(2016) 06 DEL CK 0006

In the Delhi High Court

Case No : C.A. No. 950 of 2016 in CO.PET. No. 66 of 2012

M/s. China Trust Commercial Bank — APPELLANT

Vs

Lilliput Kidswear Ltd. — RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:

Citation : (2016) 231 DLT 277

Hon'ble Judges : Mr. Manmohan Singh, J.

Bench : Single Bench

Advocate : None, for the Appellant; Ms. Sakshi Jain with Mr. Piyush Sharma, Advocates, Mr. Satya Prakash Yadav with Mr. Rakesh K. Sharma, Advocates, Mr. Nayantara Narayan, Advocate and Mr. Ashish Makhija, Advocate for the OL, Mr. Vineet Sharma with Mr. Satish Aggarw

Final Decision : Disposed Off

Judgement

Mr. Manmohan Singh, J.—By way of this order, I propose to decide the application being C.A.No. 950/2016 on behalf of Sh. G.P. Dureja under Rule 6 and 9 of Companies (Court) Rules 1959, read with Section 151 CPC for seeking review/modification of the order dated 5th February, 2016 passed in present company petition in respect of CA No. 360/2016 & 361/2016.

2. The applicant had earlier moved an application bearing CA No. 361/2016 thereby seeking release of the vacant physical possession of the premises bearing Shop No. F-09, TDI Mall, Rajouri Garden, New Delhi (hereinafter referred to as the "said property") in favour of the applicant. In the said application it was stated that the applicant is the owner in respect of the said property comprising of first floor having carpet area 656.79 sq. ft. and 980.28 sq. ft super built up and had entered into a lease agreement dated 14th July, 2010 whereby the said property was given on lease to the appellant company for a period of five years. As per the terms of the said agreement, the duration of lease began from 1st June, 2010 on a monthly rent of Rs. 55,000/- exclusive of the service tax or any other Government levy, payable by the respondent to the applicant. The said

property had been sealed in pursuance to the liquidation proceedings arising out of the present proceedings by the official liquidator, thereby causing huge loss to the applicant who is legitimately entitled for the possession thereof being the bona fide and legitimate owner of the same.

3. The application has now been filed on the reason that the applicant has neither received any rent nor any other incidental charges since the premises has been sealed by the official liquidator without there being any fault on its part. It was also stated that the applicant shall suffer irreparable loss/injury in case the possession of the said property is not restored to the applicant being the legitimate owner of the same.

4. The predecessor Bench of this Court earlier disposed of application being C.A. No. 361/2016 vide its order dated 5th February, 2016. The relevant extract of the said order has been reproduced herein below:-

" .... CA No. 360/2016 and 361/2016.

By these applications de-sealing of immovable properties is sought, which according to the applicants, were leased out to the respondent company i.e. Lilliput Kidswear Limited. Mr. Makhija informs me that a provisional liquidator has been appointed by this court vide order dated 06.01.2014. I am also informed by Mr. Makhija that the respondent company has got its reference registered under the SICA with the BIFR. In these circumstances these applications cannot lie with this court. The applications are disposed of, with liberty to the applicants to approach the BIFR under Section 22 of SICA. Once consent is obtained, the applicants will be free to approach this court for appropriate relief in the matter. The applications are, accordingly, disposed of. ... "

5. It is contended on behalf of the applicant that the observation was made by the earlier Court under the mistaken belief that consent of the Board under The Sick Industrial Companies (Special Provisions) Act, 1985 is required for de-sealing of the property in question. It is an admitted fact that the property in question was leased out to the respondent company and the applicant is the owner of the said property. There is a force in submission of the learned counsel for the applicant as in view of the ratio laid down in LG Electronics Ltd. v. Usha (India) Ltd. & Anr. being EFA (OS) No. 16/2003 decided on 11th May, 2007, this Court had held that premises leased out to the sick industrial company would not become the property of the sick industrial company.

6. In almost similar situation, the Division Bench of this Court in Co.App. No. 6/2014 on 23rd November, 2015 had passed the following order:-

"1. On the 17th of April 2014, we had been informed that the matter was being settled between the appellant and the respondent (the petitioning creditor in the winding up proceedings). For this reason, we had directed that the Official Liquidator shall not take further action with regard to the winding up of the company till the next date of hearing. This order was continued by subsequent order passed on 12th August, 2014.

2. It appears that no settlement could be reached between the parties to the present appeal. In the meantime, the appellant has approached the Board for Industrial & Financial Reconstruction by way of a reference under the Sick Industrial Companies (Special Provision) Act, 1985. A submission has been made on behalf of the appellant that on account of registration of the appellant?s reference under Section 15 of the said enactment, winding up petition itself shall not continue to exist.

3. It is necessary to also note certain further developments. In the meantime, several property owners who had let out different premises to the appellant company, aggrieved by the fact that the company was paying no rental or use and occupation charges as well as the fact that, in some cases on account of the fact that lease agreements with the appellant stood expired by the efflux of time, approached the learned Company Judge for leave to prosecute their claims against the company. Some of these landlords had already initiated eviction and recovery proceedings against the company before the winding up petition came to be filed. These landlords have filed CM Nos. 12576/2014, 16879/2014, 16881/2014, 17415/2014, 6906/2015, 12435/2015, 21341/2015, 23096/2015 and 27907/2015 before us seeking leave to prosecute their claims against the company.

4. We are informed that the learned Company Judge has refused to consider the prayer of these landlords in view of the interim order passed by us on 17th of April 2014. We find that by the order passed on 17th of April 2014, we had only interdicted the Official Liquidator from taking further action with regard to winding up of the company which on that date related to taking over the properties of the company. We had not interdicted consideration of a prayer made by the third party before a learned Company Judge with regard to its claims against the appellant company. This position would subsist even on date.

5. So far as the appellant?s submission that in view of the registration of its reference, none of these matters can be proceeded with is concerned, it is open for the company to make such submission as well as any other submission it may have before the court or forum before which such prayer is made by the landlords/property owners.

6. So far as this court is concerned, without opining in any manner on the merits of the submissions made in these applications, the applications are disposed of with liberty to the applicants to avail appropriate remedy before the learned Company Judge or any other court or forum.

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7. The Official Liquidator is directed to place his list of expenses before the learned Company Judge who may consider a manner of appropriately securing the same in accordance with law.

8. The appellant company shall place affidavits of the assets of all directors of the company within four weeks from today before the company court with advance copy to the Official Liquidator.

List on 28th January, 2016.

Dasti under signature of Court Master."

7. In view of the settled law of this Court, which is further supported by the decision of the Supreme Court discussed at length in the aforesaid case law by this Court, to my mind, the property in question can be directed to be de-sealed by the direction of this Court by modifying the order dated 5th February, 2016 as there is no impediment in doing so from any corner much less Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.

8. The relevant observation of the Supreme Court in Shree Chamundi Mopeds Ltd v. Church of South India Trust Association CSI Cinod Secretariat, Madras AIR 1992 SC 1439 has been reproduced herein below:

"Eviction proceedings initiated by a landlord against a tenant company would not fall in categories (i) and iii) referred to above. Do they fall in the second category which contemplates proceedings for execution, distress or the like against any other properties of the industrial company."

9. Even the applicants have no other efficacious remedy except to invoke the jurisdiction of this Court.

10. Thus, the order dated 5th February, 2016 is modified. The directions are passed to the official liquidator to remove the goods/articles lying in the said property bearing Shop No. F-09, TDI Mall, Rajouri Garden, New Delhi within 3 weeks from today and inform the Court so that on verification, the possession of the said property be handed over to the applicant on the next date. The application being C.A. No. 50/2016 is disposed of.

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11. List this matter on 21st July, 2016 for directions.

12. Copy of this order be given Dasti to all the concerned parties under the signatures of Private Secretary.

