(2013) 02 DEL CK 0193

In the Delhi High Court

Case No : EX. P. 419 and 421 of 2008

Bharat Petroleum Corporation Ltd.	APPELLANT
Vs	
Mr. Jagrit Khaitan	RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2013) 4 AD 686 : (2013) 198 DLT 381

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Maninder Singh, with Mr. Annam Venkatesh in EX. P. 419 and 421/2008, for the Appellant; Sandeep Sethi with Mr. Rony John, Ms. Shruti Sabharwal, Tarn Gulati, Neel Hildreth and Ms. Preeti Gupta, Advocates in EX. P. 419 and 421/2008, for the Respondent

Judgement

Manmohan, J.

Ex. Appl.(OS) 177/2009 in Ex. P. 419/2008

Ex. Appl.(OS)176/2009 in Ex. P. 421/2008

1. Present two applications have been filed on behalf of Mr. Amit Ahuja and Ms. Shalini Ahuja, the objectors under Order 21 Rule 58 read with Section 151 CPC with the following common prayers:-

(a) Allow the present Objections and release wholly the Property being C-160, Defence Colony, New Delhi-110 024 from attachment;

(b) Direct the Decree Holder to remove the Property situated at C-160, Defence Colony, New Delhi-110 024 from the List of the Properties of the Respondents/ Defendants/Judgment Debtor; and

(c) Pass any other or further order(s) which this Hon''ble Court may deem fit in the interest of justice and equity.

Mr. Sandeep Sethi, learned senior counsel for the applicants/objectors in both the applications states that the judgment debtor had transferred the property bearing No. C-160, Defence Colony, New Delhi-110 024 by way of two registered sale deeds dated 26th April, 2006 in favour of the objectors. He states that the restraint/stay order had subsequently been passed by this Court on 01st June, 2006. He points out that the recovery decree in favour of the decree holder and against the judgment debtor had been passed by this Court on 24th August, 2007 and the attachment order in the present execution petition had been passed on 19th December, 2008.

2. Mr. Sandeep Sethi relies upon Section 64(2) CPC to submit that private alienation of property before the attachment order would not be void.

3. Mr. Sandeep Sethi also relies upon a judgment of the Supreme Court in Hamda Ammal Vs. Avadiappa Pathar & 3 Others, (1991) 1 SCC 715 wherein it has been held as under:-

In the above case this Court has gone even to the extent that not only a sale deed but even an agreement of sale will prevail over attachment before judgment made subsequent to such agreement for sale. We do not want to express any opinion with regard to the case of an agreement for sale, but we are of the confirmed opinion that a sale deed having been executed prior to attachment before judgment, though registered subsequently will prevail over attachment before judgment.

4. On the other hand, Mr. Maninder Singh, learned senior counsel for decree holder contends that the objectors were not the innocent purchasers as they had constructive notice of the encumbrance created by the first attachment order dated 09th March, 2004 passed at the instance of the Sales Tax Department. In this connection, Mr. Maninder Singh relies upon certain facts which had been noted by the Division Bench in its judgment and order dated 14th December, 2012 passed in a writ petition by the objectors against the Sales Tax Department, namely, Amit Ahuja & Anr. Vs. Additional Commissioner Trade & Tax Department & Ors. (W.P.(C) 10316/2009). The relevant portion of the said judgment and order is reproduced hereinbelow:-

17. The above narrative and discussion reveals that the suit property was originally owned by one Col. Buta Singh, who sold it to the sixth respondent''s predecessors in interest. Eventually, after their death, the property devolved on him. The materials on record reveal that he is the sole proprietor of the tax defaulter in question, i.e. M/s. Jagannath Dudadhar. It is also evident that at the time of issuance of attachment order, a garnishee order, concerning the proprietorship''s bank accounts were also issued. He had approached the tax authorities, and offered to clear some dues, which resulted in the vacation of the order attaching those bank accounts. The materials on record also reveal that contemporaneously, in March-April, 2004, the sixth respondent''s driver was served the warrant of attachment in respect of the property. All these can, in a sense, be sufficient material for the court to presume, u/s 114 Evidence Act. In

this background of circumstances, the question is whether the Court can accept the argument of the revenue/tax authorities in this case that the Petitioner is not an innocent purchaser, and is deemed to have constructive notice of the encumbrance created by the attachment, which consequently defeats and voids the sale in his favour.

5. Mr. Maninder Singh, however, states that the conclusion of the Division Bench''s judgment and order is not binding upon the decree holder inasmuch as the decree holder was not a party to the said writ petition.

6. Having heard learned counsel for the parties, this Court finds that the issue raised by the decree holder is no longer res integra inasmuch as the Division Bench after noting the facts which are now relied upon by Mr. Maninder Singh has given a finding in paras 22 and 23 that the objectors/petitioners were innocent purchasers without notice of any attachment order in respect of the aforesaid property. The conclusion of the Division Bench is reproduced hereinbelow:-

22. The preceding discussion would show that the warrant of attachment in this case, was not appropriately published in accordance with Section 22 of the Punjab Revenue Act, which stipulates that every proclamation shall "be made by beat of drum or other customary method, and by posting of a copy thereof on a conspicuous place in or near the land to which it relates." There is no material on record for the court to reasonably deduce that the warrant was made known to the Sub-Registrar, under the Registration Act, so that a potential purchaser of the suit property was alerted in that regard. Indeed, the two affidavits filed on behalf of the revenue-the first by the Sub-Registrar, and the second one by the Divisional Commissioner clarify that there is nothing to show that the attachment was made known to that office. Furthermore, even though the respondents urge that the warrant of attachment was pasted on the premises, no date or other particulars are forthcoming. In the absence of these basic requirements, it was not humanly possible for anyone, including the petitioners, to ascertain the revenue''s charge. Therefore, the petitioners were innocent purchasers without notice of any attachment order in respect of the suit property.

23. As a result of the above discussion, it is held that the order issued by the first four respondents, attaching the suit property, dated 09.03.2004, is not binding on them (i.e., the writ petitioners); the same and consequent demands and notices issued to the petitioners are hereby quashed as far as the writ petitioners are concerned. It is however clarified that the respondents are at liberty to recover the dues, from the sixth respondent, in any other manner known to law. The writ petition is allowed in the above terms; there shall, however, be no order as to costs.

(emphasis supplied)

7. This Court also finds that despite being aware of the pendency of the writ petition, the decree holder had not taken any steps to implead itself in the

aforesaid writ petition filed by the objectors. In any event, as the decree holder has relied upon certain factual averments in the Division Bench''s judgment and order, this Court is duty bound to follow the conclusion of the Division Bench''s judgment.

8. At this stage, Mr. Maninder Singh states that the decree holder has taken a decision to file a SLP against the judgment and order dated 14th December, 2012 passed by the Division Bench of this Court. He prays that the attachment order be extended for a period of two weeks to enable the decree holder to file a special leave petition. He also points out that the interim order of attachment has been in subsistence for more than four years.

9. Consequently, this Court directs that the entire property bearing No. C-160, Defence Colony, New Delhi-110 024 be released from attachment and from the list of properties of the respondents/defendants/judgment debtor after a period of two weeks. With the aforesaid observations and directions, present applications stand disposed of. Order dasti.

Ex. P. 419/2008 & Ex. Appl.(OS) 581/2008, Ex. Appl.(OS) 163/2009

Ex. P. 421/2008 & Ex. Appl.(OS) 584/2008, Ex. Appl.(OS) 585/2009

List on 14th May, 2013.

