
(1988) 11 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 109 of 1987 in Company Petition No. 243 of 1980

Bala Financiers (P.) Ltd. (In Liquidation)

APPELLANT

Vs

Ujjar Singh and Another

RESPONDENT

Date of Decision : 18-11-1988

Acts Referred:

Companies Act, 1956 — Section 456, 468

Citation : (1989) 65 CompCas 651

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Judgement

G.R. Majithia, J.—This is an application u/s 456 read with Section 468 of the Companies Act, 1956 (for short "the Act"), for a direction to the District Magistrate, Ropar, to use force for restoration of possession of the property mentioned in paragraph 2 of the application to the official liquidator.

2. The facts briefly stated are that the petitioner-company was ordered to be wound up by order dated October 19, 1982, and the official liquidator attached to this court was appointed as official liquidator. The petitioner company is the owner of the land and building where the bus stand of the respondent company was located. The petitioner company had purchased it from the respondents, vide sale deed dated December 4, 1979. The official liquidator locked the premises. Respondent No. 1 entered into possession of some of the rooms of the office portion in the building. It was reported to the official liquidator that the locks put in by him were broken and respondent No. 1 was in occupation of those rooms.

3. The respondents filed a reply to this application and, inter alia, pleaded that the sale made in favour of the petitioner company was a sham transaction. Harinder Singh Bala was the managing director of M/s Bala Financiers P. Ltd. and also of the respondent company till April 11, 1980. In his capacity as managing director of the respondent-company, he adopted a clever device to

enrich himself at the cost of the company. Under his direction, fictitious expenses were shown in the account books of the company which were paid by drawing funds either from the petitioner-company or from Mohali Transport Co. P. Ltd. or from Bachan Motors Financiers P. Ltd. or from Roopnagar Credit and Investment P. Ltd. Several liabilities were created upon the respondent company by making only book entries in all the aforesaid companies with the intention to create liabilities in their favour which were controlled by Harminder Singh Bala. Sale was also effected in favour of the petitioner company for the same reason and no consideration was paid by the petitioner company to the respondents. A civil suit has also been filed challenging the sale made in favour of the petitioner company.

4. The application is wholly misconceived. The object of Section 468 of the Act is to provide a summary procedure for enabling the liquidator to avoid expensive litigation in the discharge of his primary duty which is collection of the assets of the company. Where a company is prima facie entitled to any property, the court can, in its discretion, make an order under this section for restoring possession to the official liquidator. In the present case, the liquidator has specifically stated that he had taken possession of the land and building which was purchased by the petitioner company under the sale deed dated December 4, 1979. If his possession was subsequently disturbed by an official or director of the respondent company, the remedy, if any, lay before the criminal court and not by invoking the jurisdiction of this court u/s 468 of the Act. In these summary proceedings, this court cannot embark upon an enquiry as to when the possession was taken by the official liquidator and when it was disturbed.

5. The official liquidator will submit an application before the District Magistrate, Ropar, u/s 456 of the Act. If the District Magistrate is satisfied that the possession of the official liquidator was disturbed by the director of the respondent company, he will take such steps as are necessary for restoring possession to the official liquidator. The District Magistrate shall afford opportunities to the parties to lead evidence in proof and disproof of their respective contentions and after recording such evidence, he will satisfy himself that the official liquidator, after the petitioner-company was ordered to be wound up, took possession of the land and the building on which the office of the respondent company was located and if possession was subsequently disturbed illegally by the respondent company, he will order restoration of possession to the official liquidator.

6. With these observations, this petition is disposed of.