(2012) 10 DEL CK 0171

In the Delhi High Court

Case No : CO. A (SB) 39 of 2009

M/s Rohitasha Movies APPELLANT

Vs

M/s JVG Finance Limited RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Registration Act, 1908 — Section 17
Reserve Bank of India Act, 1934 — Section 45
Transfer of Property Act, 1882 — Section 54

Citation : (2013) 133 DRJ 94

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : T.S. Chaudhary, for the Appellant; Srinjoy Banerjee, Advocate for the RBI, Mr. Rajiv Bahl, for the Official Liquidator and Mr. Yashpal Singh, Advocate for Mr. V.K. Sharma, Ex-Director, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the order dated 05.4.2006 passed by the Thareja Committee (appointed under the order of

this Court dated 22.7.2004) vide which in view of the documentary evidence adduced by the appellant (Rohitasha Movies through its proprietor

Mr. Suresh K. Grover) a finding had been returned that the appellant has failed to establish his title to the immovable properties; his claim should

be rejected. The relevant extract of the Thareja Committee is reproduced hereinafter as under:

The alleged Memorandum of Understanding is alleged to be between JVG Group of Companies and M/s Rohitasha Movies represented by sole

Proprietor, the Respondent. There is no seal of the company on this document although at the end the document describes ""signed, seated and delivered by the within named company M/s JVG Group of Companies of companies in presence of...."" JVG Group of Companies is no person in

the eyes of law to transfer or agree to transfer the flats as is claimed by the Respondent. Even according to V.K. Sharma the flats were acquired

from M/s JC Constructions Company in the name of JVG Finance Ltd. Therefore if at all there can be any transfer of any property or the flat in

question it can be by M/s JVG Finance Ltd alone represented by its Board of Directors and the seal of the company M/s JVG Finance Limited.

There is no seal. Alleged signatures of Sh. V.K. Sharma and also of Respondent are of no consequence. A copy of the Agreement to Sell has also

been submitted which is allegedly executed between the Respondent and Mrs. Priya Suresh Grover. This document states that Sh. Suresh Grover

has agreed to transfer the property and the purchaser Mrs. Priya Suresh Grover has agreed to purchase the property against certain liabilities

payable to the seller. Nothing in the document has been shown what is the liability. The amount of the liability has not been mentioned. In the

document it is stated that professional charges in respect of Hindi Feature Film ""Mukka"" which is treated therein as the full and final consideration

against the said flat and there is no liability. According to the document the peaceful vacant possession of the flat has been delivered to Priya

Grover on the other conditions in the document and in the form of no objection.

This document too is not registered with any authority. Lastly an electricity bill of BSES Ltd of 15.10.2001 was submitted. The Bill is in the name

of Mrs. Priya Grover.

From the documents assuming they are genuine, the Respondent has left no interest in the property vis-ï¿½-vis flat No. 302, Panchamrut, Off Yari

Road, Varsova, Andheri, Mumbai. It is Priya Grover who can have some interest. A statement of account of Bank of Punjab is on record.

According to the statement a sum of Rs. 50.00 Lacs has been credited in the account of Rohitasha Movies by clearing ZN OC/SET/25 on

25.6.96. This entry the Respondent claims pertains to M/s JVG Group of Industries. There is no material on record to suggest this as per the

statement received from the Bank. Certainly, the Hand Bill indicates that advertisement ""JVG presents Suresh Grover''s Dhall"" have been attached

alongwith audio cassette and CD of film Dhaal. If what is stated is correct, then it is a business transaction. There is no material to show that such

transaction was entered actually. No Income Tax record or record of other agencies is produced to show the genuineness of what is claimed by

the Respondent. Even record that Rohitasha movies is propship concern as claimed is established.

The documents on which reliance is placed by the Respondent have not been executed in accordance with law nor the documents show the

consideration for which the flat in question was agreed to be transferred. A Memorandum of Understanding is of no consequence in the matter of

transfer of immovable property. An immovable property can be transferred in accordance with the Registration Act and Stamp Act. The

agreement that too in the form of Memorandum of Understanding confers no title. The Memorandum of Understanding also mentions about the flat

No. 202 in which, according to the other documents received, one Shampa Thapar is there. If there is a separate agreement of Shampa Thapar

there can not be an agreement of the same flat with the Respondent as is mentioned in the alleged Memorandum of Understanding. It seems that

this document has been created to defeat the bonafide depositors of JVG Group of companies and as such there is no seal of the company. M/s

JVG Finance or name of JVG Finance in the document. The document also do not mention about the resolution of the Board of Directors of the

company. It is as such the transferee name is of JVG Group of Companies and not of JVG Finance Ltd. The claim of the Respondent therefore

can not be recognized. In any case, the Respondent himself claims in the statement made to Sh. J.K. Jolly on record and also in the alleged

agreement for sale flat belongs to Mrs. Priya Suresh Grover which document too does not show any consideration. As such the Respondent has

no locus-standi.

In view of the foregoing facts I find that there is no merit in the claims of the Respondent.

The claim is rejected.

Reply has been filed by the Official Liquidator. Reply has also been filed by the Company through its director Mr. V.K. Sharma.

2. Contention of the appellant is that M/s JVG Group of Companies through its Director Mr. V.K. Sharma had entered into an Memorandum of

Understanding (MOU) dated 30.5.1996 with the appellant i.e. Rohitasha Movies through its sole proprietor Mr. Suresh K. Grover. In terms of

this document the producer i.e. the appellant would produce a Hindi feature film titled as ""Dhaal"" within one year from the date of the execution of

this MOU. Certain other terms were incorporated in this MOU which included the fact that the company had paid a sum of Rs. 50 lacs to the

producer on the execution of this MOU and physical possession of four flats i.e. Flats No. 202 and 302 at Panch Amrut Apartment, Off Yari

Road, Versova Andheri, Mumbai and Flats No. 102 and 302, Panchmukhi Apartment, Off Yari Road, (Panch Marg), Versova, Andheri, Mumbai

shall be handed over in favour of the producer/appellant within one year from the date of the release of the said film. Submission is that this amount

of Rs. 50 lac has been credited into the account of Rohitasha Movies on 25.6.1996 (Annexure A-5) evidencing the fact that this MOU had been

acted upon. Further submission of the appellant is that this film ""Dhaal"" was released on 12.11.1997. Thereafter an agreement to sell dated

10.12.1997 was entered into between JGV Finance Ltd. through its Chairman V.K. Sharma and Rohitasha Movies through its proprietor Mr.

Suresh K. Grover. In terms of this MOU it had been agreed that two flats i.e. Flats No. 202 and 302 situated at Parchamrut Apartment, Off Yari

Road, Andheri, Mumbai have been transferred to the purchaser who shall henceforth be treated as exclusive owner of the said properties.

Attention has been drawn to para 15 of this agreement to sell wherein reference has been made to the aforenoted two flats of which possession

had been handed over by the company to the appellant; the other two flats i.e. the Flats No. 102 and 302, Panchmukhi Apartment, Off Yari

Road, Versova, Andheri, Mumbai were given back to the vendor. Attention has also been drawn to para 11 of the said agreement to sell wherein

it was confirmed that the vendor is permitted to enter into this agreement with the purchaser by virtue of a resolution passed by the Company M/s

JVG Finance Limited.

3. It is these two documents which have been relied upon by the appellant to establish his title of the aforenoted two flats.

4. Pursuant to this a second agreement was thereafter entered into between Mr. Suresh K. Grover and his wife Ms. Priya Grover which was on

01.7.1998 wherein he had transferred Flat No. 302 in favour of his wife Ms. Priya K. Grover. Submission of the appellant is that the title of both

the aforenoted flats has to be validated in his favour and the recommendation of the Thareja Committee that the documentary evidence (as

aforenoted) filed by the appellant does not establish his title to the said two properties is an incorrect finding; this be set aside.

5. In the reply filed by Mr. V.K. Sharma to the aforenoted application he has denied his signatures on the said documents; his submission is that

these properties belong to the company and the appellant had in fact betrayed the trust of V.K. Sharma by taking undue advantage of the fact that

V.K. Sharma was entangled in a legal amiss; MOU dated 30.5.1996, agreement to sell dated 10.12.1997 have been denied; submission of V.K.

Sharma being that they have been created by the appellant unlawfully to usurp the aforenoted flats. Submission qua the sum of Rs. 50 lac is that

this payment was made by the respondent to the appellant in consideration of the promise made by the producer that he would exhibit the banner

of the J.V.G. Group of Companies in his movie ""Dhaal""; nothing else remained to be paid by the company thereafter.

6. The Official Liquidator has also disputed the claim of the applicant; submission being that on 10.10.1997 the Reserve Bank of India under its

powers u/s 45 MB of Reserve Bank of India Act, 1934 (hereinafter referred to as the Act) had restrained the company i.e. the JVG Finance

Limited from selling, transferring, creating any charge or in any manner transferring its properties without the prior permission of the bank.

Submission being that this order was well within the knowledge of V.K. Sharma and as such V.K. Sharma had no authority to act on behalf of the

company qua the assets of the company and the agreement to sell which was on a date later in time of i.e. 10.12.1997 could not have been

entered into by V.K. Sharma in view of this restraint order dated 10.10.1997. The fact that V.K. Sharma was well aware of the restraint order

dated 10.10.1997 is an admitted fact. That apart admittedly no Board Resolution of the company is on record authorizing V.K. Sharma to act on

behalf of the Company. In the absence of which this transaction cannot be binding upon the company; reference to the Board Resolution in fact

had been made in the agreement to sell itself; to a specific query put to the Learned Counsel for the respondent whether this Board Resolution had been seen by him he is evasive.

7. That apart a transfer of an immovable property of the value of more than Rs. 100/- requires a compulsory registration. The mandate of Section

17 of the Indian Registration Act has admittedly been not complied with. It is also not a stamped document i.e. either the MOU dated 30.5.1996

or the subsequent agreement to sell dated 10.12.1997. This agreement to sell in para 15 in fact clearly states that the charges towards stamp duty

and towards registration for transferring the said flats in favour of the purchaser shall be shared by the vendor and purchaser in equal proportion.

No document after 10.12.2007 has admittedly been executed between the parties thereafter. The aforenoted MOU and agreement to sell do not

in any manner confer any title on the appellant; it cannot transfer any right in the immovable property in favour of the appellant.

8. A ''sale'' has been defined u/s 54 of the Transfer of Property Act, it clearly postulates that a transfer of an immovable property of the value of

more than Rs. 100/- and upwards can only be made only by a registered document.

9. Record shows that the winding up petition against the Company JVG Finance Ltd. was preferred by the Reserve Bank of India on 04.6.1998.

10. Record also shows and it is an admitted fact that on 10.10.1997 the Reserve Bank of India had passed an order u/s 45 MB of the Act

restraining V.K. Sharma and JVG Finance Limited from transferring its assets or properties or encumbering them in any manner. The agreement to

sell dated 10.12.1997 which is of after the date of the restraint order dated 10.10.1997, apart from the fact that V.K. Sharma had disputed his

signatures on the MOU and agreement to sell even otherwise did not confer authority upon V.K. Sharma to act on behalf of the company. There

was also no Board Resolution forthcoming. The appellant also did not bother to check the Board Resolution. That apart, the unstamped MOU and

unregistered MOU and agreement to sell not even bearing the seal of the company could not transfer any interest in an immovable property.

11. In J.K. (Bombay) P. Ltd. Vs. New Kaiser-I-Hind Spg. and Wvg. Co. Ltd. and Others, and M/s Juggilal Kamlapat Bankers, Kanpur and

Others. (creditors), the Apex Court had noted that once a winding up order has been passed no new rights can either be created and no uncompleted rights can be completed as these are the proceeds of the assets to be distributed amongst the creditors and workmen pari passu. The

second agreement to sell dated 10.12.1997 vide which Suresh K. Grover had transferred flat No. 302 to his wife Priya Grover is also an invalid

document; when Suresh Grover did not have any title to the property, the question of his transferring a better title to Priya Grover did not arise.

The electricity bill in the name of Priya Grover will not establish title in her favour.

12. As such the submission of the appellant at this stage that the company should validate these transactions in his favour is an argument bereft of

all merit. This appeal being devoid of merit is accordingly dismissed.

