The plaintiff filed counter. The counter-affidavit was sworn to by P.Jayaprasad Raja. It is averred in the counter-affidavit that defendants 2 and 4 resigned from the Board of Directors of the Company and transferred their shares in favour of the deponent i.e. P.Jayaprasad Raja in pursuance of the Memorandum of

Understanding dated 25.03.2004 which came to be subsequently superceded by another Memorandum dated 04.03.2006. It was specifically averred in the affidavit that defendants 2 and 4 who moved the application seeking for appointment of receiver ceasedto have been interest in the company consequent to sell of their shares in favour of P.Jayaprasad Raja. It is further averred in the counter that defendants 2 and 4 accepted the cheques which came to be issued inconsequence of transfer of shares in favour of P.Jayaprasad Raja. For better appreciation, I may refer paras.4 and 5 of the counter and they are thus:

4. The petitioners are guilty of suppression of the material facts and have not approached the Hon''ble Court with clean hands. I submit that during the pendency of the above suit and O.S.No.696 of 2003, the petitioners 1 and 2 entered into Memorandum of Understanding dated 25.03.2004 with me. The petitioners 1 and 2 admitted that they have resigned and ceased to be directors of the Company. I agreed to pay a sum of Rs. 1,20,00,000 towards all their claims including consideration for transferring the shares of 26,600 held by the first petitioner and 6,625 shares held by the 2nd petitioner. The petitioners 1 and 2 also signed share transfer forms evidencing the transfer of shares. I gave ten posted dated cheques for an amount of the Rs. 9,00,000/- (Rupees nine lakhs only) each amounting to Rs. 90,00,000/-. Besides, I and my wife transferred our respective 1/4th share in the property-bearing No. 8-3-191/272/2 & 8-3-191/272/2/A in Plot No. 2 situated at Vengal Rao Nagar, Hyderabad admeasuring 283.46 square yards. I transferred my 1/4th undivided share in favour of first petitioner vide Deed of Gift dated 03.04.2004 and my wife transferred her 1/4th undivided share in favour of second petitioner vide Gift Deed dated 03.04.2004. The original Gift deeds are in the possession of the petitioners and they are hereby called upon to produce the same. I am taking steps to file a copy of each of the said Gift Deeds dated 3.4.2004. I paid Rs. 9,00,000/- by cash in lieu of the first cheque of Rs. 9,00,000/-. I paid the said amount in good faith and trust and did not take any separate receipt for the said payment. However, the petitioners 1 and 2 admitted the receipt of the said ;amount in M.O.U. dated 04.03.2006. The value of each share is Rs. 10/-. The petitioner No. 1 was holding 26,600 and petition No. 2 was holding 6,625 shares of the company. Thus, the petitioners 1 and 2 were holding totally 33,225 shares. The total value of the said shares being Rs. 3,32,250/-.

5. As per the M.O.U. dated 25.3.2004, the petitioners agred to withdraw the suit O.S.No.696 of 2003 and the criminal cases filed by them. The petitioners 1 and 2 further agreed to executed necessary deeds and documents for the purposes of settlement of all the disputes and claims between the parties. The petitioners 1 and 2 are in possession and custody of the ten cheques and they are hereby called upon to produce the same.

7. It is pertinent to note that defendants 1 and 3 (V. Ranga Rao and Dr. V. Anupama Chowdary) did not choose to file any counter.

8. The learned Additional Chief Judge, City Civil Court, Hyderabad, on

considering the material brought on record and on hearing the counsel for the parties, came to the conclusion that the plaintiff has been creating adverse and conflicting claims to the subject matter of the suit and thereby proceeded to allow the petition filed by the defendants 2 and 4 and appointed a receiver to take possession of the properties of the company by order dated 15.05.2007. Para.26 of the said order needs to be noted and it is thus:

In the present case, the appointment of a receiver is necessitated for the preservation, better custody and management of the subject matter of the suit. The petitioners filed documents to establish that the first respondent has alienated the property of the company, without any manner of right whatsoever all alone, in contravention of the arrangements made by the Hon''ble High Court of A.P. The documents that are filed clearly substantiate this fact. This act of R1 shows that he has been creating adverse and conflicting claims to the subject matter of the suit, pending disposal of the suit and in violation of the orders of the Hon''ble High Court of A.P., making arrangements for the conduct of the affairs of the company. Thus, the petitioner has made out that there is a danger and would be sustained not only to the petitioners, but to the third parties, if immediate action is not taken. The respondents asserts in all his pleadings that the property is of the company and he is in possession and enjoyment of the company. Therefore, the question of depriving the first respondent of the deacto possession doesnot arise. The conduct of the petitioners who filed this petition is just and reasonable. They have been fighting for their rights legally, whereas the first respondent taking advantage of representing the company in violation of the arrangements made by the Hon''ble High Court of A.P., has been alienating the property, creating conflicting claims to the property. Therefore, this is a fit case where the discretion of the Court for the purpose of protecting the rights of all parties and the subject matter of the suit has to be exercised. Under the circumstances, I hold that the petitioner has made out a case for appointment of a receiver, pending disposal of the suit. However, the powers of the receiver shall be subject to the orders of the Hon''ble High Court of A.P., directing the particular arrangements with the participation of both the parties in CRP Nos.5768, 5792 and 6756 of 2003, which are further confirmed by the order in C.R.P.NO.1481 of 2005. The receiver shall after taking possession of the property, over see the implementation of the arrangements made by the Hon''ble High Court of A.P., pending disposal of the suit. He shall make all endeavour to preservation of the suit property, till the disposal of the suit. His remuneration shall be paid as per the rules.

The order dated 15.05.2007 passed in I.A.No.1353 of 2007 is under challenge in this appeal.

9. Heard Sri C.V.Mohan Reddy, learned senior counsel appearing for the appellant; Sri D.Prakash Reddy, learned senior counsel appearing for the respondents 1 and 2 and Sri S.Ravi, learned Counsel appearing for the respondents 3 and 4.

10. Sri C.V.Mohan Reddy, learned senior counsel appearing for the appellant submits that the respondents 1 and 2/defendants 2 and 4 ceased to have any interest in the company since they sold their shares in the year 2003 itself and they resigned from the Board of Directors with effect from 09.01.2003 and therefore, they have no prima facie case to seek for appointment of receiver in respect of the affairs of the appellant/company. A further submission has been made that the trial Court has not referred any of the documents available on record and simply carried away what all averred in the affidavit filed in support of the petition seeking appointment of a receiver. He would also contend that Memorandum of Understanding between P.Jayaprasada Raja and the respondents 1 and 2 herein (defendants 2 and 4) clearly established that the defendants 2 and 4 ceased to be the shareholders and thereby they have no concern with the affairs of the appellant/company. In support of his submission, the correspondence between the parties after filing of the suit and various criminal cases filed for the offence u/s 138 of the Negotiable Instruments Act against P.Jayaprasada Raja have been referred. He would further contend that the third respondent made unsuccessful efforts to get P.Jayaprasada Raja punished alleging violation of the interim arrangement made in CRP Nos.5768, 5792 and 6756 of 2003 by moving contempt cases being Contempt Case Nos.431 and 995 of 2005. Both the contempt cases came to be dismissed on 19.07.2005 and 24.10.2005 respectively.

11. Sri D.Prakash Reddy, learned senior counsel appearing for the respondents 1 and 2 submits that the trial Court has considered the fact of misuse of the power by P.Jayaprasada Raja acting as Managing Director of the appellant/company and thereby proceeded to appoint a receiver to preserve the suit property. It is also submitted by him that P.Jayaprasada Raja representing the appellant/company executed various documents in favour of K.Bhaskar Reddy and his associates by putting antedates and thereafter the said K.Bhaskar Reddy validated the documents and created third party interest and therefore, P.Jayaprasada Raja does not deserve to deal with the affairs of the company. He would also submit that P.Jayaprasada Raja has been playing hide and seek game since he did not choose to state in his chief affidavit with regard to all the alienations made by him in favour of K.Bhaskar Reddy and his associates, and as on the date of his chief affidavit placed on record in the suit, he asserts as if the appellant company is in possession of A, B, C schedule properties and the falsity of the affidavit is evident from the record and in which case the order of the trial Court appointing the receiver is just and proper to protect the properties of the company pending the suit. During the course of his arguments, he referred various sale deeds allegedly executed by P.Jayaprasada Raja on behalf of the appellant/company in favour of K.Bhaskar Reddy and the said K.Bhaskar Reddy getting the documents validated and thereafter K.Bhaskar Reddy disposing of the lands by creating third party interest.

12. Sri S.Ravi, learned Counsel appearing for the respondents 3 and 4 while adopting the arguments of Sri D.Prakash Reddy, learned senior counsel

appearing for the respondents 1 and 2, contends that since P.Jayaprasada Raja violated the interim arrangement made in CRP Nos.5768, 5792 and 6756 of 2003, he does not deserve to represent the appellant/company and therefore, the order of the trial Court in appointing a receiver is legal and proper and the same is not required to be interfered with in this appeal.

13. Before dwelling deep on the rival contentions of the parties, I deem it appropriate to note the scope of Order 40 of CPC which contemplates the appointment and discharge of receivers. Whenever it appears to the Court to be just and convenient, the Court may appoint a receiver of any property whether before or after the decree. The words ''just and convenient'' did not mean that the Court is to appoint a receiver merely because the Court thinks it convenient and they mean that the Court should appoint a receiver for the protection of rights or for the prevention of injury. The order is no doubt discretionary but the discretion must be exercised in accordance with the principles on which judicial discretion is exercised. The Madras High Court in T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others, laid down five principles, which are described as panch sadachar of our Court exercising equity jurisdiction. They are thus:

1) The appointment of a receiver in a pending suit is a matter resting in the discretion of the Court.

2) The Court should not appoint a receiver except upon proof that prima facie the plaintiff has a very excellent chance of succeeding in the suit.

3) Apart from the conflicting claims to the property the plaintiff must show some emergency or danger or loss demanding immediate action and therefore, the element of danger is an important consideration.

4) Where the property is shown to be in medio, that is to say in the enjoyment of none, and

5) The conduct of the party who made the application shall be free from blame.

14. Generally speaking the appointment of a receiver is recognized as one of harshest remedies, which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the person seeking the appointment of a receiver is exposed to manifest peril. The Allahabad High Court in S.B. Industries, Freegunj and Another Vs. United Bank of India and Others, enunciated the following principles for appointment of a receiver thus: A good prima facie case; Imminent danger or loss or diminution of value, destruction, or wastage of the property; removal of the property from the jurisdiction of the Court; ends of justice; rights of all parties interested in the subject matter of the suit; and adequacy of other remedies. In K.Mangamma v. K. Brahma Reddy 1989(1) ALT 331 our High Court reiterated the five principles enunciated in T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others, (supra). In Chelikam Rajamma Vs. Padileti Venkataswami Reddy and Others, our High Court relying upon T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and

Others, held as follows:

1. The appointment of receiver cannot be resorted to lightly without considering the entire facts and circumstances.

2. The party seeking the appointment of a receiver must make out a case that he/she was not only kept out of possession of the properties unauthorisedly, but the party in possession is indulging in acts of waste leading to the inference of incompetence.

3. If prima facie the plaintiff has excellent chance of succeeding in the suit the conduct of the opposite party in keeping the plaintiff out of possession of the properties will be a relevant consideration for directing the opposite party to deposit a sum of money approximately representing the value of the yield pertaining to the share of the plaintiff pending disposal of the suit and even in such circumstances a receiver should not be appointed to oust the possession of the opposite party from the joint family properties. It has been further held that the protection of the properties and safeguarding of the rights of the parties shall be the twin objectives impelling the appointment of a receiver.

15. It is trite to note that P.Jayaprasada Raja, who is representing the appellant/ company, is no other than the brother of first respondent-Shouri Raja. Second respondent is the wife of the first respondent. In a way it can be said that the directors in the appellant/company are closely related to each other. After filing of the suit by the appellant herein, much water has flown under the bridge. Some mediation took place with regard to the settlement of disputes between P.Jayaprasada Raja and Shouri Raja, in pursuance of which, certain Memoranda of Understanding have been arrived at. In pursuance of the understandings arrived at between the parties pending the suit, certain documents have been executed in favour of P.Shouri Raja and P.Roja Rani by P.Jayaprasada Raja and certain cheques came to be issued in favour of P.Shouri Raja and P.Roja Rani (respondents 1 and 2 herein and defendants 2 and 4 in the suit). It is the contention of the appellant that there are two Memoranda of Understandings, one on 25.03.2004 and another on 04.03.2006. The respondents 1 and 2, who are the defendants 2 and 4, seriously disputing the second Memorandum of Understanding. A fact remains that the respondents 1 and 2 herein had 6625 and 26,600 shares respectively in the appellant/company and they agreed to sell their shares in favour of P.Jayaprasada Raja and thereupon P.Jayaprasada Raja issued various cheques. Consequent on dishonour of cheques, respondents 1 and 2 herein initiated criminal cases against P.Jayaprasada Raja for the offence u/s 138 of the Negotiable Instruments Act. Though various documents have been placed on record by both the parties, I do not wish to make the judgment bulky by referring each and every document. It is suffice to refer the legal notice dated 04.10.2006 issued on behalf of the first respondent herein. The said legal notice came to be issued consequent on dishonour of the cheques issued by P.Jayaprasada Raja. Relevant portion of the legal notice dated 04.10.2006, which came to be issued to P.Jayaprasada Raja on behalf of the first respondent herein

needs to be note and it is thus:

My client states that you are the elder brother of my client and you have purchased 26,600 shares of M/s.Anupama Homes India Pvt. Ltd., (01-30597/98-99) of my client and my client has executed and delivered share transfer Form i.e. Form 7-B and 7-C, and you have issued the Cheque bearing No. 424670, dated 01.04.2006 for Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) drawn on ICICI, Begumpet Branch, Hyderabad towards part of the consideration for the above said shares purchased by you from our Client.

My client states that he has first deposited the above Cheque for collection in his bank i.e. Andhra Bank, Sanjeevareddy Nagar Branch, Hyderabad, as per your instructions on 01.06.2006 and it was returned unpaid by your Banker along with Cheque return memo, dated 03.06.2006 as ''Insufficient Funds'' which was received by my client from his Bank on 05.06.2006. My Client informed to you personally over phone about the return of the Cheque and you have requested him to present the Cheque again on the first of September by which time you will keep sufficient amount in your account to honour the Cheque.

My client states that he has deposited the above Cheque again for collection in his bank i.e. Andhra Bank, Sanjeeva Reddy Nagar Branch, Hyderabad as per your instructions on 27.09.2006 and the same was returned unpaid by your banker along with a Cheque return memo dated 29.09.2006 giving the reason for dishonour of the said Cheque as ''Insufficient Funds'' which was received by my client from his Bank on 03.10.2006.

My client states that you have issued the above said Cheque towards part of the consideration for the above said shares purchased by you from our client but with a dishonest intention you have not kept sufficient amount in your account knowing fully well that you hae issued the above said Cheque to our client.

16. It is also profitable to note the relevant paras. in the legal notice issued on behalf of P.Roja Rani, second respondent herein, to P. Jayaprasada Raja and they are thus:

My client states that you are the elder brother of my client''s husband and you have purchased 6,625 shares of M/s.Anupama Homes India Pvt. Ltd., (01-30597/98- 99) of my client and my client has executed and delivered share transfer Form i.e. Form 7-B and 7-C, and you have issued the Cheque bearing No. 424669, dated 10.03.2006 for Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) drawn on ICICI, Begumpet Branch, Hyderabad, towards part of the consideration for the above said shares purchased by you from our Client.

My client states that she has first deposited the above Cheque for collection in her bank i.e. Andhra Bank, Sanjeevareddy Nagar Branch, Hyerabad as per your instructions on 01.06.2006 and it was returned unpaid by your Banker along with Cheque return memo, dated 03.06.2006 as ''Insufficient Funds'' which was received by my client from her Bank on 05.06.2006. My Client informed to you personally over phone about the return of the Cheque and you have requested her to present the Cheque again on the first of September by which time kyou will keep sufficient amount in your account to honour the Cheque.

My client states that she has deposited the above Cheque again for collection in her bank i.e. Andhra Bank, Sanjeeva Reddy Nagar Branch, Hyderabad as per your instructions on 04.09.2006 and the same was returned unpaid by your banker along with a Cheque return memo dated 05.09.2006 giving the reason for dishonour of the said Cheque as ''Insufficient Funds'' which was received by my client from her Bank on 12.09.2006.

My Client states that you have issued the above said Cheque towards part of the consideration for the above said shares purchased by you from our client but with a dishonest intention you have not kept sufficient amount in your account knowing fully well that you have issued the above said Cheque to our client.

17. The cheques referred in the above notices finding place in the Memorandum of Understanding dated 04.03.2006. Of course, it is the contention of the respondents 1 and 2 that they were made to sign on blank papers under coercion and duress and P.Jayaprasada Raja made muse of the said blank signed papers by putting something in his favour and filed before various authorities. That is a matter to be enquired into at the trial. The material brought on record clearly established that the respondents 1 and 2 entered into an agreement with regard to sale of their shares in the appellant/company and received the amounts by way of cheques. Consequent on the dishonour of the cheques, proceedings have been initiated against P.Jayaprasada Raja for the offence u/s 138 of the Negotiable Instruments Act. Even the said criminal proceedings are stated to have been withdrawn by the respondents 1 and 2 herein. I do not want to dilate much as to what made the respondents 1 and 2 for withdrawing the criminal cases. The trial Court without examining as to whether the respondents 1 and 2 who approached for appointment of a receiver have prima facie case or not and without adverting to the stand of the appellant taken in the counter affidavit filed resisting the application for appointment of a receiver, simply observed that P. Jayaprasada Raja acted in contravention of the directions given in CRP Nos.5768, 5792 and 6756 of 2003. A crucial aspect which the trial Court missed to note is that efforts made by 3rd respondent herein to dislodge P.Jayaprasada Raja from the management of the affairs of the appellant/company by moving contempt cases, proved to be futile since contempt cases came ended in dismissal. The trial in the suit has commenced. Two witnesses were examined and chief-affidavit of one witness was placed on record and at that juncture, the respondents 1 and 2 herein, who are defendants 2 and 4 in the suit, resorted to filing the application for appointment of receiver. Even according to the respondents 1 and 2, properties detailed in A, B, C schedules are not available and they have been alienated in favour of third parties. Of course, learned senior counsel appearing for the respondents 1 and 2 vehemently contended that P.Jayaprasada Raja resorted to execute sale deeds antedated in favour of K.Bhaskar Reddy, who is

his henchman and thereafter, the said K.Bhaskar Reddy created 3rd party interests. During the course of arguments, learned senior counsel tried to impress the Court that the sale consideration shown in the documents executed in favour of K.Bhaskar Reddy was far below the market value. I do not see any averment in the affidavit filed in support of the petition for appointment of the receiver. When such an assertion is not made in the affidavit, the respondents 1 and 2 cannot be permitted to canvass that the consideration shown in the sale deeds executed in favour of K.Bhaskar Reddy is far below the market value. The trial Court without observing that the respondents 1 and 2 herein, who are defendants 2 and 4 in the suit, have a prima facie case proceeded to appoint a receiver to manage the affairs of the company. Therefore, the order of the trial Court is totally unjustified and unwarranted in the circumstances of the case. More particularly, in view of the arrangement made by this Court in CRP Nos.5768, 5792 and 6756 of 2003.

18. Accordingly, this appeal is allowed with costs throughout setting aside the order dated 15.05.2007 passed in I.A.No.1353 of 2007 in O.S.No.2218 of 2005 on the file of II Additional Chief Judge, City Civil Court, Hyderabad and consequently, the I.A.No.1353 of 2007 stands dismissed.

19. There is already a direction in CRP Nos.5768, 5792 and 6756 of 2003 to the trial Court to dispose of the suit within a period of two months from the date of the receipt of the copy of the said Order. Therefore, no further order is required to be passed. The trial Court has to adhere to the directions given by this Court in CRP Nos.5768, 5792 and 6756 of 2003 and the parties have to co- operate with the trial Court for early disposal of the suit.

