
(2009) 11 DEL CK 0307
In the Delhi High Court
Case No : FAO (OS) No. 248 of 2009

Arjun Chowdhry	Vs	APPELLANT
Ankur Sachdeva and Others		RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Companies Act, 1956 — Section 111

Citation : (2009) 11 DEL CK 0307

Hon'ble Judges : Sanjay Kishan Kaul, J;Ajit Bharihoke, J

Bench : Division Bench

Advocate : Subodh K. Pathak and S.P.M. Tripathi, in FAO OS No. 248 of 2009 and Subodh K. Pathak, in FAO OS No. 249 of 200, for the Appellant; Rajive Sawhney Viraj R. Datar and Vineet Jhanji, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The appeal is directed against the impugned judgement of the learned single Judge dated 20.4.2009 convicting the appellants for violating the injunction order granted by the learned single Judge and against the order of sentence dated 25.5.2009 sentencing the appellants to undergo simple imprisonment for a period of two (2) weeks and attaching the properties mentioned in para 12 of the order dated 20.4.2009 which were sold contrary to the injunction order.

2. The order of conviction and sentence in the contempt was delivered prior to the decision on the application for injunction and of vacation of stay. Appeals were preferred against the final order in the injunction applications which have been dealt with by us in detail in the judgement passed today in FAO (OS) No. 337/2009 & FAO (OS) No. 423/2009 and we have found merits in the case of the original plaintiffs. Insofar as the impugned order is concerned the learned single Judge has dealt at length with the factual controversy which is a fight between two groups claiming to run the company M/s. Capital Land Builders Pvt. Ltd. Since we have decided the injunction applications today we do not deem it

necessary to go into the details in the present order but suffice to say that an interim injunction was granted on 6.10.2006 restraining the appellants to represent themselves as shareholders/representatives of the plaintiff company till further orders. It is during the currency of this injunction order that the appellants have dealt with the property of the company claiming to have authority as Directors to act on behalf of the company and a large number of plots were sold of as enlisted in the impugned order.

3. The defence set forth by the appellants is that the injunction was obtained by the original plaintiffs by misrepresenting the facts and that original plaintiffs 2 to 4 had been removed as Directors of the company on 10.3.2006. This is stated to have occurred during the pendency of the petition filed by the society claiming rights to be recorded as shareholders in the register of members before the Company Law Board u/s 111 of the Companies Act, 1956 (hereinafter referred to as the said Act) without the claim being established. Various forms were filed and a meeting was sought to be held without complying with the provisions of the said Act. The appellants claim to have sold the land for the benefit of the company. The appellants admitted that they continued to represent themselves as representatives of the company by filing documents with the Registrar of Companies and an ingenious plea was raised that they had not been restrained to act as Directors despite the relief claimed in that behalf.

4. We have no doubt that the finding arrived at by the learned single Judge that the restrained order in respect of the appellants acting as shareholders/representatives did not imply that they can claim themselves to be Directors is correct. Thus, appellants could not have represented the company in any manner nor filed anything on behalf of the company or executed documents on behalf of the company. The endeavour was clearly to overreach the court proceedings. It is a clear case of blatant disrespect and willful disobedience of the order of the court as found by the learned single Judge. The conclusion that the appellants were guilty under Order 39 Rule 2A of the said Code can hardly be doubted.

5. The real damage is stated to have been caused by the sale of plots in violation of the injunction order as noted in para 30 of the impugned order. The appellants had no right to sell these plots or create any third party interest. It is in this context that the learned single Judge has observed that the transaction is a non est in view of the observations of the Supreme Court in Surjit and others Vs. Harbans Singh and others etc. etc.,

6. The appellants preferred an appeal against the order of conviction and then withdrew the same to make submissions before the learned single Judge on the issue of sentence. It is at that stage that the appellants submitted an apology when the learned single Judge found that the manner and circumstances in which the apology had come to be tendered did not make the same acceptable. The learned single Judge has succinctly dealt with this issue in the impugned order of sentence dated 25.5.2009. The conviction in contempt was followed by a review application and then an appeal and on failure of both the apology had

been tendered.

7. The appellants did seek to plead that they had settled with the purchaser of the land and had agreed to refund the entire sale consideration paid to them and were ready to deposit the same in Court so that the same can be given to the purchasers who had been barred to get the physical possession of the plots from the appellants. The sale deed records that the physical possession of the plot had been handed over but the appellants pleaded before the learned single Judge that the possession of the land could not be taken over by the purchaser as some unauthorized persons had occupied the plot.

8. Affidavits have been filed under the signatures of appellants on 18.8.2009 in terms whereof the deponents have undertaken to indemnify the company against the claims of the purchaser of the plots of the company which have been declared non-est vide orders dated 20.4.2009 and 25.5.2009 till the pendency of the suit.

9. We have found as noticed above no redeeming features in favour of the appellants in the present appeal. The impugned order is well-reasoned and records tendency of parties to act in audacious manner violating injunctions and causing irreparable harm and then as a last resort tendering an apology. Such an apology can hardly be said to have come from the heart. It is no defence to state that the appellants were entitled to act as Directors and transfer land when they had been restrained from representing the company. It is only on representing the company as Directors that the sale deeds were executed. The appellants have been attempting to play around with the orders of the court and act with impunity. We, thus, find that the learned single Judge has been right in concluding that the present case is one where fine would not suffice and thus imposed punishment of fifteen (15) days imprisonment apart from seeking to protect the property.

10. The only indulgence which we are inclined to show to the appellants is that if the appellants ensure that the illegal sale deeds executed by them are got cancelled and the amounts refunded and settled with the purchasers resulting in closing the litigations filed by the purchasers, then though the appellants are guilty of contempt, they may not undergo sentence of fifteen (15) days imprisonment but that punishment would be substituted with a fine of Rs. 2,000.00 each. The sentence of imprisonment, thus, stand suspended for a period of three (3) months to facilitate the appellants to redeem themselves and avail of this opportunity and in case they settle the claims of all the purchasers to whom they had sold the land contrary to the injunction order within the said period of time and deposit the fine of Rs. 2,000.00 each, then they will not undergo sentence of fifteen (15) days imprisonment failing which the impugned order of sentence would come into operation.

11. The appeals accordingly stand dismissed with the aforesaid modification.