

(2002) 04 RAJ CK 0088

In the Rajasthan High Court

Case No : Company Application No. 7 of 1997 in Company Miscellaneous Application No. 35 of 1974 and Company Petition No. 2 of 1957

In Re: Udai Bhan Industries Ltd.

Date of Decision : 03-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 446, 446(2)

Citation : (2002) 04 RAJ CK 0088

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Rinesh Gupta, for the Appellant; G.K. Garg and R. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. This application is filed by the applicants in SB Company Petition No. 2 of 1957 under Rule 9 of the Company (Court) Rules, 1959, read with Section 151 of the Code of Civil Procedure, 1908. In this application, the prayer is made for quashing of the letter dated 30-7-1984 (Annexure-6) including the land of Khasra No. 128. It is further prayed that if the land of Khasra No. 128 has wrongly been included in the land of the company (in liquidation), the same may kindly be excluded from the lands sold to the auction purchaser the respondent No. 2. It is lastly prayed that any other appropriate orders/directions which this Court deems just and proper, in the facts and circumstances of the case, may be passed in favour of the applicants.

2. The reply to this application is filed by the official liquidator, to which the applicants have filed the rejoinder. The reply to this application has also been filed by the respondent No. 2- auction purchaser, to which also the rejoinder has been filed by the applicants. Both the respondents have contested the application on merits as well as preliminary objections regarding its maintainability of the application has also been raised.

3. It is stated that this application is not maintainable as, in case, the applicants are having any grievance in regard to sale effected by the official liquidator in the year 1984, they should have invoked the provisions of Section 446(2)(d) of the Companies Act, 1956 ("the Act"). The second preliminary objection raised is that this application deserves to be dismissed on the ground of delay and laches. It is next contended that the applicants are claiming part of the land sold by the official liquidator in the year 1984 measuring 2.15 bighas out of 3.13 bighas. The applicants have not produced any documentary evidence that this land belong to them, The land has been sold in public auction by the official liquidator in the year 1984 and at that time the applicants have not raised any objection. An advertisement was published in the newspaper Rajasthan Patrika on 2-2-1984.

4. Lastly, it is urged that the applicants have not come up with clean hands, inasmuch as in the application they have not disclosed the advertisement dated 2-2-1984. The applicants have relied upon the advertisement, which was issued some time in May, 1982 in Amar Ujala published from Agra without giving the details of khasra particulars, that was not relevant for the purpose of sale of land held in the year 1984.

5. The learned counsel for the applicants in reply to preliminary objections submitted that this application is maintainable under Rule 9 of the Companies (Court) Rules, 1959, read with Section 151, as the action of the official liquidator of selling the land in question is wholly without authority. It is submitted that there is no delay in raising the objection. Otherwise also when the sale of land is void ab initio, the delay in filing the application may not come in the way of the Court to do the substantial justice to applicants. On merits, it is submitted that the official liquidator has no right to sell the property which does not belong to company (in liquidation). The learned counsel for the respondents opposed the application on merits also.

6. I have given my thoughtful consideration to the rival contentions of learned counsels for parties.

7. The Rule 9 of the Companies (Court) Rules, 1959 reads as under :--

"9. Inherent powers of Court--Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

8. Rules, 1959 are framed in exercise of the powers conferred by Subsections (1) and (2) of Section 643 of the Act, and of all other powers enabling, the Supreme Court of India, after consulting the High Courts.

9. I do not find any merit in the contention of the learned counsel for the respondents that Rule 9 of the Rules, 1959 is only provision available for the relief claimed in the application, as no specific provision for grant this relief is there in the Act.

10. Section 446 is relevant for the decision of this application. When a winding-up order has been made or the official liquidator has been appointed as a provisional liquidator, no suit or other legal proceedings shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose. Sub-section 2 of Section 446 provides that the Court which is wound up, the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of

(a) * * * (b) * * * (c) * * * (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company.

11. The question which is sought to be raised and is raised in this application falls under the Clause (d) of Sub-section (2) of the Section 446. A specific provision for consideration, adjudication and decision of this question raised in the application is there in the Companies Act, 1956. When there is a specific provision to take care and deal with the question raised in this application, the Rule 9 of the Rules, 1959 is not attracted. It is the grievance of the applicant that the land which has been sold by the official liquidator taking it to be the land of the company (in liquidation), is illegal, void ab initio. The dispute is whether the land in dispute belongs to company (in liquidation) or not and for adjudication and decision thereof the remedy available to applicant is to file the application u/s 446. This dispute is to be adjudicated upon and decided by the Company Court and then only the question of legality, propriety and correctness of the sale of the land in dispute could have arose.

12. Rule 9 speaks for inherent powers of the Court. The inherent powers of the court is attracted and available only in case where the Court has no power elsewhere for adjudication and decision of dispute raised. Where the dispute raised and relief claimed is covered under the specific provision of the Act, 1956, the inherent powers of the court under Rule 9 stands excluded. In view of the specific provisions in Section 446(2)(d), I am satisfied that this application filed by the applicants under Rule 9 is not maintainable.

13. The land in dispute undisputedly has been auctioned by the official liquidator way back in the year 1984 and same had been purchased by the respondent No. 2. This application under Rule 9 of the Rules, 1959 is presented on 23-4-1997. The auction of the land in dispute undisputedly has been made after the advertisement in newspaper. Whosoever seeks relief from this Court under its discretionary and equitable jurisdiction has to approach to the Court within reasonable time. In this case, the delay of 13 years is made by the applicants in approaching this Court, after the sale of land in dispute, which has not been explained by them. From para No. 12 of the application, I find that under letter dated 30-7-1984 (Annexure-6) the official liquidator has delivered the possession of the land in dispute to the respondent No. 2, auction purchaser. Leaving apart the letter dated 30-7-1984, the applicant was known of the fact that the land in

dispute has been sold by auction and same is purchased by the respondent No. 2 and they have to bring the matter before the Company Court within reasonable time and that has not been done. This application filed by applicants deserves to be dismissed on the ground of delay and laches.

14. The provision of Rule 9 is akin to Section 151 of the CPC. Under this rule, the Company Court can give relief to the litigant only if it is satisfied that it is to do so in the interest of justice or to prevent abuse of process of court.

They have utterly failed to show their right, title or interest in land in dispute. The land in dispute is entered as Siwai chak in the revenue record. It is mutated in the name of the respondent No. 2 long back. The entries in the revenue record both regarding Siwai chak as well as in the name of the respondent No. 2 have not been challenged by the applicants. In the facts and circumstances of the case, it is not the case where the official liquidator has abused the process of the Court and interference of this Court is necessary. On the contrary, it is a case where the applicants have made attempt to abuse the process of the Court.

15. As a result of aforesaid discussion, the application is dismissed with cost, which is quantified to Rs. 5,000. The amount of the cost is to be paid in equal part to both the respondents.