

(2005) 07 CAL CK 0015
In the Calcutta High Court

Case No : G.A. No. 3152 of 2003, A.P.O. No. 317 of 2001 and A.P.O.T. No. 615 of 2001

Hindustan Development Corporation

APPELLANT

Vs

Modiluft Limited and Others

RESPONDENT

Date of Decision : 11-07-2005

Acts Referred:

Companies (Central Government) General Rules and Forms, 1956 — Rule 5A(4)
Companies Act, 1956 — Section 108(1D), 10F, 111A, 391(1), 393
Contract Act, 1872 — Section 176, 76

Citation : (2005) 4 CHN 14 : (2007) 139 CompCas 122 : (2006) 1 CTLJ 356

Hon'ble Judges : Soumitra Sen, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : P. Chatterjee, T.K. Bose, S. Chowdhury and A. Chowdhury, for the Appellant;S.N. Mookherji, R. Bachawat and T. Aich for respondent No. 1 and M.K. Ghosh and D. De for respondent Nos. 2, 3 and 4, for the Respondent

Judgement

Soumitra Sen, J.—The present application has been filed by the appellant in the pending appeal. The appellant has filed the Suit being C.S. No. 161A of 1997 against the respondents for the following reliefs :

- a) Decree against the defendant Nos. 1, 2, 3 and 4 for a sum of Rs. 5,83,96,465/-;
- b) Interim interest and interest on judgment at the rate of 20% per annum on calendar quarterly rest basis;
- c) Mandatory injunction directing the defendant No. 1 to furnish T.D.S certificates for the quarter beginning from end of March, 1996 to end of June, 1996 and/or in lieu thereof, further decree be passed against the defendant Nos. 1, 2, 3 and 4 for a sum of Rs. 5,73,424/-;
- d) Declaration that the shares of the defendant No. 1 standing in the names of the defendant Nos. 2,3 and 4 as per the particulars set out in Schedules "B", "C"

and "D" respectively are all hypothecated and/or pledged in favour of the plaintiff for the due repayment of the dues of the defendant No. 1 and further the due declaration that the plaintiff is entitled to sell the said shares by public auction and/or private treaty and realize the sale proceeds thereof in pro tanto satisfaction of its claim;

e) Decree for sale of the said shares mentioned above and appropriation of the proceeds thereof by the plaintiff in pro tanto satisfaction of the claim of the plaintiff;

f) Receiver;

g) Injunction;

h) Attachment;

i) Costs;

j) Further or other reliefs.

2. The appellant had deposited as and by way of inter-corporate loan with the respondent No. 1 a sum of Rs. 5 crores payable with interest at the agreed note.

3. Shares of the respondent No. 1 were pledged by the respondent Nos. 2, 3 & 4 in favour of the appellant.

4. The defendant No. 1 failed and neglected to repay the money deposited with it, hence the suit was filed by the appellant for the reliefs as mentioned above.

5. In the said suit an application was taken out by the appellant, wherein an order was passed on 23rd April, 1997, restraining the respondents from operating bank account without leaving a balance of Rs. 5,83,00,000/- and from disposing of or alienating any assets, shares or investments.

6. On or about 8th September, 1997, a decree was passed on admission against the respondent No. 1 for a sum of Rs. 5,83,96,465/-.

7. As far as the other respondents were concerned, the interim order passed earlier was directed to continue. The suit is pending so far as the other reliefs are concerned.

8. The respondent No. 1 preferred an appeal against the said order dated 8th September, 1997. The Appeal Court disposed of the application for stay of operation of the order under appeal, by directing the respondent No. 1 to deposit a sum of Rs. 2.5 crores and to furnish a bank guarantee for the remaining sum, within 5 weeks from the date of the said order. In default the order of stay was to become inoperative.

9. The respondent No. 1 failed to comply with the directions given by the appeal, accordingly an application for execution of the decree was filed by the petitioner. The said application, however, was stayed at the instance of the respondent No.

1 on the basis of a contention that provisional Liquidator has been appointed over the respondent No. 1 by the Delhi High Court in a winding-up petition filed by Indian Oil Corporation.

10. In the meantime the appellant sold the pledged shares and applied to the respondent Nos. 2, 3 & 4 for supplying fresh transfer deeds in marketable lots for those shares.

11. Such fresh transfer deeds were duly sent to the appellant.

12. The total number of shares pledged were Rs. 55,60,000/- which were sold to three buyers 1112. Twenty-Four Carat Investments (Pvt.) Ltd., R. R. Stock and Share Brokers Ltd. and Prasad and Co. Pvt. Ltd. All are apparently share brokers.

13. It is significant to mention here that the purchasers in turn had sold 15,11,200 shares to numerous individual buyers and names of some such individuals were duly recorded by respondent No. 1.

14. There is, however, a dispute as to how many shares out of those 15,11,200 shares were actually transferred by the respondent No. 1, but the fact remains that some shares have indeed been duly transferred, and those transfers have been affected on the basis of the executed transfer deeds as mentioned hereinbefore.

15. The remaining shares, which were not sold to individual buyers, were lodged by those three purchasers with the respondent No. 1 for registration.

16. The respondent No. 1 refused to register those shares, inter alia, on the ground that the respondent No. 1 as the pledger did not execute any fresh transfer deeds and the purported transfer deeds were not proper instruments of transfer.

17. Against, the said refusal to transfer, one of the purchasers, namely. Twenty-Four Carat Investment (Pvt.) Ltd. filed an application u/s 111A of the Companies Act. The said application was dismissed by the Company Law Board, inter alia, on the ground that the person being one Mr. Kuldip Bhatnagar, who had signed the fresh transfer deeds in 1999, did not have the authority to sign on behalf of the respondent No. 1.

18. Against the order of dismissal, the said purchaser filed an appeal u/s 10F of the Companies Act before the Delhi High Court, which is still pending.

19. The subject-matter of dispute in the pending appeal before the Delhi High Court is over 18,09,800 shares.

20. It appears that the other two purchasers viz. R. R. Stock Share Brokers (Pvt.) Ltd. and Prasad & Co. (Pvt.) Ltd., have pursued different remedy. They applied before the Delhi High Court u/s 457 of the Companies Act in the then pending winding-up proceedings initiated by Indian Oil Corporation. The subject-matter of dispute in the application is the refusal to transfer 12,38,600 shares,

9,99,600 shares respectively of the said two purchasers.

21. It has been contended on behalf of the appellant that the said winding-up proceeding has been settled by and between the respondent No. 1 and Indian Oil Corporation, and the provisional liquidator has been withdrawn.

22. Thereafter, the appellant at the request of the purchasers handed over the original transfer deeds, which were undisputedly executed by the authorized representative of the respondent No. 1, in the year 1995, at the time when the shares were pledged.

23. The said original blank transfer deeds were revalidated by the purchasers from the Registrar of Companies, NCT of New Delhi and Haryana in accordance with the relevant provisions of the Companies (Central Govt.) General Rules and Forms and thereafter lodged the shares along with duly revalidated original transfer deeds with the register and transfer agents of the respondent No. 1 viz. Karry Consultants Ltd. for due registration.

24. The said transfer agent returned the revalidated transfer deeds on the ground that fresh signature of the seller had not been obtained.

25. The said transfer agents were informed that the transfer deeds were duly revalidated and were the original transfer deeds of 1995. Even then the shares were not transferred and some shares were returned on account of bad delivery. The said fact was informed to the appellant by the purchasers.

26. Accordingly, the appellant filed an application in the pending suit, being G. A. No. 2293 of 2001, praying for a direction upon the respondent No. 1 to register transfer of 40,48,200 shares which were sold to the said three purchasers and were in possession of the respondent No. 1, and 15,11,200 shares, which were sold by the said three purchasers, to various individuals. As stated earlier some shares out of the said lot has already been transferred in the names of the subsequent purchasers.

27. Though initially interim orders were passed, but the said application being G. A. No. 2293 of 2001, was dismissed upon final hearing on 22nd August, 2001. The present appeal is against the said impugned order.

28. Though we initially took up for hearing the application filed in the appeal, but the parties chose to extensively argue the points involved in the appeal. On behalf of the respondents our attention was also drawn to the fact, that during pendency of this appeal, on April, 2003 an application was filed by the respondent No. 1 under Sections 391(1) and 393 of Companies Act, wherein the name of the appellant has been included in the list of creditors.

29. From the impugned order it appears that what impressed the learned Judge, is that the pending proceedings before the Delhi High Court would have a material bearing on the present proceeding, and that the reliefs claimed were outside the scope of the suit.

30. Before dealing with the said contention, it is necessary to understand the factual position with regard to the shares. There are two sets or lots of shares.

31. One lot is 40,48,200 shares which the purchasers lodged with respondent No. 1 for transfer. The other lot is 15,11,200 shares which the purchasers had sold to individual buyers, which is yet to be duly transferred.

32. If the subject-matter in issue before the Delhi High Court and this proceeding is the same, then perhaps propriety demands, that since one of the purchasers has preferred an appeal, that proceeding should be disposed of before any order is passed by this Court.

33. But the question is, whether the subject-matter is same or not.

34. The subject-matter of appeal u/s 10F of Companies Act before the Delhi High Court are the transfer deeds signed by K. Bhatnagar in the year 1999. But the transfer deeds on the basis of which the appellant is seeking an order from this Court are the ones, which were executed in the year 1995 at the time when the shares were pledged. There cannot be any dispute with regard to the valid execution of the transfer deeds, which were made available along with the share scripts at the time when the shares were pledged. Those original transfer deeds were subsequently revalidated in accordance with Section 108(1D) of Companies Act, 1956 read with Rule 5A(4) of the Companies (Central Govt.) General Rules and Forms.

35. For the sake of convenience the relevant provisions are set out as under: "Section 108(ID) of the Companies Act, 1956 reads as under:

(ID)-Notwithstanding anything in Sub-section (1A) or Sub-section (IB) [or Sub-section (1C)] where in the opinion of the Central Government it is necessary so to do to avoid hardship in any case, that Government may on an application made to it in that behalf, extend the periods mentioned in those sub-sections by such further time as it may deem fit, [whether such application is made before or after the expiry of the periods aforesaid]; and the number of extensions granted hereunder and the period of each such extension shall be shown in the annual report laid before the Houses of Parliament u/s 638.

Rule 5A(4) of the Companies (Central Government) General Rules and Forms read as under:

5A(4)-Every application to the Central Government for extension of time under Sub-section (ID) of Section 108 shall be made in Form 7C and shall be accompanied by the instrument of transfer forming the subject-matter of the application and the fee prescribed therefor."

36. From the impugned judgment it is clear that the learned Judge was of the opinion that if an order is passed by this Court the appeal filed before the High Court at Delhi by one of the purchasers, namely, Twenty Four Carat Investments (Pvt.) Ltd. and the other two applications filed by the two other purchasers,

namely, R. R. Stock and Brokers Ltd. and Prasad and Company (Pvt.) Ltd. would become infructuous.

37. By reason of an order passed by a competent Court other proceeding in another Court may be rendered infructuous but that by itself cannot be a ground to refuse the passing of an order. What is important is to see whether the subject-matter in issue in the two proceedings are same or not. As we have already indicated that the fresh transfer deeds, which were signed by K. Bhatnagar in 1999, is not an issue before this Court. The appellant before this Court is seeking an order on the basis of the revalidated transfer deeds, which were undisputedly executed in the year 1995 on behalf of the respondent No. 1. Therefore, in our opinion, even if an order passed in this proceeding may consequentially render the proceeding before the Delhi High Court infructuous, the subject-matter in issue in the proceeding before this Court and proceeding before the Delhi High Court is not the same. Furthermore, we cannot loose sight of the fact that out of the total pledged shares a large number of shares aggregating to Rs. 15,11,200/- were sold to individual buyers out of which admittedly 2,66,500 shares have been duly transferred on the basis of the fresh transfer deeds executed by Mr. K. Bhatnagar.

38. The other point on the basis of which the learned Judge has dismissed the application is that the orders sought for was in the nature of main relief by way of an interlocutory application. It is well-settled that in given circumstances Court can always pass interim relief in the nature of final relief though such a power is required to be used sparingly and with utmost caution but it cannot be contended that the Court is precluded from passing an order in an interlocutory application which would result in granting a final relief.

39. The same view has been expressed in the decision of *Woodford and Anr. v. Smith and Anr.*, reported in 1970(1) All ELR 1091.

40. Before the Court the counsel for the defendant relied upon a passage of the Supreme Court Practice which reads as follows :

"It is not the practice of the Court (except by consent) to grant on an interlocutory application an injunction which will have the practical effect of granting the sole relief claimed. This does not deter the Court from granting such interlocutory injunction as may be necessary to preserve property or prevent irreparable damage."

41. Disagreeing with the aforesaid proposition Justice Megarry held that there is nothing to prevent the Court in a proper case from granting on motion substantially all the reliefs claimed in the action. After discussing the various judgments on this issue it was held by Justice Megarry that in a given case Court could indeed grant the final relief by way of an interlocutory order.

42. On behalf of the respondent apart from what was argued before the learned Trial Judge various other issues were also raised. It was submitted that the

present application was not maintainable as it seeks to get orders, which is beyond the scope of the suit and the enquiry, which will be necessary for the purpose of granting reliefs as claimed would also be outside the scope of enquiry in this proceeding.

43. It was also submitted that the petitioner has no locus standi since title in respect of the shares have already been transferred in favour of the purchasers.

44. It was further submitted that during the pendency of the suit the shares ought not to have sold without the intervention of Court, as it would be difficult for the Court to satisfy itself as to the correct price of the shares.

45. The respondent further submitted that since the proper forum for registration of shares would be New Delhi since situs of the shares is at New Delhi.

46. The question of the revalidation of shares by the Registrar of Companies, New Delhi and Haryana has not been challenged before any appropriate forum and possibly cannot be the subject-matter of challenge in this proceeding. Moreover, on facts the allegation, which is necessary to establish fraud and misrepresentation, has not been properly made out. One fact, which is required to be considered, is that the execution of the transfer deeds of 1995 is undisputed and/or cannot be disputed by the respondent No. 1. The only question is its revalidation in accordance with law. The statutory authorities have been empowered to carry out such revalidation. Therefore, so long as such revalidation is subsisting the consequential effect thereof should be given.

47. With regard to the contention that the reliefs as claimed herein is outside the scope of the suit, we are of the opinion that the prayers as prayed for in the plaint is such that the consequential order directing registration of shares can be given by the Court so as to make the order fully effective as between the parties. Since the prayer for sale of the shares have been made consequential registration of the same is required to be made so as to make the sale fully effective. In the facts and circumstances of the case justice and equity demands that appropriate order should be passed to perfect the sale by directing registration of shares in favour of the purchasers. It is an admitted position today that a judgment has been passed on admission and the decree passed on the basis thereof has remained unchallenged. After passing a decree the Court cannot remain a mute spectator and allow the decree to be rendered infructuous and/or turn into a paper decree.

48. With regard to the contention that the appellant has no locus standi as title to the shares have been transferred to the purchasers, we are of the view that though in case of a share of a company the title may have passed, but such title has not yet been perfected by reason of refusal on the part of the respondent No. 1 to register of the shares. By reason of the specific statutory requirement the share register of a company is required to be changed and/or altered by inserting the name of the subsequent purchasers of the shares. In the instant case, such rectification of share register has not yet taken place. Therefore, the title would

be perfect only when the share register is rectified by inserting the names of the purchasers and not otherwise. We are also aware of the fact that unless the title of the purchasers are perfected by inserting their names in the share register by duly registering the shares, the appellant would be held liable for bad delivery and may be subjected to financial liability.

49. With regard to the contention that the appellant ought not to have sold the shares without intervention of Court, we are of the opinion that in terms of Section 76 of the Contract Act a pledgee has a right to sell the shares irrespective of his right to file the suit.

50. In support of the above proposition the appellant has relied upon the decisions of Haridas Mundra Vs. National and Grindlays Bank Ltd., , Bank of Chittoor Ltd., Chittoor by its Manager Sri V.R. Doraiswami Ayyar Vs. P. Narasimhulu Naidu and Others, , Mahalinga Nadar v. Ganapathi Subbien, reported in ILR 27 Mad 528 and Nim Chand Baboo and Ors. v. Jagabundhu Ghose, reported in ILR 22 Cal. 21.

51. From the aforesaid decisions the position of law which clearly emerges is that the Pawnee's right to sue is concurrent with his right to sell without intervention of Court.

52. It has also been held in the decision of Mahalingar (supra) that in enforcing the right of the Pawnee u/s 176 of the Contract Act the plaintiff could either sue upon the debt, retaining the pledge as a collateral security or he could sell the shares on reasonable notice to the defendant.

53. In the decision of Indian Cable Company Limited Vs. Smt. Sumitra Chakraborty, , a Division Bench of this Court have also held that there is no bar in the matter of granting a relief in the final form if the circumstances of the case deserve such an order. In the instant case, as we have already observed that the decree passed against the respondent No. 1 has reached a stage of finality. The shares have been duly sold. Therefore, until and unless the sale is perfected, the whole object and purpose the selling of shares would be rendered infructuous.

54. In support of the proposition that the proper Forum for registration of shares would be in New Delhi since situs of shares is in New Delhi, the respondent has relied upon the decision reported in AIR 1963 SC 21. In the said decision the Hon"ble Supreme Court while discussing as to which Court would be the competent Court in the facts and circumstances of the said case observed that the proper" Court would be the Court where the situs of the shares lay. The issue, however, here is whether this Court has the jurisdiction to pass the orders and/or grant reliefs as claimed. The suit was filed in the Original Side of this Court, after obtaining the leave under Clause 12 of the Letters Patent. The respondent No. 1 who is defendant No. 1 in the suit has been shown to be carrying on business within the jurisdiction of the Court. We see no reason why this Court should be divested of its jurisdiction to pass appropriate orders. We have already indicated that the direction to transfer the shares would be

consequential to the main orders as prayed for. Since the sale of shares has already been concluded the only thing remains is to perfect the sale.

55. The proceedings under Sections 391(1) and 393 of the Companies Act, 1956 which was filed by the respondent No. 1 before the Delhi High Court was during the pendency of the appeal. The mere filing of such an application before the Delhi High Court would not render the proceeding before the Appeal Court infructuous. Moreover, we feel that there is a deliberate attempt on the part of the respondent No. 1 to render the proceeding before this Court nugatory by resorting to such a proceeding.

56. For the reasons as aforesaid, we are of the opinion that the impugned order has been passed on the basis of incorrect appreciation of facts and is therefore set aside. Accordingly, let there be an order in terms of prayers (a) and (b) of the application being G. A. No. 2293 of 2001. In view of the order passed hereinabove the application as well as the appeal is disposed of. However, there will be no order as to costs.

Asok Kumar Ganguly, J.

I agree.

Later:

57. Prayer for stay is considered and same is rejected.

58. All parties will act on the signed copy of the operative portion of the judgment on the usual undertaking.