
(2014) 05 RAJ CK 0236

In the Rajasthan High Court

Case No : Company Application No. 75/2013

Jaipur Spinning and Weaving Mills

APPELLANT

Vs

The Podar Mills and Others

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Companies Act, 1956 — Section 446(2)(d), 456, 457, 460(4)

Citation : (2014) 05 RAJ CK 0236

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : G.K. Garg, Senior Counsel and Shri Kersi J. Mehta, Counsel, Advocate for the Appellant; Ajeet Kumar Sharma, Senior Counsel, Shri Rachit Sharma, for Respondents No. 1 to 4, Shri Ashok Gaur, Senior Counsel, Shri Ajat Shatru Mina, for Respondent No. 5, Shri Praveen Samdhani, Senior Counsel, Shri Viven Miskita, Shri Saurabh Jain, Shri Kushagra Sharma, Shri Suneet Tyagi, Shri S.S. Hora, Shri Anuroop Singhi, Counsel for Respondent No. 6, Shri Rishabh Khandelwal, Counsel for Respondent No. 7, Shri Mustaffa and Shri Sandeep Taneja, Counsel for Respondent No. 8, Advocate for the Respondent

Judgement

Mohammad Rafiq, J.—This application has been filed under Sections 456, 457, 460(4) read with Section 446(2)(d) of the Companies Act, 1956, and Rules 9, 232 and 233 of the Company (Court) Rules, 1959, with the prayer that respondents be ordered to handover peaceful, lawful and vacant possession of the property let out to it by the lease deed dated 30.12.1964 as modified by the deed dated 23.08.1968 and further prayer is made that applicant may be permitted to sell/auction the properties after valuation as directed by this court in its judgment dated 07.12.2007.

2. The matter was heard for quite some length but full-fledged hearing could not be possible as all the parties have not yet filed reply to the application.

3. This court on 30.01.2014 granted time to the respondents to file reply. Thereafter when the matter was listed on 13.02.2014, the preliminary objections were filed with regard to maintainability of the application. The court directed

that preliminary objections may be considered simultaneously when the matter is heard on merits. Two more applications have been filed by the respondent no. 2 and respondent no. 4 thereafter with the prayer that their names be deleted from the array of respondents. While respondents no. 1, 5, 6 and 8, have filed their reply, respondents no. 2 to 4 and 7 have not yet filed reply to the application.

4. Shri G.K. Garg, learned Senior Counsel for applicant Official Liquidator, has, in the course of argument, invited attention of the court towards order of this court dated 26.05.2006 in Company Application No. 100/2002 in Company Petition No. 10/1980, by which application filed by the lessee M/s. Podar Mills Limited for purchase of the disputed/leased out property on capitalized value of lease rent, was declined holding that it had no preferential right to purchase the same and that in all fairness, the property is required to be sold in an open auction and the applicant may take part in auction proceedings. It was thereafter that the Official Liquidator, with the permission of the court, got a auction/tender notice published on 07.08.2007 in daily newspapers inviting bids for auction.

5. Shri G.K. Garg, learned Senior Counsel appearing for applicant-Official Liquidator, submits that despite specific order of the Court, the lessee in the meantime sold the property to a third party i.e. respondents no. 5 to 8 herein, on 19.07.2007. Learned Senior Counsel invited attention of the court towards the order of this court dated 07.12.2007, by which the application filed by the Official Liquidator seeking approval of the bid offered in pursuance of tender notice dated 07.08.2007 published in daily newspapers, was disposed of directing cancellation of aforesaid tender notice, and requiring the Official Liquidator to get fresh valuation of the property in question through Government valuer and through other approved land valuation agency and initiate auction proceedings afresh by wide circulation of the public tender notice with prior permission of this court. In that matter, when the court was apprised of the fact about creation of third party interest and parting with possession by the lessor, this court, while declining to go into that controversy in that application, observed that since present one are not the proceedings initiated to examine the questions as to the lease-hold rights or its violation on the part of lessee company, in case the Official Liquidator and Secured Creditors felt aggrieved by acts of the lessee company resulting in violation of terms and conditions of the lease in question, they are free to raise and initiate independent proceedings in accordance with law.

6. Shri G.K. Garg, learned Senior Counsel appearing for Official Liquidator, asserted that it is pursuant to aforesaid observations that the present application has been filed as an independent proceedings. He therefore submitted that right of the respondents to file reply to the application, who have despite number of opportunities not filed the same, may be closed and in order to safeguard the interest of the company in liquidation, matter may be decided at the earliest.

7. On the other hand, Shri Praveen Samdhani, learned Senior Counsel appearing

for respondents, submitted that proceedings envisaged in the order of this court referred to supra, could be initiated only by instituting a regular suit for cancellation of the lease deed. Since there was stipulation to the contrary in the lease-deed, the lessee was not debarred from further assigning his lease-hold rights. If the lessor is of the view that there was breach of condition of the lease, then he has to file a fresh suit after termination of the lease. In fact, in this case, the notice of termination was given by the Official Liquidator but subsequently it was withdrawn with the leave of the court. Thus, the Official Liquidator would now be precluded from filing the present application, particularly when he has accepted the rent from all the sub-lessees/assignees through respondent no. 1 lessor.

8. This court at this stage does not deem it appropriate to close the right of the respondents to file reply to the application. At the same time, however, it must be observed that afore-noted and other ancillary questions raised by the parties would be considered when the matter is finally heard and decided after reply to the application is filed by all the party respondents.

9. In order however to safeguard the interest of the company in liquidation and secured/unsecured creditors and ensure that further complications may not arise in the matter, and looking to the nature of controversy, the respondents are directed to,

(1) maintain the status-quo with regard to the property in question, and

(2) not to further alienate/transfer the property to any third party and not to encumber or create charge on, the property in dispute or create any further interest in any form whatsoever in favour of any new party,

pending disposal of this application.

10. It is however made clear that this court has refrained from making any observation on merits of the case either way and that this order would not preclude any of the parties to make such arguments as may be available to them in law.

11. The application to come up for orders on 01.08.2014. In the meantime, the respondents no. 2 to 4 and 7 may file reply to the application.