

(2003) 09 GUJ CK 0062

In the Gujarat High Court

Case No : Company Application No. 220 of 2001 in Company Petition No. 147 of 2000 with Company Application No's. 44 of 2001 and 176 of 2003 in Company Petition No. 147 of 2000

Nigam Priyakant Maniar

APPELLANT

Vs

Reserve Bank of India

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Companies (Court) Rules, 1959 — Rule 6, 9
Companies Act, 1956 — Section 2(11), 441, 443(1), 446, 446(2)
Reserve Bank of India Act, 1934 — Section 45I

Citation : (2004) 122 CompCas 579 : (2004) 54 SCL 437

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : C.L. Soni and D.S. Vasavada, for the Appellant; Amar N. Bhatt, for Respondent No. 1, D.S. Vasavada, for Respondent No. 1, R.M. Desai, for Respondent No. 1, Ashwin L. Shah, for Intervener, Swati Soparkar, for Respondent No. 1, Bharat R. Pandya and Official Liquidator for Respondent Nos. 1 and 2, for the Respondent

Judgement

K.M. Mehta, J.—Nigam Priyakant Maniar, applicant has taken out this Judge's Summons with a prayer that this Court may direct the Official Liquidator not to seal the residential premises of the applicant i.e. Flat No.18, Haridwar Apartment, 23 Patel Society, Gulbai Tekra, Ellisbridge, Ahmedabad - 06 (hereinafter referred to as the suit property") as per the order dated 20.7.2001 passed in Company Petition No.147 of 2000 by either modifying the said order or lifting direction qua his residential flat.

2. The applicant has also filed Company Application 176 of 2003 in Company Petition No. 147 of 2000 in which the applicant has prayed that Shri Rajiv Vastupal Mehta may be impleaded as party opponent no.3 in Company Application No.220 of 2001 and further prayed that this Court may be pleased to summon Shri Rajiv Vastupal Mehta for his appearance before this Court on the

day fixed and may examine said Shri Rajiv Vastupal Mehta in respect of the suit property and also in respect of the amount of Rs.14.00 lakhs (Rupees Fourteen Lakhs) being the consideration received by him for sale of above stated Flat No.18 to the applicant. The applicant has further prayed that this Court may be pleased to direct Shri Rajiv Vastupal Mehta to deliver property being amount of Rs.14.00 lakhs received by him towards consideration from the applicant for sale of Flat No.18 belonging to the company to the Official Liquidator and further prayed that this Court may be pleased to direct that on Official Liquidator receiving above stated amount of Rs.14.00 lakhs from Shri Rajiv Vastupal Mehta, the Official Liquidator shall confer legal title of Flat No.18 to the applicant.

3. In support of both the aforesaid Judge's Summons, the applicant has filed necessary affidavits.

4. For appreciating the aforesaid contention, I will have to set out few facts giving rise to this matter as under:

Background of the case:

4.1. M/s.Piramal Financial Services Limited (the company in liquidation or PFSL) was a Company incorporated on 8.10.1992. Reserve Bank of India (hereinafter referred to as "R.B.I.") had issued a certificate u/s 45I(f) of the Reserve Bank of India Act, 1934 that it was a non-banking financial company and it was bound by the directions issued by the R.B.I. as amended from time to time.

4.2. R.B.I., a body corporate, established by the Reserve Bank of India Act, 1934 (hereinafter referred to as the "R.B.I. Act") had filed winding up petition on 9.5.2000 under the provisions of R.B.I. Act before this Court for winding up of PFSL.

4.2(A). Thereafter this Court passed an order on 10.5.2000 in Company Petition No.44/01 and ordered that the Official Liquidator attached to this Court be appointed as Provisional Liquidator of Piramal Financial Services Limited (the company in liquidation).

4.3. This Court by the judgment and order dated 20.10.2000 (since reported Reserve Bank of India Vs. Piramal Financial Services Ltd. reported in (2000) (4) GLR 3476) admitted the said petition and appointed Provisional Liquidator to the said company.

4.4. Thereafter, this Court by its order dated 20.3.2001 passed an order winding up PFSL and the Official Liquidator who was appointed as Provisional Liquidator earlier by the order dated 20.10.2000 was directed to be appointed as Liquidator of the company with usual powers under Companies Act, 1956.

4.5. Thereafter this Court by order dated 27.7.2001 passed in Company Application No.44 of 2001 directed the Official Liquidator to take possession of the properties and assets particularly Flat No.8, 16, 17 & 18 situated at Haridwar Apartments, Panchwati, Nr. Gulbai Tekra, Ahmedabad, (Shubh Construction) i.e.

one of the Schedule-A of the report of the Official Liquidator dated 12.7.2001 in the aforesaid company application.

5. In view of the aforesaid Official Liquidator Report, the Official Liquidator had deputed his representative on 8th August, 2001, for taking possession of Flat Nos. 8, 16, 17 and 18 situated at Haridwar Apartment, Panchvati, Near Gulbai Tekra, Ahmedabad, after giving due notice to the persons concerned. The Official Liquidator took possession of the aforesaid flats which were not used i.e. Flat Nos.8, 16 & 17. The official liquidator has also submitted its minutes/reports in this behalf.

6. It may be noted that so far as Flats No.8, 16 and 17 are concerned, this Court has dealt with the said matter separately in the case of Official Liquidator Report No.81/01 in Company Petition No.147 of 2000. This Court gave judgment on 21st March, 2003. In the said matter this Court in para 9.26, 9.27 and 10 observed as under:

6.1 "Para 9.26 In view of the same, order of winding up was passed in Company Petition No.147 of 2000, winding up commenced from 9.5.2000. After that when the order was passed in Company Petition No.296 of 1999, it commenced from 18.10.1999. The impugned transfers have been effected on 7.5.1999 which date is within six months previous to 18.10.1999 and as such, the same are covered by Section 531 of the Act.

6.2 "Para 9.27 I have considered Sections 441 and 531 of the Companies Act. I have also considered judgment in the case of J.K. (Bombay) P.Ltd. Vs. New Kaiser-I-Hind Spg. & Wvg. Co.Ltd. reported in (1970) 40 Comp Cas 689 particularly on pages 713-714 and also Division Bench judgment of this Court in the case of Bank of Maharashtra Vs. Official Liquidator (supra) and other decisions cited at the Bar. I have also considered the judgments of the Hon'ble Supreme Court. I have also considered the submissions regarding flat Nos.8, 16 and 17. It is an admitted fact that the transactions have been entered into in May, 1999 when the amount was not due and payable by the company in liquidation to the purchaser. In spite of the fact that there was no legal threat or compulsion, the company in liquidation has voluntarily transferred the flats in question, namely, flat Nos.8, 16 and 17 to the purchasers. The company in liquidation has not acted bona fide or in good faith and the transactions entered into by the company in liquidation with the purchasers amount to fraudulent preference as set out u/s 531 of the Companies Act and interpreted by various judgments in this behalf. In view of the same, the flats in question are not transferred in favour of the purchasers as the transactions between the company in liquidation and the purchasers amount to fraudulent preference in the eye of law. Therefore, the property in question, namely flat Nos. 8, 16 and 17, vests in the Official Liquidator and the transactions entered into by the company in liquidation regarding the property in question with the respective purchasers are contrary to Section 531 of the Companies Act. The said transactions are illegal, bad and liable to be quashed. Ultimately, the property in question, namely flat

Nos.8, 16 and 17, vests in the Official Liquidator. The Official Liquidator is directed to seal the property in question and I do not accept the request of the Official Liquidator to desal the flats in question for the reasons stated in the judgment.

6.3. In view of the aforesaid judgment the Court had held that the transaction between PFSL (company in liquidation) with owners of Rajiv Enterprises Pvt.Ltd were fraudulent, illegal and liable to be set aside. (So far Flat Nos.8, 16 & 17).

PRESENT CONTROVERSY:

7. It may be noted that, as regards flat No.18, though it was the subject matter of the earlier order of this Court, the Official Liquidator could not take possession of the said property on the ground that when Liquidator went to the site on 8.8.2001 one Mr.Maniar had already possession of the property in question. The official liquidator did not take possession of Flat No.18 at that time. So in my earlier judgment and order dated 21st March, 2003, I did not deal with the question of Flat No.18. Now in this matter, I am considering the matter only pertaining to flat No.18 (suit premises).

7.1. The applicant has stated that the applicant is an owner of the residential premises - suit premises. He submitted that before purchasing the suit property in question, he had given an advertisement in Gujarat Samachar dated 24th May, 1999. The copy of the said advertisement has been produced by the applicant. He has further stated that before purchasing the above flat, the applicant requested his Advocate Mr.Amar G.Shah for title clearance report and thereafter his advocate Mr.Amar Shah started making search in the office of Sub.Registrar to find out whether the property in question was free from encumbrances or not. However, before the report was received, Shri Rajiv Vastupal Mehta had executed a sale deed in his favour. The said sale deed was executed on 7th June, 1999, and he had received the title clearance report on 28th June, 1999. The advocate has opined that the property in question is clear and marketable and free from all encumbrances.

7.2. The applicant has further stated that a registered sale deed was executed between him and Rajiv Vastupal Mehta and for executing the sale deed he had paid Rs.14.00 lakhs by cheque to Shri Rajiv Vastupal Mehta in this behalf. The applicant has stated that Rs.1.00 lakh were paid by him on 15.5.99 and Rs.13.00 lakhs were paid by him on 3.6.99. The applicant has also stated that even in the share certificate which was given to applicant an entry was made about the transfer by "Shasya Association". It has been further stated that he had received the said consideration from his mother who had sold the plot No.220, Manek Baugh Society, Ambawadi, Ahmedabad, for Rs.31,40,462/- and he being the only son, his mother had given Rs.15,50,000/- to purchase the flat in question. The applicant, therefore, says that he had adequate consideration from the date on which he had purchased the property in question. The applicant has, therefore, stated that he has paid full value consideration to his vendor and his vendor has

also paid the full consideration in this behalf and, therefore, his title is legal and valid in this behalf. The applicant submitted that in view of the same he had a legal and valid title of the property in question.

7.3. The applicant has further stated that from the date on which he has purchased the flat from Shri Rajiv Vastupal Mehta, Shri Rajiv Vastupal Mehta had a valid and legal title and M/s.Piramal Financial Services Ltd. had created charge on four flats being Flat Nos.8, 16, 17 and 18. The said flats were allotted to the company by Shashya Association at Haridwar Apartment. The company had created charge on the said flats in favour of HDFC to secure term loan of Rs.50 lakhs on 24.10.1996 and the said charge was registered on 20.1.97.

7.4. Thereafter Mr.Rajiv Vastupal Mehta had helped the company to come out of the above stated charge and ultimately the company could satisfy the charge created by it on 7.5.99. Thus, on 7.5.99 the charge/mortgage created on the four flats was released and it was fully satisfied. In this respect, the company had also issued notice in Form No.17 under the provisions of the Companies Act, 1956, stating that the charge on the above stated four flats has been fully satisfied and not only that but even HDFC has also given certificate about release of the charge of above stated four flats.

7.5. The applicant has further stated that on 1.4.99 a resolution was passed by the Board of Directors of the Company by which the Chairman and Managing Director Shri Ashish P.Patel was authorised to purchase, sell, acquire, release, develop etc. the property movable as well as immovable of the company. Pursuant to the said resolution, the above stated four flats were sold to Shri Rajiv Vastupal Mehta and out of four flats, the applicant had purchased Flat No.18 from Shri Rajiv Vastupal Mehta.

7.6. Mr.C.L.Soni, learned advocate for the applicant has agreed to show his bona fide that if this Court appoints any independent valuer of the flat in question to determine the value as on June 1999 and if valuer comes to the conclusion that the property was more valuable than Rs.14.00 lakhs, then if Mr.Rajiv Vastupal Mehta pays Rs.14.00 lakhs to Official Liquidator then whatever is short fall amount of the said flat he is prepared to pay the same to Official Liquidator provided Official Liquidator gives a legal and valid title of the flat in this behalf.

8. It may be noted that by the judgment of this Court, which has been referred to earlier, transaction between company and Rajiv Vastupal Mehta by which Rajiv Vastupal Mehta had purchased the property in question dated 7th May, 1999, is held to be bad in law i.e. fraudulent preference.

9. Mr.Roshan Desai, learned advocate for the Official Liquidator stated that when the transaction between the company in liquidation and Shri Rajiv Vastupal Mehta is held to be illegal and bad in law, the subsequent transaction between Rajiv Vastupal Mehta and applicant is also bad in law and the applicant cannot have any better title in this behalf. However, he has submitted that, it is no doubt true that the applicant has paid consideration worth Rs.14.00 lakhs to Rajiv

Vastupal Mehta and purchased the same.

10. At the time of hearing of this application, Mr.Roshan Desai, learned advocate has invited my attention to Section 446 of the Companies Act and also the above referred earlier judgment of this court. He submitted that in view of this aforesaid judgment of this Court in matter of Official Liquidator Report 81/2001 decided on 21st March, 2003, the transaction between the company and Rajiv Vastupal Mehta is held to be a fraudulent preference and the said transaction is void and bad in law. Once Rajiv Vastupal Mehta has not a valid legal title naturally he cannot transfer any legal or valid title in this behalf. In view of the same, he submitted that the title of the applicant is an imperfect title in this behalf.

11. As regards jurisdiction of the court, he has invited my attention to Sec.446 of the Companies Act and also judgment of Madras High Court in the case of Kasturi And Sons Ltd. Vs. F.D.Stewart Pvt.Ltd. reported in 113 Company Cases p.438.

Contention of Mr.Rajiv Vastupal Mehta:

12. When the Court issued notice in Company Application No.176 of 2003, Shri Rajiv Vastupal Mehta had appeared and had filed affidavit in this behalf. Mr.S.N.Soparkar, learned Senior Counsel appeared for Rajiv Vastupal Mehta. The learned counsel further submitted that the dispute between Rajiv Mehta and Nigam Maniar is purely in a realm of civil court jurisdiction and, therefore, this court may not entertain the application filed by Nigam Maniar in this behalf. He further submitted that if Mr.Maniar has any grievance against Mr.Rajiv Mehta, he can always file civil suit against Rajiv Mehta in this behalf for ventilating his grievance against him. He submitted that when this Court came to the conclusion that the transaction between the company and Rajiv Vastupal is a fraudulent transfer, jurisdiction of the company court ends. He submitted that against the main judgment of this court (i.e. OL Report 8/2001 decided on 28.3.2003), Mr.Rajiv Vastupal Mehta has filed appeal before Division Bench of this Court. However, the same is pending for admission and no order has been passed by the Division Bench in this behalf. In view of the same, this Court will have no jurisdiction to hear the matter at this stage. He has submitted that in no clauses of Sec.446(2) the present case falls and, therefore, the court may not entertain this application and this Court may reject the application filed by the applicant.

13. It was further submitted that Section 477 deals with the power to summon persons suspected of having property of company. He further submitted that the property sold to the applicant was purchased by Rajiv Vastupal Mehta for a valuable consideration and the property sold was not in his custody and possession at the relevant time and, therefore, Section 477 does not apply in this behalf. He has stated that the flat is in the custody of the applicant and it does not belong to Shri Rajiv Mehta and, therefore, Section 477(6) does not apply in this case.

Contention of Mr.Ashwin L.Shah on behalf of Interveners:

14. It may be noted that when the earlier OLR was heard, learned advocate Mr.Ashwin L.Shah appeared for some of the creditors and he had very ably assisted the court in the earlier matter. In view of the same, this Court also passed the order that for intervener, Mr.Ashwin L.Shah, learned advocate, may appear in this case also to assist the Court. Pursuant to the order dated 16th July, 2003, Mr.Ashwin L.Shah, learned advocate had appeared on behalf of some of the interveners. He has invited my attention to Section 446 of the Companies Act and also the judgment of the Hon"ble Supreme Court in the case of Sudarsan Chits (I.) Ltd. Vs. O.Sukumaran Pillai and others reported in 58 Company Cases p.633 in which the Hon"ble Supreme Court (Per D.A.Desai, J.) also considered the jurisdiction to entertain application under Sec.446 of the Companies Act, particularly on page 637, 638, 639 and 640 the Hon"ble Supreme Court observed like this:

14.1 "To save the company which is ordered to be wound up from this prolix and expensive litigation and to accelerate the disposal of winding-up proceedings, Parliament devised a cheap and summary remedy by conferring jurisdiction on the court winding-up the company to entertain petitions in respect of claims for and against the company. This was the object behind enacting s.446(2) and, therefore, it must receive such construction at the hands of the court as would advance the object and at any rate not thwart it. (Page 637, 638)

14.2 xxxxxx It specifies the contours of the jurisdiction of the court which is winding up the company. It confers special jurisdiction on the court which is winding up the company to do things that are set out in the various sub-clauses notwithstanding anything contained in any other law for the time being in force. Section 446(2) thus conferred special jurisdiction on the court winding up the company which otherwise it may not have enjoyed. The "court" in the Companies Act is defined in s. 2(11) to mean with respect to any matter relating to a company (other than any offence against this Act), the court having jurisdiction under the Act with respect to that matter relating to that company, as provided in s.10. (page 638)

14.3 xxxxxxxx Undoubtedly, s. 446(1) manifests the legislative intention that the procedure thereunder prescribed could be availed of when the winding up order has been made or where the official liquidator is appointed as the provisional liquidator. Section 446(1) envisages two situations in which the court will have jurisdiction to make the order thereunder contemplated. These two situations are where a winding-up order has been made or where the official liquidator has been appointed as provisional liquidator. The first of the two situations envisages an order for winding up of the company having been made and which is subsisting. (page 639)

14.4 xxxxxxxx Sub-section (2) of s.446 confers jurisdiction on the court which is winding up the company to entertain and dispose of proceedings set out in cls. (a) to (d). The expression "court which is winding-up the company" will comprehend the court before which a winding-up petition is pending or which has

made an order for winding-up of the company and further winding-up proceedings are continued under its directions. Undoubtedly, a look at the language of s.446(1) and (2) and its setting in Part VII, which deals with winding-up proceedings, would clearly show that the jurisdiction of the court to entertain and dispose of proceedings set out in sub-cls.(a) to (d) of sub-s.(2) can be invoked in the court which is winding up the company. (page 639, 640)

14.5 xxxxxxxx As noted earlier, winding up proceedings dragged on for decades with no end in sight and with no benefit to the creditors and contributories of the company. To accelerate the process of winding up so as to bring them to an end, this sub-section was amended in its present form in 1960 conferring jurisdiction on the court winding up the company to entertain, amongst others, any suit or proceeding by or against the company or any claim made by or against the company. If therefore, a winding-up petition is pending, meaning thereby that an official liquidator is appointed as provisional liquidator which is a stage in the process of winding up, the court before which such proceeding is pending can be styled as a court winding up the company and ipso facto it would have jurisdiction to entertain the proceeding enumerated in cls.(a) to (d) of sub-s.(2) of s.446." (page 640).

15. Mr.Ashwin L.Shah, learned advocate has submitted that in view of the aforesaid observation made by the Hon"ble Supreme Court, the Court has jurisdiction in this behalf. He has further submitted that sub-sec.(2) of Sec.446 provides that notwithstanding anything contained in any other law for the time being in force, the court which is winding up the company shall have jurisdiction to entertain or dispose of the matters referred to therein. He has also relied on another judgment of this Court in the case of Rajratna Naranbhai Mills Co.Ltd (in liquidation) Vs. New Quality Bobbin Works reported in 43 Company Cases 131 particularly on page 144 where this Court observed as under:

"Section 446(2) is more explicit in terms and confers jurisdiction upon the High Court to entertain all the questions that arise in a winding up. Where the particular sale of the property of the company is void as having been made after commencement of the winding-up proceedings is necessarily a question that arises in winding up and such a question can be examined and disposed of at the instance of the liquidator by the High Court. All the matters legally falling within the scope of section 446(2) must be entertained by the High Court and it is implicit in the provisions contained in section 446(2) that elaborate proceedings by way of suit involving time and expense to the detriment of the ultimate interests of the company in liquidation were not contemplated."

15.1. In view of the aforesaid decision, he has submitted that this Court has jurisdiction. He submitted that once the court already held that transaction between company and Rajiv Mehta is illegal, naturally the transaction entered into between Rajiv Mehta with the applicant can be considered by this Court.

15.2. The learned advocate further submitted that in this case the applicant has

paid Rs.14.00 lakhs to Rajiv Vastupal Mehta which has been paid by cheques. The transaction between company in liquidation and Rajiv Vastupal Mehta was held to be fraudulent preference by this Court and, therefore, naturally the transaction between Rajiv Vastupal Mehta and the applicant may also be held to be bad in law. But in this case the applicant is unnecessarily suffering a loss because he was not aware about the earlier transaction and he has bonafidely and genuinely paid Rs.14.00 lakhs in this behalf. With a view to give complete justice to applicant he stated that over and above Sec.446 this Court must exercise inherent powers and mould the relief and try to give justice to the applicant.

15.3. Learned counsel has referred to Section 643 of the Companies Act, 1956 which provides power of Supreme Court to make rules. He has stated that Section 643 of the Act provides for the Supreme Court, after consulting the High Courts, shall make rules providing for all matters relating to the winding up of the companies and may make rules providing for all such matters as may be prescribed. Clause (b) of Section 643 provides that Supreme Court may make rules consistent with the Code of Civil Procedure, 1908 as to the mode of proceedings to be had for winding up a company in High Courts and in Courts subordinate thereto. Sub-clause (v) of clause (b) of Section 643 provides generally for all applications to be made to the Court under the provisions of this Act. He, therefore, submitted that in exercise of the said power under Sub-section (1) and (2) of Section 643 of the Companies Act, 1956 the Supreme Court of India, after consulting the High Court, has made Rules, namely, the Companies (Court) Rules, 1959.

15.3(A). Under the provisions of this sub-section read with Rule 6 of the Companies (Court) Rules, 1959 the provisions of the CPC apply to a proceeding under the Act "in so far as they are applicable".

15.3(B). He has also referred to Rule 9 of the said Rules which provides as follows:

"Rule 9 Inherent powers of Court:- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

15.3(C). Rule 9 of the Companies (Court) Rules must therefore be construed in conjunction with sec.643 of the Companies Act, 1956. Section 643 of the said Act has a direct bearing on interpretation and applicability of Rule 9 invoked in this behalf as stated above. Section 643 of the Companies Act, 1956, enables the Supreme Court to make rules providing for all matters relating to the winding up of companies and for other matters specified therein.

15.4. The learned advocate has also relied upon the judgment of the Madras High Court in the case of Ramakrishna Industries (P.) Ltd and others Vs. P.R.Ramakrishnan and others reported in 1986(1) C L J 227 where the Madras

High Court on page 233 para 6 has observed as under:

"para.6 These are clear authorities for the position that even at the stage of admitting the winding up petition, or entertaining the winding up petition, the Court has also an inherent power to do that which is necessary to prevent the abuse of the process of the Court or to advance the cause of justice or make such orders which are necessary to meet the ends of justice. That inherent power of the Court is not taken away or in any way restricted by section 443(1) of the Companies Act."

15.5. He submitted that in this case Mr.Nigam Maniar has purchased the property, and before purchasing the same he had given advertisement in the Newspaper and, thereafter he had purchased the property by paying Rs.14.00 lakhs. He submitted that Rajiv Mehta has duped Mr.Maniar in this behalf. In view of the same this Court will have a jurisdiction to examine the transaction between Rajiv Mehta with applicant as to whether the same is legal and valid or not.

CONCLUSION :

16. I have already considered the submission of learned advocates Mr.C.L.Soni, Mr.Soparkar and Mr.A.L.Shah in this behalf. In my view, I will have to consider what is scope of inherent powers in relation to CPC as well as Companies Act.

16.1. In this behalf I may usefully quote the judgment of the Apex Court in the case of Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal,

"It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression "if it is so prescribed" is only this that when the rules prescribe the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interest of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule."

16.2. Similarly in the case of Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, .

"If the High Court thus had inherent power to hold the trial of a case in camera, provided, of course, it was satisfied that the ends of justice required such a course to be adopted, it would not be difficult to accept the argument urged by the learned Attorney General that the power to hold a trial in camera must include the power to hold a part of the trial in camera, or to prohibit excessive publication of a part of the proceedings at such trial. What would meet the ends of justice will always depend upon the facts of each case and the requirements of justice."

16.3. Similarly judgment of the Bombay High Court in the case of Kishore Y.Patel

and others Vs. Patel Engineering Co.Ltd and others reported in 79 Company Cases 53. On Page 63 the Court has observed as under:

"While considering applications made to the company court under the substantive provisions of the Companies Act, 1956, the company court is entitled to mould the relief and exercise its inherent jurisdiction whenever found necessary to prevent injustice. The court is thus required to address itself to the question as to under which substantive provision of the Companies Act, 1956, the application is made by the applicant. If the application made is found maintainable under some specific substantive provision of the Act, then alone Rule 9 of the Rules can be pressed into service and not otherwise."

On page 71 the Court observed as under:

"Rule 9 of the Companies (Court) Rules is liable to be interpreted in the light of the enabling provisions of the Act contained in section 643 of the Companies Act. Rule 9 can, therefore, be invoked by the company court while considering applications made to it under one or other of the substantive provisions of the Companies Act, 1956, and not otherwise."

16.4. I have also considered what is scope of inherent powers u/s 151 of the CPC in the leading text book namely "Mulla on CPC" and also book of CPC by Prof.C.K.Thakker, (CJ). Volume II. "The CPC is not exhaustive. The Court has, therefore, in many cases, where the circumstances require it, acted upon the assumption of the possession of an inherent power to act ex debito justitios and to do that real and substantial justice for the administration for which alone it exists. This section does not confer any powers but only indicates that there is a power to make such orders as may be necessary for the ends of justice and to prevent an abuse of the process of the Court. The inherent power, "observed the Supreme Court in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, has not been conferred on the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it". One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression "Act of the Court" is used it does not mean merely the act of the primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matters up to the highest Court which finally disposes of the case," per Lord Cairns in *Roger v. Comptoir D'Escompts De Paris* (1871 L.R. 3 P.C. 465 at 475) {Re. Mulla on the Code of Civil Procedure, Volume I, 15th Edition Page 921}.

16.5. Passages from the book of Prof.C.K.Thakker (CJ):

16.5(A) "Every court of law is constituted for the purpose of administering justice between the parties and, therefore, must be deemed to possess, as a necessary corollary, all such powers as may be necessary to do the right and undo the wrong in the course of administration of justice. Inherent powers of the court are complementary to those powers and the court is free to exercise them for the

ends of justice or to prevent the abuse of the process of the court. The reason is obvious. (Code of Civil Procedure by C.K.Thakkar, Vol.II page 900)

16.5(B) xxxxxx Legislature is incapable of contemplating all the possible eventualities which may arise in future litigation. Inherent powers come to the rescue in such unforeseen circumstances. They can be exercised *ex debito justitiae* (as a matter of course) in the absence of express provisions in the Code. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it. Thus, this power is necessary in the interests of justice. The inherent power has its roots in necessity and its breadth is coextensive with the necessity." (page 900)

16.5(C) xxxxxx It is well settled that the provision does not confer any additional jurisdiction on the court; it only recognizes the inherent powers of the courts of record and civil courts and nothing more. Inherent powers, hence, cannot be abandoned by a court. Such powers are in addition to the powers specifically and expressly conferred on the court by the Code. They are thus complementary and the court can exercise them when exercise thereof is not in conflict with express provisions in the Code or against the intention of the Legislature. (page 902)

16.5(D) Object of Section 151 of CPC: The CPC is an adjective law. The provisions of the Code, therefore, have to be liberally construed to facilitate justice. It is also not capable of contemplating all possible eventualities which may arise in future and to provide procedure. The provisions of the Code, therefore, have to be construed liberally and following the principles of justice, equity and good conscience. Courts have been vested with inherent powers keeping in mind these considerations and they come to the rescue in such foreseen circumstances. They are to be exercised *ex debito justitiae*. They have not been conferred upon the court. They are inherent in every court by virtue of its duty to do justice between the parties before it. {Re. CPC 1908 by C.K.Thakker Vol.II 2002 Edition page 903}

16.5(E) "The court must be satisfied that such exercise is necessary :- (i) for the ends of justice; or (ii) to prevent abuse of the process of the court. (page 904)

16.5(F) Though the phrase "ends of justice" has not been defined anywhere, it may be said that the connotation may mean full and complete justice between the parties. In other words, the ends of justice will be achieved when a matter is decided on the basis of justice, equity and good conscience. (page 944)

16.5(G) The inherent powers saved by the Code may be exercised to secure the ends of justice. The power conferred by the Code is discretionary and can be exercised only in furtherance of justice. The word "justice" would mean justice which the CPC is designed to achieve. In considering the question whether inherent powers should be exercised for the ends of justice, the court would take into account relevant considerations, such as, the order impugned before the court, injustice caused to the applicant, remedy available to the aggrieved party,

inconvenience and unnecessary expenses likely to be burdened on the parties, multiplicity of proceedings which can be avoided and other such matters." (page 945)

17. In view of the aforesaid submissions made by the learned advocates for the parties and in view of the facts and circumstances of the case and particularly the fact that the company receives an adequate consideration, I am of the view that fresh valuer of the property be appointed in this behalf who can value the property in question as of date on which Mr.Maniar had purchased the property from Rajiv Vastupal Mehta, and if the valuer fixes any price at more than Rs.14.00 lakhs then in that event, this Court can always direct Mr.Maniar to pay that additional amount to the Official Liquidator in this behalf to safeguard the interest of the company in liquidation. As the transaction between the company and Rajiv Mehta is held to be bad in law, and Rajiv Mehta had already received Rs.14.00 lakhs, this Court can always order Rajiv Mehta to refund Rs.14.00 lakhs to the Official Liquidator in this behalf. If these two orders can be passed, the interest of the company will be preserved and protected.

17.1. In view of the aforesaid discussion, I have not dealt with the scope of Section 477 of the Act and the application made by the applicant in this behalf.

18. I have considered the facts and circumstances of the case. I have considered the judgment of the Hon''ble Supreme Court in the case of Sudarsan Chits (supra), also provisions of Sec.446, judgment of this Court in Rajratna Naranbhai Mills'' case (supra), Madras High Court judgment in the case of Ramakrishna Industries (P.) Ltd. (supra) and also scope of sec.151 of the CPC principle of which I have extracted from the judgment of Hon''ble Supreme Court in the case of Manoharlal and Naresh case and also leading text book of Mulla on CPC as well as book of C.K.Thakker. I am of the view that in this case not only section 446 but read with sec.643 inherent powers of the Company Court will have to be exercised in this behalf. I have also considered the submissions made by Mr.Roshan Desai, Mr.Ashwin L.Shah, Mr.Soparkar and Mr.C.L.Soni, learned advocates appearing for the respective parties. I have also considered the judgment of the Hon''ble Supreme Court and also submissions of Mr.Roshan Desai and Mr.Ashwin L.Shah in this behalf. In this case the Company Court has a jurisdiction to decide the legality and validity of the transaction in this behalf and once the court has come to the conclusion by its earlier judgment decided in OLR No.81 of 2001 dated 21st March, 2003, that the transaction between company and Mr.Rajiv Vastupal Mehta is bad in law then obvious conclusion is that Mr.Rajiv Vastupal Mehta had no right or title in the property in question and so the title of the property of Nigam Maniar is to that extent is an imperfect title. However, with a view to see that when Nigam Maniar had purchased the property after giving advertisement in the Newspaper and also paid Rs.14.00 lakhs, Mr.Maniar has never been a party in the transaction between company and Mr.Rajiv Mehta and Mr.Maniar was a bonafide purchaser of the property for value, naturally when he purchased the property from Rajiv Mehta, the title of the property of Rajiv Mehta

was legal and valid. However, by a subsequent judgment, the transaction between company in liquidation and Rajiv Mehta have been held to be bad, that fact Mr.Maniar was not aware about when he purchased the property. With a view to see that interest of Mr.Maniar is safeguarded, preserved and protected, I order Rajiv Vastupal Mehta to pay Rs.14.00 lakhs to the Official Liquidator of the company in this behalf which he has received as a consideration from Mr.Nigam Maniar. This Court further orders the appointment of an independent valuer who will value the flat in question as of June 1999, and if by that valuation the value of the property is more than Rs.14.00 lakhs then in that event the amount of difference shall be paid by Mr.Nigam Maniar to the Official Liquidator in this behalf. As soon as the above amounts are paid to Official Liquidator, the Official Liquidator will give a legal and valid title to Mr.Maniar of the flat in question in this behalf.

18.A. Mr.Soni, learned advocate for Nigam Maniar undertakes that whatever cost of valuer, the same will be borne by the applicant Maniar.

19. In view of the aforesaid discussions, the Company Application No.220 of 2001 is concerned, I ordered the Official Liquidator not to seal the residential premises of applicant Flat No.18 situated at Haridwar Apartment, 23 Patel Society, Near Gulbai Tekra, Ellisbridge, Ahmedabad, by modifying the order dated 20th July, 2001, passed in Company Petition No.147 of 2000 and accordingly this application is disposed of.

19.1. As regards Company Application No.44 of 2001, the same will be placed for hearing on 7th October, 2003.

19.2. As regards Company Application No.176 of 2003, in view of the order passed therein, I do not pass any order at this stage regarding examination of Rajiv Vastupal Mehta in respect of the property bearing Flat No.18, situated at Haridwar Apartments, 23 Patel Society, Gulbai Tekra, Ellisbridge, Ahmedabad, at this stage.

20. Before I part with this order, I may quote the following maxim.

"EX DOLO MALO NON ORITURE ACTIO. (Per Lord Mansfield in *Holman v. Johnson*, Cowp.341, at p.343) - A right of action cannot arise out of fraud."

21. After pronouncement of judgment, Mr.Roshan Desai, learned advocate for the Official Liquidator states that in view of the order passed by this Court, the Official Liquidator has to receive Rs.14 lakhs from Mr.Rajiv Vastupal Mehta and after valuation report of said property whatever price is determined by the valuer, the difference will have to be paid by Mr.Maniar. The learned counsel for the Official Liquidator states that if Mr.Rajiv Vastupal Mehta files an appeal or any other proceedings and obtains stay regarding Rs.14 lakhs to that extent the interest of Liquidator is not properly preserved or protected. In that eventuality, this Court should protect the same in this behalf because Mr.Nigam Maniar is staying in the property without legally acquired title at this stage. I appreciate

the contention of Mr.Roshan Desai, learned advocate for the Official Liquidator but it appears that it is very difficult to protect the interest of the Official Liquidator at this stage as I have already ordered the valuer to determine the value of the property. When the valuer submits his report, at that time this issue will have to be decided. Mr.Kothari, learned advocate for Mr.S.N.Soparkar, learned senior advocate, requests that this Court may stay the proceedings of this order for four weeks. I have already ordered the valuer to determine the value of the property and as and when the report of the valuer is submitted, I will pass a final order. So at this stage I do not accept his request.