

(1974) 05 DEL CK 0011

In the Delhi High Court

Case No : Company Appeal No. 17 of 1973

Ram Lal Anand

APPELLANT

Vs

Bank of Baroda

RESPONDENT

Date of Decision : 14-05-1974

Acts Referred:

Citation : (1976) 46 CompCas 307 : (1974) ILR Delhi 588 : (1974) RLR 534

Hon'ble Judges : P.N. Khanna, J; M.R.A Ansari, J

Bench : Division Bench

Advocate : R.M. Lal, B.R. Aggarwal, J. Lal and R.L. Roshan, for the Appellant;

Judgement

P.N. Khanna, J.

(1) This is an appeal u/s 483 of the Companies Act No. 1, of 1956, herein called "the Act", directed against the judgment of the learned company Judge, who, while disposing of an application of Bank of Baroda, respondent No. 1 herein, u/s 392 of the Act, directed the official Liquidator to sell the property in dispute by public auction and further directed Mr. R. L. Anand, the appellant, to execute all the necessary documents including the conveyance deed, as may be required to complete the sale.

(2) The property in dispute is No. 88, Sunder Nagar, New Delhi, which Mr. R. L. Anand, the appellant claims as his, while Messrs Anand Finance Private Limited, herein referred to as "the company" claims as belonging to it. "The company had been enjoying certain cash credit facilities from the respondent Bank since 1959. In January, 1966 an equitable mortgage by deposit of title deeds of the property was created in favor of the Bank by way of additional security. It is not disputed that at the relevant time, the appellant was the Managing Director of the company. A total of more than Rs. 10,00,034.20, stood to the company's debit in the said cash credit account with the Bank. A winding up petition (Company Petition No. 34 of 1966) was pending against it, as was also pending a petition for sanction of a scheme of compromise between the company and its unsecured

creditors, when the respondent Bank entered into a compromise with it. In April, 1968 a joint application was moved u/s 443(2) read with sections 391 and 392 of the Act for sanctioning the said compromise. The company admitted under the compromise, that the respondent Bank was a secured creditor and a sum of Rs. 9,97,048.50 stood to its debit in favor of the Bank as on May II, 1966. It was also admitted that the Bank held an equitable mortgage of the property in dispute, by way of security. The compromise also provided that the parties will cooperate in taking appropriate steps to get the attachment of the property in dispute vacated, which attachment was made in suit No. 406 of 1966 filed by some creditors against Mr. R. L. Anand. The company agreed that within three months from the date of the sanction of the agreement or the raising of the said attachment, it will pay to the respondent Bank a sum of Rs. 4,98,524.00 being 50% of the admitted claim of the Bank as on May II, 1966. The Bank was also authorised to sell the said property and to receive the said sum of Rs. 4,98,524.00 being 50% of its total claim in full and final settlement subject to the other conditions mentioned in the compromise. If the property fetched more price than Rs. 4,98,524.00 the excess was agreed to be paid to the company. One of the terms of the compromise provided. that if after the creditors were paid to the extent of 50 per cent a surplus still remained, the Bank was to be paid a further amount to the extent of Rs. 1,49,556.00, being 15 per cent of the amount due to the Bank as on May II, 1966. The Bank, however, agreed to accept the said sum of Rs. 4,94,524.00 in full and final settlement of its admitted claim, if 15 per cent out of the distributable surplus did not become payable. The application for the sanction of this compromise came up before S. N. Shanker, J., who by his order, dated May 10, 1968 sanctioned it as being in the larger interest of the company and of the creditors and the Board of Directors were directed to enter into the compromise if they considered it fit and proper. The petition filed by the creditors against Mr. Ram Lal Anand and others were dismissed as withdrawn by October 16, 1970 and attachment on the property in dispute was raised. The Bank filed an application u/s 392 of the Act and rule 9 of the Company (Court) Rules for directions to enforce the sanctioned compromise. A notice to the application was directed to be given to the appellant, Mr. R.L. Anand, one of the directors of the company also, as the property stood in his name and he had been claiming it as his. The company, however, was disputing the appellant's claim and claimed, on the other hand, that this property belonged to it. The company did not dispute the creation of the equitable mortgage or the amount due- It only pleaded its unsatisfactory financial position. To began with, it contended that there was no compromise and that the order dated May 10, 1968 was made on a proposed compromise. But this position was given up and the counsel appearing on behalf of the company stated before us that the company supported the claim of the Bank and the order of the learned Company Judge.

(3) It had been contended by the appellant, as has been contended on his behalf even before us, that he was not a party to the said agreement and compromise

and was, Therefore, not bound by it. It was also contended that he was the owner of the property and the company had nothing to do with it. His property, according to him, could not be sold to satisfy the indebtedness of the company.

(4) The learned Company Judge rightly brushed aside this objection of the appellant, by noticing that the title deeds were admittedly in the Bank's possession. The appellant himself was the managing director of the company. There is no suggestion that the title deeds were not given voluntarily or of free will.

(5) The appellant then contended that the company had agreed to pay him Rs. 2,05,000.00 in lieu of his giving up his rights in the property in dispute. This amount not having been paid the property, according to him, still remained his. This plea has reference to a scheme of arrangement which had been entered into between the company and the unsecured creditors in C.A. 128 of 1966 in Cp 42--D of 1966, which was approved and sanctioned on July 29, 1968 by Andley, J. (as his Lordship then was). The respondent Bank has also placed reliance on that scheme in support of its plea that the appellant gave up all his rights in the property. As the property stands in the name of the appellant, the Bank has also prayed for directions to him to join in the execution of the sale deed as a confirming party. The scheme of arrangement sanctioned by this court thus assumes considerable importance and the learned Company Judge has based his decision mainly on its interpretation. This scheme has been reproduced in schedules I and II attached to the said order, which is annexure "C" attached to the petition. The said scheme of arrangement was held to be in the interest of the General Body of creditors and binding on the company and the unsecured creditors.

(6) The terms of settlement of that scheme as set out in the memorandum of agreement given in Schedule II, clearly show that Mr. R. L. Anand, the appellant was a party to it. It is recited that he was acting on behalf of the General Body of shareholders and had joined the other parties to make the prayer that in the interest of the General Body of the creditors as well as that of the General Body of shareholders and with a view to avoid expensive and wasteful prolonged litigation, the settlement set out therein, be sanctioned and given effect to. He, according to one of the terms of the settlement was to be one of the first directors of the company representing the shareholders. Para 4 of the settlement which deals with the disputed property is Sunder Nagar, New Delhi, and which is the material clause in the settlement for our present purposes, reads as under :-

"The Directors of the Company claim that residential kothi known as 88 Sunder Nagar, belongs in law and equity to the company and that Shri R. L. Anand had no beneficial interest in the same. Accordingly, they have sometime back made a transfer entry in the books of account crediting an amount of Rs. 2,05,000.00 to Messrs Veer Finance Co. On the other hand Shri R. L. Anand claims that the above property belongs to him and that he was required to purchase it in view of the objections raised by the Registrar of Companies and that he has paid the full

consideration for the same. With a view to avoid this dispute, Shri R. L. Anand agreed in the interest of the general body "of creditors to give up all his rights in respect of the said property and to hand over the vacant possession thereof and the fixtures and furniture therein to the Directors of the Company forthwith, and the Company agrees to pay a sum of Rs. 2,05,000.00 in such manners the Chairman of the Board of Directors of the Company may consider fit, unless the same. is adjusted in the manner provided Hereafter. *The credit of Rs. 2,05,000.00 made in "favour of Veer Finance shall be reversed accordingly."

(7) Mr. R. M. Lal, the learned counsel appearing on behalf of the appellant contended that the appellant was no party to this settlement. He had joined in his capacity as a representative of the shareholders and not in his personal capacity. He, according to him, was not personally bound by the said settlement. The contention of the learned counsel is without any basis. It is mentioned in para 4 reproduced above that Shri R. L. Anand agreed to give up all his rights in respect of the said property and to hand over vacant possession thereof. This was an undertaking given by the appellant in his personal capacity. He was not giving up his rights in the property as a shareholder, as it is not the appellant's case that he possessed any right in the property in his capacity as a shareholder. The right which were being given up" were his personal rights, and he, when giving up, could not be taken to be acting in a capacity other than his personal capacity. The appellant along with others secured the sanction of the court by representing that he was giving up his personal rights in the property, if any. He cannot now turn round and be heard to say that he was a party to this settlement only in his capacity as representing the shareholders and that he did not give up his personal rights.

(8) The learned counsel then contended that the undertaking by the appellant was in the nature of a contingent contract, which obliged the appellant to do something, only if some other event collateral to the contract did happen. The other event, according to him, was the payment of Rs. 2,05,000.00 by the company to the appellant. The appellant undertook to give up his rights in the .property, says the counsel, only if a sum of Rs: 2,05,000.00 was paid to him. This contention finds no support from the language of the settlement. Para 4 reproduced above shows that the appellant in the interest of the general body of creditors agreed to give up all his rights in the property and to hand over vacant possession thereof and the fixtures and . furnitures therein to the company forthwith. The word "forthwith" has a significance of its own, which cannot be overlooked. The agreement by the company to pay Rs. 2,05,000.00, was not for any payment forthwith. On the other hand, the company agreed to pay the said amount in such manner as the Chairman of the Board of Directors of the company considered fit and that also if the same was not adjusted in the manner provided in a later part of the agreement.

(9) For this, reference has to be made to para 6(f) of the settlement, which reads as follows : "Shri R. L. Anand shall have the option of either vacating the

flat, i.e. 9, Wyoming Building, Malabar Hills, Bombay, owned by Mazda Theatres, Bombay, or to buy the same at a cost of Rs. 2,80,000.00 provided he makes the payment within two months from this date. The company shall be prepared to adjust the amount of Rs. 2,05,000.00 referred to in paragraph 4 towards this payment, if so desired by Shri R. L. Anand, the balance will in that case be payable in cash."

(10) It is, thus, clear that a sum of Rs. 2,05,000.00 was not required to be paid forthwith, but was to be either adjusted in the price of the Bombay flat in accordance with paragraph 6(f) or was to be paid in such manner as the Chairman of the Board of Directors of the company considered fit. Mr. B.-R. Aggarwal, appearing on behalf of the Bank contended that this clause was deliberately incorporated to enable the company to make adjustment of its claims against the appellant, if any, against the amount of Rs. 2,05,000.00. We need not go into this aspect of the matter. It is clear to us that the payment of Rs. 2,05,000.00 was not a condition on the performance of which alone the rights in the property in dispute were to be given up by the appellant.

(11) All the same, there is no doubt that the appellant's undertaking to give up his rights in respect of the property in dispute and to hand over the vacant possession along with fixture and furniture therein to the company on one side and the company's commitment to pay to him a sum of Rs. 2,05,000.00 in such manner as the Chairman of its board of directors may consider fit unless the same was adjusted in the manner provided in the compromise, on the other, formed the consideration for each other. Although the two sets of promises were not to be performed simultaneously, yet they, owing to their forming the consideration for each other, were reciprocal in nature. The parties to this settlement were bound u/s 37 of the Contract Act, to perform or offer to perform their respective promises. We, Therefore, must say with respect that we are unable to agree with the learned Company Judge that while enforcing the rights of the respondent Bank against the company by making the appellant fulfill his undertaking to the company, the appellant's rights claimed against the company be left totally unexamined and he be advised to take such steps, Which may be appropriate and open to him. The order of the learned Company Judge directing sale of the property and further directing the appellant to execute sale deed without ascertaining, whether the company was ready and willing to perform its part of the compromise, Therefore, cannot be sustained.

(12) u/s 392, the High Court has the power to supervise the carrying out of the compromise or arrangement which has been sanctioned by it u/s 391. Further it has the power to give directions either at the time of sanctioning the compromise at any time thereafter in regard to any matter for the proper working of the compromise or arrangement. The court has the power even to modify the compromise in order to make it work satisfactorily. The order u/s 392 can be passed by the court suo motu and it is not necessary for it to wait for an application for the purpose. While ensuring the proper working of one part of the

compromise which requires the appellant to give up his rights, the court is not prevented from giving directions in regard to the other part of the compromise dealing with the obligations of the company. It is true that no hard and fast rules can be laid for the manner in which the court will exercise its powers u/s 392; and there may be cases where the court will insist on the performance of one part of the compromise leaving the other part for consideration at some future occasion, especially when the two parts are not dependent on each other. But this, we think, is a case involving peculiar circumstances. The compromise with the Bank was sanctioned, way back in May, 1968, and the other compromise between the company and its unsecured creditors was sanctioned in July, 1968. Nothing is known as to what happened during all these years. Mr. Roshan, the learned counsel appearing on behalf of the company stated at the Bar that the appellant had handed over possession of the premises to the company in the beginning, but subsequently it was taken back by him. The circumstances under which this happened, if it happened at all, have nowhere been disclosed. Whether the company performed its promise or any part thereof, or whether it ever offered to perform its part of the contract? Has anything been paid by the company by adjustment or otherwise ? If not, whether the company is still ready and willing to perform its part of the contract and, if so, how and in what manner it proposes to pay the sum of Rs. 2,05,000.00, which was to be paid to the appellant ? Answers to these questions shall have to be ascertained in all fairness to the parties concerned, in order to find out, if this part of the compromise was still enforceable. It may not be fair to exercise powers u/s 392, to enforce merely a part of the compromise, by ignoring altogether the other part. The two parts shall have to be performed by the parties concerned, though not simultaneously. We, Therefore, feel that the learned Company Judge was wrong in ignoring the compromise which binds the company as much as the appellant. It is, Therefore, necessary to investigate into all these matters and weigh the pros and cons thereof, before ordering the sale of the property. In view of the delay, which has already been caused, we are sure, the proceedings will be expedited.

(13) We accordingly allow this appeal, set aside the order of the learned Company Judge and remand the case back to him for final disposal in accordance with law, after taking into consideration the observations made herein. There shall, however, be no costs in this appeal.