
(2005) 08 DEL CK 0092
In the Delhi High Court
Case No : Co. Appeal No. 26 of 2003

Mrs. Usha Anand and Another	Vs	APPELLANT
Dior International Pvt. Ltd. (In Liquidation)		RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Companies Act, 1956 — Section 457(1)

Citation : (2005) 123 DLT 619 : (2005) 84 DRJ 89

Hon'ble Judges : V.K. Jain, J; Rekha Sharma, J

Bench : Division Bench

Advocate : Rahul Mehra, for the Appellant; N.K. Kaul Naveen Kumar, Gaurav Anand, Anu Mehta and Meenakshi Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal contains a very interesting prayer and it will Therefore be appropriate to reproduce the same :

"Set aside the impugned order dated 4th March, 2003 in CA NO. 1137 of 2001 as also the Order dated 6th March, 2003 in CA NO. 1641 of 1999 and the earlier Orders referred to therein arising out of CP NO. 60 of 1994 whereby sale by private Contract of valuable immovable property has been permitted and sanctioned and ordered to be proceeded with...."

2. It will be seen from the aforesaid prayer that the appellant not only wants us to set aside the orders dated 4.3.03 and 6.3.03 but also all earlier orders which have been passed in Co. Petition No. 60/1994.

3. Any appeal arising out of an order passed by the learned Company Judge has to be filed within the prescribed period of limitation. No general prayer can be maintained, wherein, on the basis of one or two impugned orders an appellant can pray for setting aside of the previous orders passed by the company court. Therefore, the prayer as made, cannot stand and it has to be confined only to orders dated 4th March, 2003 and 6th March, 2003.

4. Coming to the impugned order dated 4.3.2003 in CP NO. 60/1994 we find that in the said order, the learned Company Judge recorded that the Company Court had passed an order dated 11th December, 2000 directing/permitting the sale of the property, i.e., Flat No.5, 6th floor, Satnam Apartment, Backbay Reclamation, Mumbai to the applicant / purchaser in CA NO. 1641/1999. The order dated 11th

5. December, 2000 was passed on the premise that the valuation of the property made by the valuer appointed pursuant to the order of the court was reasonable and the valuer had given a fair value of the same. Learned Company Judge also observed that the order passed on 11th December 2000 got delayed due to the purported claims of the erstwhile ex-Directors/applicants in CA 1137/01 that they were ready and willing to purchase the property in question for a larger sum of Rs.1,94,15,000/- and that the Official Liquidator was hand-in-glove with the applicant/ purchaser, namely, DCM Shriram Consultants Ltd who is tenant in the said property. Learned Company Judge further observed that the ex-Directors of the company were unable to procure such a price claimed by them and the Court had already noticed that the inability to bring a higher price would be construed as an attempt to delay the sale. Having observed thus, the Learned Company Judge preceded to deal with the submission of the appellant that it was mandatory to sell the property by public auction. It has been held that the offer of the tenant could not strictly be termed as private contract and that in any case a private contract was permissible in law as per Section 457(1)(c) of the Companies Act, 1956. It has been further held that in view of the facts and circumstances of the case and the offer made by the applicant who was a tenant in the aforesaid premises at a rate, which the valuer had found on the assumption that vacant possession of the flat was to be given, the price offered is fair.

6. So far as the impugned order dated 6.3.2003 is concerned it makes reference to CA 1641/99 in CP No.60/94 and then states that the said application stood already disposed of on 11.12.2000 but the effect of the order so passed was kept in abeyance owing to the offer made by the ex-Directors/ applicants in CA 1137/01 which came to be dismissed on 4.3.2003. Hence, by virtue of the order dated 4.3.2003 the sale of the property in question was confirmed.

7. It was contended by learned counsel appearing for the appellant that the order regarding valuation of the property attained finality only after the order dated 4.3.2003 was passed and he Therefore could raise a challenge to the same in the present appeal.

8. This appeal, to say the least, is an abuse of the process of Court. The order for valuation of the property was made by the Company Court on 3rd March, 1997 in CA NO. 105/96, in the following terms :-

"Before the offer of the company is considered, the Liquidator is directed to have the flat evaluated from approved valuer of the Bank and the valuation report thereafter to be filed in a sealed cover."

9. Pursuant to the aforesaid order, the valuation report in a sealed cover was filed by the Official Liquidator. The valuation report was obtained from M/s. Alfa Engineering Consultants and they valued the property at Rs. 1,14,75,000/-. We feel once, the exercise of valuation was done and that too as far back as in the year 1997 and the appellant having been given an opportunity to have its own valuation done and pursuant to that valuation opportunity having given to the appellant to purchase the property in terms of the said valuation but the appellant having failed to pay the sum themselves or to provide any other buyer, it simply demonstrates that the valuation report obtained by the appellant was of no credence. All that the appellant succeeded in doing was to stop the sale of the property from 1997 till 2005.

10. It is relevant to re-produce the order passed by the Company Court on 1st December, 2000:-

"CA NO. 1641/99 in CP NO. 60/94

The applicant, DCM Shriram Consolidated Limited is a company incorporated under the Companies Act. As per agreement dated 1.9.92 between the applicant company and DIOR International (company in liquidation), the applicant took the premises/flat no. 5, 6th floor, Satnam Apartment, Backbay Reclamation, Mumbai on a monthly rent of Rs. 25,000/- which included the fitting and fixture charges as well. At the time of entering into agreement, the applicant company paid a sum of Rs. 25,000/- as refundable interest free security deposit, which is refundable at the time of vacating the flat. The agreement was initially for a period of 33 months only. The lease was extended for a further period of three years on the rent of Rs. 25,000/- per month. The applicant also paid an additional amount of Rs. 20,00,000/- as interest free refundable security deposit. A memo of understanding was executed between the parties in this regard. According to the applicant, rent was being paid by the applicant regularly. The refundable interest free security amount of Rs. 45,00,000/- is lying with the company in liquidation.

In the above circumstances, the applicant has filed the present application praying that the applicant company be given preference to purchase flat no.5, 6th floor, Satnam Apartment, situated at Backbay Reclamation, Mumbai at reasonable market price for which the applicant company will adjust their deposit of Rs. 45,00,000/-. In the alternative, the applicant has prayed for a direction to the liquidator to pay stock refund to the applicant company their refundable security deposit amount of Rs. 45,00,000/- from the sale consideration of the flat at the time of vacating the flat. In the alternative, the applicant has also prayed for a direction to the Official Liquidator to pay stock refund the security deposit of Rs. 45,00,000/- to the applicant company immediately and take possession of the flat.

M/s. Alfa Engineering Consultants were appointed to value the property in question. As per the valuation made by them if vacant possession of the property

is available, the value of the property would be Rs. 1,14,75,000/- . The applicant is willing to purchase the property for the said price. The liquidator, who is present in court, submits that the valuation made by the approved valuer is reasonable and that the application may be allowed to purchase the property for the above mentioned price. The liquidator also submits that he has no objection to adjust the refundable interest free security deposit of Rs. 45,00,000/- from the price of the property. In other words, the liquidator has no objection to sell the property to the applicant for the price of Rs. 1,14,75,000 minus Rs. 45,00,000/- i.e. Rs. 69,75,000/-.

The liquidator has also filed an affidavit dated 1st November, 2000 admitting that the applicant has paid a sum of Rs. 45,00,000/- to the company in liquidation as security deposit. It is also stated that in compliance with this court's order dated 10.5.96, the Directors of the company in liquidation deposited with the liquidator Rs. 20,00,000/-, received by them in 1995. The liquidator orally submits that the balance sum of Rs. 25,00,000/- had been utilised by the company in liquidation.

Renotify for orders on 11th December, 2000."

11. It seems that thereafter the appellants filed an application before the Company Court, inter alias praying that the appellants be given preference to purchase Flat No. 5, on the 6th floor of Satnam Apartments at a reasonable market price. After hearing the parties, the learned Company Judge affirmed the order passed on 1st December, 2000 vide its order dated 11.12.2000. When the said order was passed on 11th December, 2000, why that order was not challenged by the appellant ?

12. Learned counsel appearing for the appellant has given an Explanation for non-challenging of order dated 11.11.2000 by stating that application for review was filed and Therefore it was not challenged in the appeal. What is of significance is that the review application was filed on 3rd July, 2001 which was much beyond the period of limitation. In any case when appeal is maintainable against an order passed by the Company Court and such a valuable right of the appellant was being affected it passes our comprehension as to why the appellants chose to remain silent and did not prefer an appeal. It appears to us that the order could not have been successfully assailed by the appellants as they were blowing hot and cold in the same breath.

13. From what has been noticed above it will be seen that the learned Company Judge at the instance of the appellant had got the re-valuation of the property done. Learned Judge also gave an option to the appellant to purchase the property itself or get another buyer for the price which, according to them, was the market price. The appellants however failed to either buy the property themselves or get a buyer and when the Company Judge proceeded further in the matter they never preferred an appeal. We Therefore feel that this appeal is in continuation of the dilatory tactics by the appellant. There is no merit in this appeal. Dismissed with costs quantified Rs. 25,000/- (Rupees Twenty Five

Thousand Only).