

(2008) 11 GUJ CK 0056
In the Gujarat High Court

Case No : Company Application No. 188 of 2007 in Company Petition No. 147 of 2000

Official Liquidator of Piramal Financial Services Ltd.

APPELLANT

Vs

Ashish Patel

RESPONDENT

Date of Decision : 10-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2
Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 446, 446(1), 446(2), 446(3), 468
Reserve Bank of India Act, 1934 — Section 45

Citation : (2009) 91 SCL 236

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : R.M. Desai, for the Appellant; Nanavati and Nanavati, for the Respondent

Judgement

K.A. Puj, J.—The Official Liquidator has taken out this Judge's Summons praying for permission of this Court to execute the Consent Decree dated 20-11-1998 and 21-1-1999 passed by the City Civil Court in Civil Suit No. 3111 /1998 to Civil Suit Nos. 3114/1998 and 3110/1998 respectively to recover and release the sum of Rs. 7,07,18,00,000 due as on 1-1-2000 together with interest at the rate of 36 per cent per annum from 1-1-2000 till payment or realisation. The Official Liquidator has also prayed for permission to execute the Consent Decree passed by the City Civil Court in Civil Suit No. 3115 of 1998. The Official Liquidator has prayed for permission to take possession of the Securities being Office No. 202 admeasuring 1,100 sq. feet, Office No. 203 admeasuring 1115 sq.ft. and Office No. 204 admeasuring 890 sq. ft. respectively aggregating 3,105 sq. ft. situated at 2nd Floor in the Building known as "Swagat", C.G. Road, Ahmedabad - 380 009 with undivided share in the open terrace and shares held by them, if any as members of association. The Official Liquidator has further prayed for the direction to the respondents to pay to the official liquidator, during the pendency

and final disposal of this application, by way of mesne profit and/or compensation calculated at the rate of Rs. 30 per sq. ft. per month from 1-2-1999 till vacant and peaceful possession is handed over to Official Liquidator. Lastly the Official Liquidator has prayed for direction to the Sale Committee, appointed by this Court to sell the said Office Nos. 202, 203, 204 on 2nd Floor of "Swagat" Building in execution of the Consent Decree subject to confirmation and approval of this Court.

2. An affidavit is filed by Mr. Mahesh P. Shah, the Deputy Official Liquidator in support of the Judge's Summons. Mr. Roshan Desai, the learned Advocate appeared on behalf of the Official Liquidator. On notice being served on the respondents, M/s. Nanavati & Nanavati have filed their appearance. An Affidavit is filed by Shri Ashish Patel on behalf of the respondent Nos. 1, 2 and 3.

3. The brief facts giving rise to the present application are that M/s. Piramal Financial Services Limited ("PFSL", now in liquidation) was a Company incorporated and registered under the Companies Act, 1956. Reserve Bank of India filed a Company Petition No. 147 of 2000 praying that PFSL be wound up under the provisions of Section 45 of Reserve Bank of India Act. This Court admitted the said Petition on 20-10-2000 and appointed the Official Liquidator attached to this Court as the provisional Liquidator of PFSL. The said Company was thereafter wound up by an Order dated 20-3-2001 and the Official Liquidator appointed as provisional Liquidator was appointed as Liquidator of the Company with all usual powers under the provisions of the Companies Act, 1956. This Court vide its Order dated 20-7-2001 passed in Company Application No. 44 of 2000 directed the Official Liquidator to take possession of the properties and assets as mentioned in Schedule "A" of the report of the Official Liquidator dated 12-7-2001 in Company Application No. 44 of 2001.

4. The respondents in this application are developers of several properties, including property being "Swagat" Building on the piece and parcel of land on Final Plot No. 405 of Town Planning Scheme No. 3 (Varied) admeasuring 1,999.44 sq. mtrs. Situate, lying and being at Mouje Changispur, City Taluka in the Registration District and Sub-District of Ahmedabad. The respondents obtained a loan from PFSL. By an Agreement dated 14-6-1996, properties of Radhe Estate Developers were given as collateral security for the said loan. However it is not clarified as to what is the proper security given to PFSL. Radhe Estate Developers and Shri Ashish Patel who guaranteed the amount due and payable by Radhe Estate Developers under the Loan Agreement committed a default in payment of the amount due and payable. In view of the default committed in payment of the amount due and payable by the respondents, the Company filed Civil Suits in City Civil Court, Ahmedabad being Civil Suit Nos. 3110 of 1998 to 3115 of 1998 for judgment and decree for the amount mentioned in the plaint in each of suits together with interest thereon at the rate mentioned in the plaint. Para 3 of the Plaint gives details of the amount lent and advanced by the Company to the respondents. Negotiations took place between

the Company and respondents and ultimately settlement was arrived at between the parties and Consent terms signed by the parties were filed in each of the suits and it was agreed that decree in terms of Consent terms be passed. Accordingly Consent Decree was passed in each of these Suits on 20-11-1998 and 21-1-1999. By the said Consent Decrees, it was provided that the defendants as well as associate concerns of Defendant No. 2, i.e. Shri Ashish Patel would abide by Decree of Injunction regarding the property given as Security to the Plaintiff Company for its financial assistance granted and shall be released when the defendants make full payment. Decree was also passed against Shri Ashish Patel. By the said decree, defendants agreed to pay the Decretal dues in 36 monthly instalments. The charge was created on Office Nos. 202, 203, 204 and other properties as mentioned in the Decree. It is provided that the defendants have to pay a sum of Rs. 707.18 lakhs, the total outstanding as on 1-1-2000 with interest at the rate of 3 per cent per month, i.e. 36 per cent per annum. The defendants have given possession of the Security to the Company.

5. It appears from the records that Shri Ashish Patel and his Associates and his group companies purchased substantial shares of Company somewhere in January 1999 and Shri Ashish Patel was appointed as Chairman and Managing Director of the Company on 7-2-1999. During the tenure of Shri Ashish Patel as Chairman and Managing Director of the Company, he took possession of Office Nos. 202, 203 and 204 and started using the same as well as permitting the group Companies as Office for their own benefit contrary to the right of the Company.

6. In the above background of the matter, the Office Nos. 202, 203 and 204 duly charged in favour of the Company being the Security for the loan advanced by the Company are now available to the Official Liquidator for release of the dues of the Company-in-liquidation. When the representative of the Official Liquidator desired to have inspection of the properties of the Company namely Office Nos. 202, 203 and 204 at "Swagat" Building, objection was raised on behalf of the respondents to hand over the possession and to take inspection and were informed that Office Nos. 202, 203 and 204 have been purchased by them and they are owners of the said Offices.

7. It is also on record that Shri Ashish Patel filed an Affidavit-in-reply dated 11-10-2003 in O.L.R. No. 56 of 2003 wherein it was stated that Shri Ashish Patel and his family members and his associates decided on 7-9-1999 to hand over controlling interest in the Company to Vellor Finstock Private Limited (VFPL), Mumbai. It was also averred that pursuant to Memorandum of Understanding dated 8-9-1999, by which it is stated that partial consideration would be paid by VFPL. Along with the said Affidavit, an Agreement dated 7-9-1999 which was entered into between Shri Ashish Patel and others on the one hand and VFPL on the other hand was produced. Thereafter, additional affidavit dated 1-12-2003 was filed by Shri Ashish Patel in O.L.R. No. 56 of 2003 wherein it is clearly stated

that Radhe Estate Developers, a Partnership Firm took a loan from PFSL on 14-6-1996 and properties of Radhe Estate Developers were given as collateral security for the said loan. It is also averred that Memorandum of Understanding was entered into on 7-9-1999 between Shri Ashish Patel and his associates as Seller and VFPL as buyer. Clause 2 of the said Memorandum of Understanding dated 7-9-1999 reads as under:

Simultaneously buyer has stipulated and seller has consented to discharge total dues of Radhe Group of Companies (Borrower) aggregating to Rs. 671.37 lakhs payable to Piramal Financial Services Limited on account of loan/hire purchase financing and for advance for booking of property maintained in the books of Piramal Financial Services Limited as stocks of realty, loans or advances and discharge the borrower of all their obligations on receipt of the said sum in full and final settlement of all their dues payable to Piramal Financial Services Limited and also the buyer agrees to withdraw for and on behalf of Piramal Financial Services Limited all the pending suits including the Decretal orders instituted/passed against the seller and its group Companies/firms at the instance of Piramal Financial Services Limited. Further buyer also agrees to unconditionally return all documents of title and other documents/papers issued by Radhe Group of Companies/Firms in favour of Piramal Financial Services Limited for the purpose of creating charge in favour of the later.

8. It was also averred that in terms of the aforesaid agreement the buyer VFPL undertook to pay liability of Radhe Group of Companies of Rs. 671.37 lakhs to PFSL.

9. Another Memorandum of Understanding was executed on 8-9-1999 between Shri Ashish Patel and his associates namely, Ms. Jahnvi Ashish Patel, Ms. Madhuben P. Patel, Ms. Nikiben Miteshbhai Shah, Mr. Dilipbhai S. Trivedi, Mr. Prafulbhai C. Patel and Ms. Pinki R. Bhansali and Patel Agrofarms Pvt. Ltd. as party of the First Part, Radhe Developers (India) Ltd., Radhe Estate Developers and Radhe Finance as party of the Second Part and Vellor Finstock Private Limited, a party of the Third Part and Piramal Financial Services Limited as party of the Fourth part. On perusal of the said Memorandum of Understanding, it is clear that the party of the Second Part, i.e., Radhe Developers (India) Ltd., Radhe Estate Developers and Radhe Finance are debtors of the Party of the fourth Part and Party of the fourth Part, i.e., the Company is holding various securities in respect of loans given to the party of the Second Part. By way of loans and advances, the total debt was receivable from the party of the Second Part being Rs. 671.37 lakhs as on 31-3-1999. It is also recited that party of the Second Part and party of the Fourth Part had entered into Consent terms and the Court has passed Consent Decree in respect of Civil Suit Nos. 3110 to 3115 of 1998 on 20-11-1998 and 21-1-1999 for payment of loans. It is also recited that the party of the Third Part, i.e., Vellor Finstock Private Limited is desirous of taking up the liability of the party of the Second Part to the party of the Fourth Part and for that purpose, the Memorandum of Understanding is entered into. By

the said Memorandum of Understanding, it is provided that on party of the Third Part taking up the liability of Rs. 671.37 lakhs of the party of the Second Part towards the party of the Fourth Part, the party of the Second Part is discharged of its liabilities and obligations of the party of the Fourth Part of Rs. 671.37 lakhs. It was also provided that party of the Third Part expressly confirms without any demur or dispute in future of having taken up the liability of Rs. 671.37 lakhs of the party of the Second Part and owes an identical amount of Rs. 671.37 lakhs to the party of the Fourth Part.

10. It was also provided that the party of the Third Part agreed to offer the properties bearing Survey No. 12/1 situate at Villupate Village, Kodaikanal, Tamil Nadu to the extent of 13.5 acres in favour of the party of the Fourth Part as security to the latter's satisfaction which would cover the party of the Third Part's liability of Rs. 671.37 lakhs. It was also agreed that the Party of the Third Part is the Holding Company of the party of the Fourth Part. In the said agreement, reference has been made to Para 2 of the Recital that the party of Second Part is a debtor to the party of the Fourth Part and the latter is holding various securities in respect of the amounts given to the party of the Second Part by way of loans and advances, the total debt receivable from the party of the Second Part as on 31-3-1999.

11. It has also come on record by way of an intimation given by Special Economic Offence Wing (C.I.D. Branch) that when they visited Kodaikanal, Tamil Nadu to ascertain the location of land bearing Survey No. 12/1 situated at Villupate Village, Kodaikanal, Tamil Nadu to the extent of 13.5 Acres, it was found that no such land exists.

12. It appears from the copy of the plaint forming part of the Consent Decree that Office premises bearing Nos. 202, 203 and 204 in "Swagat" Building situated at C.G. Road, Ahmedabad along with other properties are given as security in the said suits. Radhe Estate Developers and Shri Ashish Patel are defendants in all these Suits. From the records available with the liquidator, it was ascertained that possession of the said securities was not with the official liquidator and hence the liquidator has sought the permission to take possession of the said security from the respondents and/or any person occupying the same and to sell the same in satisfaction of the dues payable by respondents to the Company-in-liquidation.

13. Mr. Roshan Desai, the learned Advocate appearing for the Official Liquidator submitted that VFPL is non-existing Company and the liquidator is not able to locate the whereabouts of the said Company. Liquidator has tried to locate the whereabouts of its Directors but he has not been able to locate them. He has further submitted that on winding up order being passed, the Directors of the Company are required to file a Statement of Affairs. However such Statement of Affairs is not filed and hence the liquidator has filed Criminal Case No. 12 of 2004 for non-filing of Statement of Affairs. In the said proceedings three persons are not being served with notice in spite of several efforts made by the liquidator. He

has further submitted that the agreement dated 8-9-1999 provides that Securities are to be released by PFSL since liability is taken over by the holding company, VFPL. The draft of the said agreement was approved by the Directors of PFSL at the meeting held on 7-9-1999 on which date Shri Ashish Patel and his associates were Directors of the Company-in-liquidation. He has therefore submitted that such a resolution is void ab initio as any transaction relating to immovable property of Rs. 100 or more is to be done by a Registered Document. Release of Security is a transaction which is required to be completed by a Registered Document. Since there is no registered document releasing security, such a transaction is void ab initio.

14. Mr. Desai has further submitted that in Official Liquidator, Piramal Financial Services Ltd. v. Dena Bank [2004] 122 Comp. Cas. 967 : [2005] 63 SCL 558, this Court has referred to the Memorandum of Understanding dated 7-9-1999 and observed that simply by taking over the liability, it cannot be said that the amount is paid to the Creditor. He has further submitted that by Consent Decree, Radhe Developers (I) Limited, Radhe Estate Developers (Partnership Firm) and Shri Ashish Patel agreed that a Decree for Injunction is to be passed and by such decree of injunction, they are restrained from allotting, re-allotting, transferring or disposing off/dealing in any manner and also from parting with possession of properties given in Security to the plaintiff, the description of which is given in the plaint and are further restrained from disturbing the possession of the property till full and final payment to the Company as per the Consent Decree. He has further submitted that the amount due to the Company-in-liquidation is not paid and the charge created in favour of the Company-in-liquidation is not satisfied and it still subsists. Securities of Flats and Offices mentioned in the plaints are available to the Company-in-liquidation and Company-in-liquidation is entitled to take possession of the said securities. He has therefore submitted that the prayers made in the Judge's Summons are required to be granted and the application be allowed accordingly.

15. Mr. S.I. Nanavati, Learned senior counsel appearing for the respondents on the other hand has strongly raised objection against the maintainability of the present application and submitted that none of the prayers made in the present application deserves to be granted by this Court in favour of the official liquidator. He has submitted that the official liquidator has filed this application with the intention to misguide this Court and suppress the material facts which are already on record and within the knowledge of the official liquidator. The Consent Decrees passed in all the Suits have been satisfied and necessary pursis was filed in the City Civil Court in all the Suits and the Civil Court has recorded the satisfaction of decrees by its Order dated 21-9-1999, a copy of this pursis and the order passed thereon are filed by the respondent, Shri Ashish Patel, one of the respondents along with his affidavit filed in support of summons for judgments taken out in Company Application No. 135 of 2007 against the official liquidator. These facts have been purposefully concealed and hence the application deserves to be rejected on the ground of suppressio falsie. He has

further submitted that on 7-2-1999, Shri Ashish Patel and his family members and his associates acquired controlling interest and management of PFSL from M/s. Electric Control Gear India Limited. He was appointed as Chairman and Managing Director of Piramal Financial Services Limited from 7-2-1999. On 7-9-1999, Shri Ashish Patel, his family members and associates transferred the controlling interest in the Company to VFPL, Mumbai and thereupon ceased to be in the Management of the Company and he resigned as Chairman and Managing Director with effect from 7-9-1999. On 7-9-1999, an Agreement recording the transfer of shares and liability was executed between Shri Ashish Patel, his family members and associates and the said VFPL recording the terms of transfer of shares and Management. On the next day, i.e., 8-9-1999 another agreement came to be executed between Shri Ashish Patel, his family members and associates, the said VFPL and the said PFSL. By virtue of the said agreement, VFPL took up the liability of Shri Ashish Patel and his associates amounting to Rs. 671.37 lakhs payable to PFSL and the same was agreed upon by PFSL and Shri Ashish Patel and his associates were relieved from their obligations to pay the amount due and payable. Thus, on 8-9-1999 the liability of Shri Ashish Patel and his associates stood crystallized at Rs. 671.37 lakhs. Thus the liability stood fully discharged on 8-9-1999 in view of the said Agreement. In furtherance of the said Agreement dated 8-9-1999, PFSL issued a "No Due Certificate" which communicates that the liability of Shri Ashish Patel and his associates to PFSL amounting to Rs. 671.37 lakhs stood fully discharged. In the said Certificate, PFSL agreed to return and release all the documents of tiles and other deed and papers handed over by Shri Ashish Patel and his associates for the purpose of creating charge as security for various loans/advances for booking of properties etc. PFSL agreed to withdraw unconditionally and irrevocably all pending suits including decretal orders instituted/passed against Shri Ashish Patel and his associates and the said No Due Certificate was to be treated for all intents and purposes as "No Due Certificate" by PFSL to Shri Ashish Patel and his Associates. Thereafter necessary pursis was filed in the Ahmedabad City Civil Court, Ahmedabad in Civil Suit Nos. 3110 of 1998 to 3115 of 1998 recording the satisfaction of the Consent Decree in toto. The City Civil Court recorded the said pursis stating that the decree passed in the concerned suit stands fully satisfied and there remains nothing due and payable by the defendants to the plaintiff and the charge created on the property stood relinquished. He has therefore submitted that in view of this pursis and the Agreements, PFSL relinquished all its charges on the properties offered as security for the advances made by the Company to Shri Ashish Patel and his associates and from that day, all the properties became free from the charge of PFSL. He has further submitted that the decision of this Court referred to and relied upon by the liquidator is not applicable to the facts of the present case and hence no adverse inference can be drawn against the respondents. He has further submitted that the Application preferred by the official liquidator deserves to be rejected with compensatory costs.

16. Mr. Nanavati has further submitted that there is no question of execution of a decree which is already satisfied. He has further submitted that as contemplated under Order 21, Rule 2 of CPC, payments by adjustment were made out of the court and the same has been admitted by the decree holder as required under Clause (c) of Rule 2A of Order 21 of CPC. Mr. Nanavati further submitted that this Court cannot go beyond the scope of the decree. Even otherwise, there is no prayer for cancellation of the Order dated 21-9-1999. He has further submitted that the Agreements dated 7-9-1999 and 8-9-1999 were declared illegal in collateral proceedings and it has no effect on the present proceedings. He has further submitted that the Resolution was duly passed by PFSL on 7-9-1999 and it was placed on the record of Company Application No. 135 of 2007 at Page 236. Mere non-affixing of the common seal of the Company does not invalidate the resolution. He has further submitted that the Order passed by the Trial Court on 21-9-1999 is a judicial order. It has become final and parties have given effect to the said order and parties are bound by it. Unless it is set aside after following due process of law, the Official Liquidator is not entitled to any relief in the present proceedings.

17. Having heard learned advocates appearing for the respective parties and having gone through the contents of the application as well as affidavit filed on behalf of the respondents and having considered the relevant statutory provisions as well as the authorities on the subject, the Court is of the view that none of the contentions raised on behalf of the respondents bear any substance or merits and the same deserves to be rejected. The main thrust of the argument canvassed on behalf of the respondents by Mr. Nanavati is that the Competent Civil Court has passed the decree and the said decree is duly satisfied. The order is not set aside by any Court in any legal proceedings. The consent decree is duly satisfied by way of joint pursis filed by parties. Once the decree having been satisfied there is no question of execution of the said decree. It is also contended on behalf of the respondent that in the present proceedings, the Official Liquidator has invoked the jurisdiction of the Company Court seeking declaration that the order passed on 21-9-1999 is an illegal order and even otherwise the parties have not acted as per the decree and decree is not satisfied in its true sense. The Liquidator has, therefore, prayed for execution of the decree. If there is any grievance against the order dated 21-9-1999 the same can be challenged in the properly initiated legal proceedings. This is not the forum where the order can be challenged by the Official Liquidator. If these submissions are examined in light of the peculiar facts of this case and the decided case law and the powers of the Company Court under the provisions of the Companies Act, 1956, it becomes very clear that the Company Court is not power-less to set the things right.

18. In *O.L. of Aryodaya Spg. and Weaving Mills Co. Ltd. Vs. Charansingh Dhupsingh*, it is held that u/s 446(1) of the Companies Act when a winding up order had been made or the Official Liquidator has been appointed provisional liquidator there was bar on institution of suits or commencement of other legal

proceeding or if such suit or legal proceeding was pending at the date of the winding up order there was a bar against proceeding further except by leave of the court and subject to such terms as the court may impose. The object of Section 446 of the Act is to save the Company which is being wound up from unnecessary litigation and expenses and to protect its assets for equitable distribution amongst its creditors and its shareholders. The provisions of Section 446(2) and (3) of the Act have been specifically incorporated to ensure that the liquidator in course of winding up is not required to file suits for recovering properties of the company as otherwise it will become virtually impossible to order winding up of a company-in-liquidation. u/s 446 of the Act, the legislative intent to permit the High Court to initiate proceedings straightway as if they were proceedings of the Court of an appropriate jurisdiction is clear; that there should be no impediment in the way of the liquidator necessitating his getting involved in unnecessary litigation as there is public accountability after a winding up order has been passed to determine the liquidation proceedings as expeditiously as possible and tenants of companies under winding up cannot stretch the winding up proceedings to suit their personal interest. Once it is found that a person is a trespasser, proceedings u/s 446 of the Act are "due process of law" and the trespasser as such can be directed to be evicted and such direction cannot be said to be without due process of law. The Court can always make an order which is just and proper in the facts and circumstances of a case and it is immaterial as to what the prayers are in the application and particularly in winding up proceedings, whenever the court discovers any property of the company in the possession of the anybody since the court is to administer justice and to prevent multiplicity of proceedings when the fact of unauthorised occupation of the company's asset or property by a person is clearly proved before the Court, the Court has ample power u/s 446(2)(a), (b), (d) and Section 468 read with Rule 9 of the Companies (Court) Rules, 1959, to pass such order as it may think proper which the facts and circumstances of the case demand, for determining the rights of the parties. Once it is established that there was failure by the heirs of respondent No. 1 to comply with the terms of the decree in the civil suit the company (in liquidation) became entitled to seek vacant and physical possession of the land from them. The company became entitled to vacant and physical possession of the land from all the persons claiming through the deceased respondent No. 1 when the default in making payment of compensation from 1986 and sub-letting was admitted.

19. The Court further held that a judgment debtor cannot be heard to say that the decree holder must proceed to enforce the decree only in a particular manner and not in any other manner already provided in the decree. If one applies ratio of this decision to the facts of the present case, it is clear that the properties which were offered by way of security were sought to be released under the guise of offering some other properties, which were never in existence. There is, therefore, no sense of contending that the securities were substituted and that no sooner fresh securities were offered the consent decree was passed on that

basis. The Court has to be satisfied as to whether such substituted properties are available for satisfaction of the decree. Since there was clear breach of the consent terms and the decree was not satisfied, the Official Liquidator has every right to seek the execution and/or satisfaction of the decree by asking for the possession of the properties which are offered as securities while obtaining the loan from the Company-in-liquidation.

20. The agreements dated 7th and 8th September, 1999 have come up for consideration before this Court in the case of Official Liquidator of Piramal Financial Services Ltd. {supra} wherein after examining the relevant clauses of the said two agreements which are also under consideration in the present case, the Court observed that in terms of the MoU dated 8-9-1999, the liability of Rs. 671.37 lakhs payable by the Radhe group to Piramal Financial Services was taken over by Vellor Finstock Pvt. Ltd. The property bearing Survey No. 12/1 situated at Vilupatti village, Kodaikanal, Tamil Nadu, admeasuring 13.5 acres was also given by Vellor Finstock Pvt. Ltd., to Piramal Financial Services Ltd., towards the liabilities of Radhe Estate Developers. The same contentions were raised on behalf of the respondents in that case which are raised in the present case. The Court took the view that by taking over the liability, it cannot be said that the amount is paid to the creditor. The security can be released only on payment being made of the debt and not otherwise. The Court further took the view that the agreement of 1999 appears to be a collusive since it has been entered into by the parties which were under the control of the same person, namely, Ashish Patel. As such it does not inspire any confidence and does not carry any sanctity. This judgment is a complete answer to the contention raised before the Court on behalf of the respondents. OJ Appeal filed against this judgment is also dismissed. In *Radhe Associates v. O.L. of Piramal Financial Service Ltd.* [2007] 135 Comp. Cas. 251 the Division Bench of this Court, while dismissing the said appeal held that the agreements dated 9-7-1997 and September 7 and 8 of 1997 were not legally executed. SLP filed against the judgment of the Division Bench is also dismissed by the Hon"ble Supreme Court.

21. Keeping the above legal position in mind the present application is considered by the Court.

22. Civil Suit Nos. 3110 to 3115 of 1998 were filed by PFSL the Company-in-liquidation in City Civil Court at Ahmedabad for the relief of permanent injunction regarding the properties given as securities for the suits loan and for the relief for the decree for the amount mentioned in the suits. Suits have come up for final hearing in November, 1998 and January, 1999 and consent terms in each suit were filed. The defendant No. 1 firm i.e., Radhe Estate Developers and the defendant No. 2 i.e., Shri Ashish P. Patel, as a Partner/Promoter/Director or Proprietor of several other concerns to whom advances were made by the Company-in-liquidation have acknowledged and admitted the debts and after referring to the MoU dated 6-10-1998, they agreed to repay the amount outstanding as shown in Civil Suit Nos. 3110 to 3115 of 1998 with interest at the

rate of 3 per cent per month. They have further agreed to pay the decretal dues to the company-in-liquidation in 36 equal monthly instalments, commencing from 1-1-2000. They have also agreed to get the charge created on the properties given as security to the company-in-liquidation. They also agreed that a decree for permanent injunction be passed against them and by such decree of injunction they were to be restrained from allotting, reallocating, transferring or disposing/dealing in any manner and were also to be restrained from parting with the possession of the properties given in security to the company-in-liquidation. They further agreed that if they fail to pay the decretal dues in time as per the time schedule for repayment of the decretal dues the company-in-liquidation would be entitled to execute the decree by filing execution proceedings with the Court.

23. Based on the above consent terms, decree was passed by the City Civil Court, Ahmedabad in each Civil Suit on 20-11-1998 and/or 21-1-1999.

24. Surprisingly, thereafter, a MoU was entered into by Shri Ashish Patel and his associates and family members with Vellor Finstock Pvt. Ltd., (VFPL) on 7-9-1999 disinvesting their controlling interest in the company-in-liquidation in favour of VFPL, subject to the terms and conditions contained therein. Immediately on the next day i.e., on 8-9-1999 another MoU was executed between four parties, the contents of which are already discussed earlier. It is surprising and shocking that this agreement is signed by the same person on behalf of VFPL and the PFSL (Company-in-liquidation).

25. Based on the above agreement dated 8-9-1999, pursis dated 21-9-1999 was filed under which all decrees passed in Civil Suit Nos. 3110 to 3115 of 1998 were stated to have been satisfied. This pursis was signed by Shri Ashish Patel for himself as well as for and on behalf of Radhe Developers and Smt. Madhuben P. Patel. It was not signed by the decree holder i.e., the PFSL (Company-in-liquidation). An endorsement of "No objection" was made by some one without disclosing his name or without mentioning as to on whose behalf such endorsement was made. Though the copy of said pursis was given to learned advocate to file necessary reply, the learned Trial Judge had passed an order on the same day i.e., 21-9-1999, after considering the endorsement of "No objection" and held that the decrees were fully satisfied, without ascertaining as to whether properties offered as securities under the alleged consent terms were in existence and without verifying as to who are the signatories of the agreement dated 8-9-1999. As a matter of fact agreement dated 7-9-1999 was not referred to in the pursis and agreement dated 8-9-1999 was signed by the same person for and on behalf of the plaintiff i.e., PFSL (Company-in-liquidation) and VFPL, the party, said to have satisfied the decrees. It appears that the learned Trial Judge had acted in very undue haste and passed the order on the pursis at Ex. 29 on the same day i.e., 21-9-1999. Once the decree having been passed by the competent Civil Court, it becomes functus officio. If the decrees were satisfied subsequently, the executing court would pass appropriate order in an execution

petition, if filed and if no such petition were filed and the same court were to take cognizance of such satisfaction of the decrees, proper procedure should have been followed and on a proper application, such order should have been passed. On the basis of a mere pursis, the judgment-debtors should not have been relieved nor the earlier consent terms on the basis of which decrees were passed should have been given go by. This Court is, therefore, of the view that pursis filed on 21-9-1999 is nothing but a fraud committed by the judgment debtors, not only on the PFSL (company-in-liquidation) but also on the Court and order passed thereon by the Court on 21-9-1999 is a nullity and it is non est at law. Neither the judgment debtors are relieved from their obligation nor properties offered by them as securities are free from the charge. Decree passed on 20-11-1998 and 21-1-1999 in Civil Suit Nos. 3110 to 3115 of 1998 are still subsisting and the Official Liquidator is entitled to recover the decretal amounts from the present respondents by liquidating the assets which were offered as securities, wherever such assets have gone and in whosoever's name they stand.

26. In the above view of the matter, the Court is of the view that the consent decree dated 20-11-1998 passed by the City Civil Court in Civil Suit Nos. 3111 of 1998 to 3115 of 1998 and also the consent decree dated 21-1-1999 passed in Civil Suit No. 3110 of 1998 are still not satisfied and hence the Official Liquidator is permitted to execute the said decree against the respondents/judgment debtors for recovery and realization of the decretal amount. The Official Liquidator is further permitted to take possession of the security being office Nos. 202, 203 and 204 admeasuring about 1,100 sq.ft. 1,115 sq.ft. and 890 sq.ft respectively, situated at 2nd floor, in the building "Swagat" C.G. Road, Ahmedabad with undivided share in the open terrace and shares held by them if any as Members of Association. Since the Official Liquidator is permitted to recover the decretal amount with interest, there is no question of issuing any direction for recovery of any mesne profit and/or compensation for use of the above referred premises by the respondents.

27. This application filed by the Official Liquidator is accordingly allowed in the above terms, without any order as to costs.

28. While deciding this application, the Court has referred to the document produced in Company Application No. 135 of 2007 which was filed by Radhe Estate Developers which was disposed of by this Court on 29-1-2008 and while disposing off the said application, the Court has directed the office to keep the papers of the said application along with Company Application No. 188 of 2007.

29. When judgment is pronounced Mr. S.I. Nanavati, learned Senior Counsel appearing for the respondents prays for stay against the implementation and execution of the order passed by the Court. Mr. R.M. Desai, learned advocate appearing for the Official Liquidator has objected to grant any stay. Having regard to the facts and circumstances of the case and considering the request, the Court hereby grants stay against operation, implementation and execution of this order till 10-12-2008.