(2012) 09 DEL CK 0053

In the Delhi High Court

Case No : Writ Petition (C) 5900 of 2008

Pee Gee Exports Pvt. Ltd. APPELLANT

Vs

Gargaya Research Instruments and Others RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 92, Order 34 Rule 5, Order 9 Rule 13
Constitution of India, 1950 — Article 226

Citation : (2012) 09 DEL CK 0053

Hon'ble Judges : Vipin Sanghi, J;Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Chandra Prakash, Mr. Manish Miglani and Mr. Arjun, for the Appellant;

Final Decision : Dismissed

Judgement

CM No. 2290/2012

1. Mr. P.K. Garg, proprietor of R-1, is present in the court. He was also the Director of R-2. He states that the name of R-2 has been struck off the record of the Registrar of Companies. The respondent has failed to file any document in support of this stand despite opportunities having been granted since 22.02.2012. The costs imposed on the last date have also not been deposited. What is produced before us is a copy of the company master details of the ROC recording that R-2/Company has been struck off the record as it had no paid-up capital. It is thus a defunct company. In view of the averments contained in the application, we recall the order dated 06.02.2012 dismissing the petition for non prosecution subject to the cost already deposited. The cost be transmitted to the Delhi High Court Mediation and Conciliation Centre in UCO Bank A/c No. 48852. We make it further clear that despite this order R-1 shall deposit the cost of Rs. 7,500/- as directed vide order dated 13.08.2012 today itself, as undertaken to this court by Mr. P.K. Garg who is present in the court.

WP(C) No. 5900/2008.

The State Bank of India/R-3 advanced loan to respondents 1 & 2 which was secured by equitable mortgage of property bearing no. C-12 (Site IV) Uptron Industrial Estate, Sahibabad admeasuring 5548 square yards. Since the account became irregular, respondent No. 3 instituted proceedings for recovery before the Debt Recovery Tribunal (DRT) on 19.11.1998 against respondents 1 & 2. Respondents 1 & 2 failed to appear and were proceeded ex parte resulting in ex parte decrees dated 22.04.2002. These were passed in two separate OAs No. 400/1998 and 413/1998 for Rs. 55,72,585/- and Rs. 16,82,787/- with interest and costs against the two respondents respectively. The endeavour of the appellant to re-open the decrees by filing applications under Order 9 Rule 13 CPC failed, as they were dismissed on 26.08.2002 and recovery certificates were issued.

2. It appears that, thereafter, R-1 sought to rake up the issue in writ proceedings which were ultimately dismissed in 2003 with liberty to approach the Debt Recovery Appeal Tribunal (DRAT). Thereafter R-1 and R-2 approach the DRAT, by filing an appeal against the order of the DRT along with an application for condonation of delay which, however, came to be dismissed on 04.07.2005. Against the said dismissal, appeals and proceedings were preferred by R-1 and R-2, which failed right till the Supreme Court.

3. In the meantime, the proceedings were initiated before the DRT for sale of the mortgage property. This endeavour was challenged in the Allahabad High Court by filing a writ petition seeking a direction to the bank to finalize the OTS. The proceedings for recovery were stayed. The stay was vacated in the year 2004.

4. Thereafter also proceedings continued before the DRT. Suffice it to say that auction of the property was held on 24.05.2005 wherein the appellant was the successful bidder. Objections were filed by respondent Nos. 1 & 2 challenging the auction under Rules 60 & 61 of the Second Schedule of the Income Tax Act, 1963.

5. The objections filed to the auction sale were dismissed and the auction sale was confirmed vide order dated 02.03.2006 by the Recovery Officer, DRT. Against the said dismissal an appeal was preferred before the Presiding Officer, DRT. The said appeal was allowed and the auction was set aside vide order dated 01.06.2007, which was assailed by the auction purchaser before the DRAT. The second appeal was also dismissed in terms of the impugned order dated 05.08.2008. It is this order which is now sought to be assailed before us under Article 226 of the Constitution of India.

6. The important aspect to note is that in the proceedings before the DRAT, there was apparently no stay and in the meantime the respondents 1 & 2 approached R-3/Bank for settlement of their account. The settlement was arrived at and the respondent/Bank redeemed the mortgage. A No Due Certificate was issued. This fact has been recorded in the impugned order. Insofar as the present writ petition is concerned, there were interim orders operating in favour of the

petitioner but the writ petition, as noticed above, was dismissed for non prosecution and interim orders were vacated on 06.02.2012. The reply filed by R-3/Bank to the applications of the petitioner for restoration states that in view thereof the property was transferred by respondent No. 1 to M/s Glorious Hospitality Private Limited in whose favour lease deed already stands executed by UPSIDC and the possession stands delivered vide an order of the Recovery Officer dated 10.02.2012 to R-1 who in turn, delivered possession to the transferee. In fact, the most important aspect is that the auction sale had been set aside and the proceedings to challenge the auction sale were pending when settlement was arrived at with the Bank. In fact, till such time as any challenge to auction sale is pending, the sale is not final. In the present case, even the sale had been set aside. This aspect has been analyzed by us in WP(C) No. 4441/2011 and connected matters M/s Pragati Builders and Promoters and Ors. Vs. Ram Murty Pyara Lal & Ors. decided on 03.07.2012 where in para nos. 25 to 27 it was observed as under:

25. We may draw strength from the observations made by the Supreme Court in U. Nilan Vs. Kannayyan (Dead) Through Lrs., , which has referred with approval to the earlier judgments of the Supreme Court in Maganlal Vs. Jaiswal Industries, Neemach and Others, for coming to the conclusion that a sale does not become absolute or irrevocable merely on passing an order confirming the sale under Order 21 Rule 92 but it would attain finality on the disposal of the appeal, if any, filed against an order refusing to set aside the sale. The finality to such an auction would only be after the disposal of the appeal and for this purpose reference has been made to the observations in AIR 1934 134 (Privy Council) .

26. Another interesting observation is made in para 40 of U. Nilan Vs. Kannayyan (Dead) Through L.Rs. Case (supra) qua such situations to conclude that adversity of a person is not a boon for others. The said para reads as under:

40. Adversity of a person is not a boon for others. If a person in stringent financial conditions had taken the loan and placed his properties as security therefore, the situation cannot be exploited by the person who had advanced the loan. The Court seeks to protect the person affected by adverse circumstances from being a victim of exploitation. It is this philosophy which is followed by the Court in allowing that person to redeem his properties by making the deposit under Order 34 Rule 5 C.P.C.

27. The duty of a Court to oversee the conduct of an appropriate sale has been emphasized by the Supreme Court in L. Moolchand and Others Vs. Fatima Sultana Begum and Others, .

(Emphasis supplied)

7. In view of aforesaid facts and circumstances, the petitioner before us as an auction purchaser has no inherent right to get the property transferred in its name when the Bank itself has settled the account of the borrower during the pendency of the appeal proceedings and that too after the auction in favour of

the appellant was set aside by the DRT. The subsequent developments have also been noticed by us where third party interest has been created on account of this petition having been dismissed for non prosecution and possession stands transferred to a third party. It is of course open to the petitioner to take back their money wherever it is lying with accrued interest, if any, thereon.

8. We see no reason to exercise jurisdiction under Article 226 of the Constitution of India. Dismissed.

