
(2014) 11 SC CK 0084

In the Supreme Court Of India

Case No : C.A. No. 10187 of 2014 (Arising out of SLP(C) No. 8539 of 2012)

Morgan Signatures Towers Pvt. Ltd.

APPELLANT

Vs

M.P. Nagar

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Companies Act, 1956 — Section 391, 446, 446(1), 446(3)

Citation : (2015) 2 RCR(Civil) 19

Hon'ble Judges : Rohinton Fali Nariman, J; Ranjan Gogoi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted. The present appeal concerns itself with a Company in-liquidation, namely, M/s. Jhalani Tools (India) Ltd., which has been wound up by the Company Court by an order dated 18th March, 2003. The subject matter of the present proceedings is Civil Suit No. 143 of 2010 dated 21st May, 2010, filed by M/s. Morgan Signatures Towers Pvt. Ltd. (Appellant herein) against Shri M.P. Nagar as Defendant No. 1 and the Municipal Corporation, Faridabad as Defendant No. 2. The suit proceeds on the footing that the predecessor Company of the Plaintiff, namely, M/s. Faridabad Instruments Pvt. Ltd. had purchased a certain property vide sale deed dated 1st June, 2007 from the Official Liquidator for and on behalf of a Company in winding-up which is this very Company i.e. M/s. Jhalani Tools (India) Ltd. The property with which the suit was concerned is part of Unit No. III Plot No. 1 and 2 situated at Faridabad. M/s. Faridabad Instruments Pvt. Ltd. had also purchased another adjacent property vide separate sale deed dated 1st June, 2007. The reason for setting out this transaction in Para 3 of the plaint is only to show the Plaintiff's title to the said properties. The cause of action in the suit is from Para 4 onwards which say that the Defendant No. 1, who has no concern with the said property, is bent upon trespassing into the said property to dig the foundation of the said area. According to the Plaintiff, the Defendant No. 1 wants to grab this valuable property and without getting the site

plan sanctioned has started digging a foundation in the said land. Defendant No. 2, the Municipal Corporation, is also arrayed as a party because, according to the Plaintiff, it cannot permit Defendant No. 1 or any other person to do the aforesaid acts. Ultimately, in Para 10 of the plaint, it is stated:

"10. It is, therefore, prayed that a decree for permanent injunction may kindly be granted in favour of the Plaintiff against the Defendant No. 1, restraining the Defendant No. 1 his henchmen, representatives, associates and others from encroaching, trespassing or taking forcible possession and they may also be restrained from raising any construction on the open plot of the Plaintiff company marked by letters E.F.G.H. measuring 12" x 36" which forms part and parcel of the bigger plot No. 1 and 2, Unit-III marked by letters A.B.C.D. as shown in the site plan attached with the plaint situated in NIT, Faridabad Industrial Area and Defendant No. 2 may also be restrained not to allow the Defendant No. 1 or any other person to sub-divide the same and to change the purpose from industrial to commercial, residential, shop, office etc. If the Defendant No. 1 succeeds to raise any construction over the property in dispute marked by letters E.F.G.H. or any other portion of the property marked by letters A.B.C.D. during the pendency of the suit or proved to have been in possession over the suit property or any portion of the property 5 marked by letters A.B.C.D. as shown in the site plan Annexure P-4, then a decree for Mandatory Injunction/possession may kindly be passed in favour of Plaintiff against the Defendants with cost of the suit.

Or any other relief, which this Hon'ble Court deems fit and proper may also be granted in favour of the Plaintiff against the Defendants."

2. In an application made Under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short "the C.P.C."), the present Respondent No. 1 applied to the Court to have the plaint rejected on the ground that it was not in conformity with Section 446 of the Companies Act, 1956 inasmuch as no prior leave had been taken from the Company Court to institute the said suit.

3. By an order dated 19th January, 2011 by the Civil Judge (Junior Division), Faridabad, the said learned judge allowed the application and dismissed the suit Under Order VII Rule 11 of the Code of Civil Procedure saying that the Civil Court had no jurisdiction to proceed any further. In a revision filed against this order, by the impugned order dated 29th August, 2011, the Punjab & Haryana High Court upheld the said order.

4. Learned counsel for the Petitioner has argued before us that Civil Suit No. 143 of 2010 in no manner concerns the Company M/s. Jhalani Tools (India) Ltd. The said Company is not even a party Defendant and no reliefs are claimed against the same. That being so, according to the learned Counsel, Section 446 of the Companies Act, 1955 (for short "the Act") would have no application inasmuch as the said Section would only apply to suits which are commenced and pending at the date of a winding-up order "against the Company". True, the purchase of the property was made in 2007 i.e. after a winding-up order was passed against M/s.

Jhalani Tools (India) Ltd., but, considering the fact that no relief was claimed against the Company in-liquidation, no leave was required Under Section 446 of the Act.

5. As against this, learned Counsel for Respondent No. 1 contended that Section 446 of the Act would be attracted even in cases where suits are filed by the Company in-liquidation. It was his contention that inasmuch as M/s. Morgan Signatures Towers Pvt. Ltd. had derived title from the Company in-liquidation, the suit, in substance, was by the Company in-liquidation; the sale being subsequent to a winding-up order being passed against M/s. Jhalani Tools (India) Ltd., consequently Section 446 would be attracted.

6. Section 446 of the Act states as follows:

446. Suits stayed on winding up order.- (1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding 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 Tribunal and subject to such terms as the Tribunal may impose.

(2) Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of-

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company (including claims by or against any of its branches in India);
- (c) any application made Under Section 391 by or in respect of the company;
- (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or rise in course of the winding up of the company;

whether such suit or proceeding has been instituted or is instituted or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960) (4) Nothing in Sub-section (1) or Sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."

7. It will be seen that leave of the Company Court would only be required, once a winding-up order is passed against a Company in suits or other legal proceedings which are "against the Company". We agree with the learned Counsel for the Petitioner that Civil Suit No. 143 of 2010 is not a suit "against the Company" inasmuch as the Company in-liquidation is neither a party to the suit nor is any relief being claimed against the said Company. On this short ground alone, we set aside the orders dated 19th January, 2011 and the impugned judgment dated 29th August, 2011 and allow this appeal. Consequently, the suit will be restored to the file and will be disposed of on merits. The appeal is allowed in the aforesaid terms. No order as to costs.