

(2005) 02 GUJ CK 0066
In the Gujarat High Court

Case No : Civil Application No. 26 of 2005 in Civil Application No. 88 of 2004 in
O.J. Appeal No. 39 of 2004

Mahaveer Ghantakaran Enterprises

APPELLANT

Vs

Sharad Pandittrav Vani

RESPONDENT

Date of Decision : 17-02-2005

Acts Referred:

Citation : (2005) 02 GUJ CK 0066

Hon'ble Judges : M.C. Patel, J;B.J. Shethna, J

Bench : Division Bench

Advocate : A.S. Vakil, for the Appellant; J.J. Yajnik, for Respondent Nos. 1 to 10
and P.C. Kavina, for Official Liquidator for Respondent No. 11, for the Respondent

Judgement

B.J. Shethna, J.—Heard learned counsel Shri Apurva Vakil for the applicant, Shri Yagnik for opponents no.1 to 10 appearing on the advance copy of this application being served upon him and Shri P.C. Kavina for respondent no.11 - Official Liquidator appearing on the advance copy of this application being served upon him.

2. Mr. Vakil tenders his sincere apology for annexing copy of the order dated 24th August, 2004 passed in Civil Application No.88 of 2004 instead of the order passed in O.J. Appeal No.39 of 2004 as Annexure "6" and prayed that he may be allowed to substitute Annexure "6" by supplying copy of the order dated 24th August, 2004 passed in O.J. Appeal No.39 of 2004. Oral prayer made by Mr. Vakil is granted. Accordingly, Annexure "6" be substituted.

3. Company Application No.184 of 2004 filed in Company Petition No.157 of 1995 by applicants Sharad Pandittrav Vani and nine other workmen of Ahmedabad Manufacturing and Calico Printing Mills Company Limited and Company Application No.217 of 2004 filed by Mahaveer Ghantakaran Enterprises (present applicant) came to be disposed of by the learned Company Judge (K.A. Puj, J.) by his order dated 4th August, 2004, whereby the learned Company Judge vacated the order of stay granted earlier in favour of the applicants -

workmen and the Official Liquidator (O.L.) was directed to immediately take possession of the quarters, from the applicants workmen, in which they were staying. He (O.L.) was further directed to take necessary help of the Police Commissioner as well as Municipal Commissioner for removing them from their quarters and taking possession of the quarters from them. Both the Commissioner of Ahmedabad Municipal Corporation and Police Commissioner were directed to depute their personnels to take the possession of the staff quarters of the applicants workmen. A copy of the said order was also ordered to be served on the Police Commissioner of Ahmedabad as well as Municipal Commissioner for rendering necessary help and assistance to the Official Liquidator for compliance of the order. The secured creditors were also directed to depute their respective persons at the time when the operation of removal of the unauthorised occupants wheret oo be undertaken by the O.L. By that order, the learned Company Judge also ordered that for their retirement dues, the applicants - workmen will have to lodge their claim before the Official Liquidator, if it was not lodged so far. After ascertaining their claims with the claims of the secured creditors and others, O.L. was directed to seek permission for appropriate directions for disbursement of the amount realised on the sale of the assets of the company in liquidation, but that would not entitle the workmen to retain the possession of their quarters.

Then, the learned Company Judge proceeded to pass order on Company Application No.217 of 2004 filed by the applicant - Mahaveer Ghantakaran Enterprises (present applicant) and issued necessary directions by stating that "..... Since the court has passed the order today in Company Application No.184 of 2004 wherein the Official Liquidator is directed to get the possession of staff quarters back from the applicants, the possession thereof should be handed over to the present applicant on or before 31st August, 2004"

4. The aforesaid common order dated 4th August, 2004 passed by the learned Company Judge was challenged only by the applicants - workmen before this court by filing. J. Appeal No.39 of 2004 in Company Application No.184 of 2004. Civil Application No.88 of 2004 was filed in. J. Appeal No.39 of 2004 for interim orders, which was allowed on 24th August, 2004 by us after hearing the learned Official Liquidator and the order dated 4th August, 2004 passed by the learned Company Judge in Company Application No.184 of 2004 directing the Official Liquidator to take back forcible possession from the applicants - workmen with the help of Municipal Commissioner of Ahmedabad Municipal Corporation and Police Commissioner, Ahmedabad was stayed till the final disposal of the main O.J. Appeal No.39 of 2004. And the said O.J. Appeal No. 39 of 2004 was admitted on that very day i.e. August 24, 2004.

5. It appears that after the order passed by us on 24th August, 2004 in Civil Application No.88 of 2004, staying the operation of the order dated 4th August, 2004 passed in Company Application No.184 of 2004, the present applicant - Mahaveer Ghantakaran Enterprises moved Company Application No.352 of 2004

in Company Application No.217 of 2004 before the learned Company Judge seeking modification of his order dated 4th August, 2004 passed in Company Application No.217 of 2004, in view of the order dated 24th August, 2004 passed by this court in Civil Application No.88 of 2004 in O.J. Appeal No.39 of 2004. The said Company Application No.352 of 2004 was disposed of by the same learned Company Judge on 28th October, 2004 (Annexure "7" to this application) by directing the parties to move the Division Bench for appropriate clarification with certain observations. Thereafter, Shri A.S. Vakil, learned advocate for the applicant - Mahaveer Ghantakaran Enterprises addressed a letter dated 29th November, 2004 to the Official Liquidator calling upon him to state as to whether he had made any application before the Division Bench seeking modification as ordered in his Company Application No.217 of 2004 (Annexure "8" to this application).

6. Thereafter, the applicant - Mahaveer Ghantakaran Enterprises moved another Company Application No.18 of 2005 in Company Application No.183 of 2003 before the learned Company Judge and made the grievance that despite the specific direction issued by the learned Company Judge in his order dated 28th October, 2004, he (O.L.) had not taken any steps in the matter and thereby, flouted the order of the court. The learned Company Judge, by his order dated 24th January, 2005, called up on the O.L. to explain in writing to show cause as to why action should not be taken against him for flouting his order as O.L. tried to shield the interested persons in the matter, which was not proper for the Official Liquidator, (Annexure "9" to this application) and the matter was adjourned to 28th January, 2005.

7. On 28th January, 2005, the learned Company Judge passed further order on Company Application No.18 of 2005 by recording statement of Shri Vakil, learned advocate for the applicant that he will approach the Division Bench seeking appropriate direction in O.J. Appeal No.39 of 2004, and extended the time in favour of the applicant to 11th February, 2005. On that day, O.L. was on leave. Therefore, on his behalf, Assistant O.L. requested to grant time to explain as to why his earlier order dated 24th January, 2005 was not complied with, request was granted and O.L. was directed to furnish necessary explanation on or before 14th February, 2005 and the matter was kept on 14th February, 2005.

Meanwhile, as per the statement made by Shri Vakil for the applicant before the learned Company Judge on 28th January, 2005, the applicant - Mahaveer Ghantakaran Enterprises filed present Civil Application in Civil Application No.88 of 2004 in O.J. Appeal No.39 of 2004 on 2nd February, 2005. It was initially placed on 4th February, 2005 before the regular Division Bench consisting of D.A. Mehta, J. and Ms. H.N. Devani, J. Their Lordships felt that by present application modification of the order dated 24th August, 2004 passed by this court was sought for, therefore, it should be heard by the same Bench. Accordingly, Registry was directed to obtain necessary orders for placing it before the appropriate Bench at the earliest. Therefore, office made submission on

February 7, 2005 and after obtaining the orders from the learned Chief Justice, this matter was placed before this court yesterday i.e. on 16th February, 2005. However, due to leave note of Shri Vakil, the matter was kept today by a speaking order.

8. The attention of Mr. Apurva Vakil, learned counsel for the applicant was drawn to the following submissions recorded by the learned Company Judge (K.A.Puj, J.) in his order dated 28th October, 2004 passed in Company Application No,352 of 2004.

"..... Mr. Vakil is right in his submission that despite the failure on the part of the Official Liquidator, the Division Bench should not have finally disposed of Civil Application and granted stay till the O.J. Appeal is decided without hearing all concerned parties. According to Mr. Vakil, the order of the Division Bench is patently erroneous and violative of the principles of natural justice."

However, Mr. Apurva Vakil submitted that he had never made such submissions before the learned Company Judge and it was put in his name by the learned Company Judge. Mr. Vakil is a seasoned and sober lawyer coming from a well known lawyers" family, having standing of more than 15 years at the bar and we have no reason to disbelieve his solemn statement made in presence of learned counsel Shri Yagnik for the workmen, who has also supported the say of Mr. Vakil that no such submissions was ever made by Mr. Vakil before the learned Company Judge. It is surprising to note that after quoting above, the learned Company Judge has further stated in para 6 of his order that "..... this court is not competent to make any comment on this issue." .Having said so, immediately thereafter, the learned Company Judge stated that "However, any order, judgment or decision of the Court is respected because of its quality and not because of the fact that more number of judges have decided it" . Much could have been said on this but we refrain ourselves from stating anything in the matter except that it lacks judicial sobriety, propriety and maturity. It would have been better if such observations were avoided. We hope and trust that it should not happen again.

9. Learned counsel Shri Kavina for the Official Liquidator also made serious grievance about the uncalled observations made against his client - Official Liquidator. Mr. Kavina vehemently submitted that once the Division Bench of this court passed an order on Civil Application No.88 of 2004 on 24th August, 2004 and stayed the order dated 4th August, 2004 passed by the learned Company Judge in Company Application No.184 of 2004, whereby the learned Company Judge directed the O.L. to take the forcible possession from the workmen with the help of the Police Commissioner and Municipal Commissioner of Ahmedabad, then he was duty bound to respect and implement the order of Division Bench of this court rather than the order of the learned Company Judge. The learned Company Judge, in para 7 of his order dated 28th October, 2004 passed in Company Application No.352 of 2004 observed that

"... It is, therefore, obligatory on the part of the O.L. to move appropriate application before the Division Bench seeking proper modification and/or direction issued by this Court in Company Application No.217 of 2004."

It was rightly submitted by both learned counsel Shri Kavina for the Official Liquidator and Shri Yagnik for the workmen that once the Division Bench of this court passed an order and stayed the operation of the order passed by the learned Company Judge in Company Application No.184 of 2004, then it was not open to the learned Company Judge to direct the parties to move the Division Bench for appropriate clarification. Mr. Kavina, however, made it clear that this should not come in his way in approaching the Division Bench for early disposal of the main O.J. Appeal No.39 of 2004. There is lot of substance in the aforesaid submissions made by learned counsel Shri Kavina and Shri Yagnik for the Official Liquidator and the workmen, respectively. Having heard the learned counsel for the parties, we are of the considered opinion that no such direction could be issued against the parties, at least by the learned Single Judge. Mr. Yagnik for the workmen has no objection in granting prayer 10(A) of impleading the present applicant - Mahaveer Ghantakaran Enterprises as party respondent no.13. Hence, prayer 10(A) is granted. Regarding prayer made in (B) and (C) of para 10, we are of the considered opinion that the present applicant should approach the learned Company Judge only for extension of time and not for any other reliefs.

10. Before parting, we must state that by a common order dated 4th August, 2004, the learned Company Judge disposed of both Company Application No.184 of 2004 filed by the workmen and Company Application No.217 of 2004 filed by the present applicant. In Company Application No.184 of 2004, the learned Company Judge directed the Official Liquidator to take the possession of the staff quarters of the workmen with the help of the Police Commissioner and Municipal Commissioner of Ahmedabad. When that order is stayed by this court on 24th August, 2004, then there is no question of compelling the Official Liquidator to execute the order passed by the learned Company Judge in Company Application No.217 of 2004. With utmost respect to the learned Company Judge, he should have known that once the Division Bench stayed his order of directing the Official Liquidator to take possession of the staff quarters of the workmen passed in Company Application No.184 of 2004, then the order passed by him in Company Application No.217 of 2004 directing the O.L. to hand over possession of the staff quarters of the workmen would be of no consequence and it remain impliedly stayed. In spite of the order passed by the Division Bench of this court on 24th August, 2004 in Civil Application No.88 of 2004, if the Official Liquidator proceeds to implement the order passed by the learned Company Judge in Company Application No.217 of 2004, then it would be per se contempt of this Court. It is hoped and trust that now the learned Company Judge will not insist any further for implementation of his order passed in Company Application No.217 of 2004 on 4th August, 2004 and subsequent orders passed in Company Application No.18 of 2005 on 24th January, 2005, 28th January, 2005 and 14th February,

2005. We also may make it clear that it will be open to the present applicant to apply for extension of time before the learned Company Judge. As and when such a prayer is made, the learned Company Judge will consider and decide it in accordance with law. With these observations and directions, this application is disposed of accordingly.