

(2008) 08 GUJ CK 0032
In the Gujarat High Court

Case No : O.J. Appeal No. 43 of 2005 with O.J. Civil Application No"s. 213 and 217 of 2005

Balkrishna T. Thakkar

APPELLANT

Vs

Sanrhea Technical Textiles Ltd. and Others

RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:

Citation : (2008) 08 GUJ CK 0032

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Sachin D. Vasavada, for the Appellant; Anip A. Gandhi, for Opponent 1 and J.S. Yadav, for Opponent 2, for the Respondent

Judgement

D.A. Mehta, J.—This appeal has been preferred by one of the shareholders of M/s Mahendra Mills Ltd. (Company in liquidation) challenging the order dated 14.6.2005 made by the Company Court in Company Application No. 310 of 2001. The appellant was not a party before the Company Court in the proceedings of Company Application No. 310 of 2001 and hence, vide order dated 6.10.2005 made in Miscellaneous Civil Application No. 104 of 2005, leave to file appeal having been granted, the present appeal has been preferred.

2. The case of the appellant, in nutshell, is that the respondent No. 1 herein, who was leased out a certain part of the property of the Company in liquidation, was wrongly permitted by the learned Company Judge to purchase the leased out property at a price which was not the market price, and in the alternative, was wrongly permitted to renew the lease vide the impugned order dated 14.6.2005.

3. As against that, the learned Senior Advocate appearing for respondent No. 1 herein, original applicant of Company Application No. 310 of 2001, submitted that the lessee had, in the first instance, sought permission from the Company Court for purchasing the property from the Official Liquidator and even today, is ready and willing to purchase the property at the market price, which may be determined in a public auction, giving first right to the lessee to purchase the

property after the market price is so determined. It was further submitted that an application was moved by way of Civil Application No. 381 of 2007 which is pending as of date, seeking extension of lease which has since expired on 31st October, 2007. It is an admitted position that the said lease has been extended by way of interim relief vide order dated 29.10.2007 made in the said Civil Application, whereunder the Official Liquidator has been directed not to take any coercive steps till the next date of hearing and the said interim relief continues till today. That in the circumstances, it was submitted that the lessee may be permitted to pursue the application for extension of lease before the learned Company Judge, or the lessee may be permitted to purchase the property, as suggested earlier. However, in any event, the submission goes, the appeal is otherwise liable to be dismissed in absence of any error committed by the learned Company Judge.

4. It is necessary to take note of the fact that, admittedly, only a part of the property of the Company in liquidation is under lease with respondent No. 1 lessee, while entire property has already been put to auction by the Company Court. One M/s Devganga Traders is the successful bidder at the said auction and the sale has been confirmed in favour of the said highest bidder, but because of the stay of operation in the present proceedings, the learned Company Judge has not proceeded further to finalize the sale and the Official Liquidator is, therefore, not in a position to receive the balance amount of sale consideration and part with the property in question. In a related proceeding by way of Civil Application No. 153 of 2008, the said successful bidder has moved this Court seeking vacation of the stay so as to enable the Company Court to conclude the sale in favour of the successful bidder. It is also necessary to take note of the fact that the property which has been put to auction includes the leased out portion and the successful bidder has agreed to purchase the property on an "As is Where is and Whatever There is Basis".

5. In the aforesaid set of facts and circumstances, including the later developement which has come on record, it is apparent that the present appeal does not merit acceptance. The appellant herein is admittedly one of the shareholders of the Company in liquidation and the only interest that the appellant has, as a shareholder, is to ensure that the assets of the Company in liquidation are not frittered away and when put to sale, best price is obtained in the hope that after discharge of all liabilities, the shareholder may derive some return of the investment made by the shareholder. Therefore, entertaining the appeal and stalling the subsequent proceedings cannot work to the advantage of the appellant. It is not even the case of the appellant that the subsequent auction at which M/s Devganga Traders has emerged as the highest successful bidder is in any way detrimental to the interest of either the Company in liquidation or its shareholders.

6. Therefore, the best course open would be to permit the said sale undertaken under the aegis of the Company Court to be concluded at the earliest so as to

serve the interest of all concerned. The appeal is, therefore, required to be dismissed. Even otherwise, as can be seen from the impugned order, the learned Single Judge has taken into consideration all the relevant factors and recorded a finding while disposing of the Company Application No. 310 of 2001. The appeal is, accordingly, dismissed.

7. As a consequence, the stay of operation of the impugned order dated 14.6.2005 granted in O.J. Civil Application No. 213 of 2005 is vacated and O.J. Civil Application No. 213 of 2005 is rejected and rule therein is discharged with no order as to costs.

8. Similarly, as a further consequence, O.J. Civil Application No. 217 of 2005 by which the stay of operation of proceedings of auction of the properties of the Company in liquidation was prayed for, is also rejected. Rule is discharged therein. Interim relief stands vacated in the said Civil Application.

9. Accordingly, O.J. Appeal No. 43 of 2005 is dismissed. O.J. Civil Application No. 213 of 2005 and O.J. Civil Application No. 217 of 2005 are rejected. There shall be no order as to costs.