

(2003) 03 CAL CK 0049
In the Calcutta High Court
Case No : C.O. No. 416 of 2003

Shrimati Bhavita Jitendra Mehta

APPELLANT

Vs

Sudera Enterprises Private Limited

RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Companies Act, 1956 — Section 391(2)
Constitution of India, 1950 — Article 227
West Bengal Premises Tenancy Act, 1956 — Section 10, 12, 8

Citation : (2003) 3 CALLT 266 : (2004) 122 CompCas 361 : (2004) 51 SCL 290

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Jayanta Mitra, Sabyasachi Naik, Shrenik Singhvi, Sovan Sundar Basu and Siddhartha Lahiri, for the Appellant; Pratap Chatterjee, Surajit Mitra, Harish Tandon and U.S. Menon, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mukherjee, J.—This is to consider an application under Article 227 of the Constitution of India read with Section 115 of the CPC against orders dated January 30, 2003, February 17, 2003 and February 21, 2003 all passed by the learned Chief Judge, Presidency Small Causes Court at Calcutta in R.C.A. No. 1 of 2002.

2. The petitioner in this application is a tenant in respect of shop No, B-203, lower basement, at 1, Shakespeare Sarani, Calcutta 71, The petitioner was inducted in the disputed premises by Sudera Enterprises Private Limited.

3. Sometime in April 1989 the petitioner initiated a proceeding in the office of the Rent Controller for fixation of fair rent under Sections 8, 10 and 12 of the West Bengal Premises Tenancy Act, 1956. The said proceeding was, however, transferred to the Additional Rent Controller and was, ultimately registered as A.R.C. No. 92 of 1989(FR).

4. On or about April 6, 2000 Sudera Enterprises Private Limited, A.B.L. International Limited and Vinith Private Limited jointly applied u/s 391(2) and 394 of the Companies Act. 1956 before the Company Court for sanctioning of a scheme of amalgamation. The said proceeding was registered as Company Petition No. 317 of 2002. On September 26, 2000 a learned judge of this Court sanctioned the scheme of arrangement/ amalgamation. Under the said scheme the real estate division of Sudera Enterprises Private Limited, including the major portion of the said premises No. 1, Shakespeare Sarani, Calcutta, has been transferred to ABL International Limited while the investment division and the fifth and sixth floors of the said building have been transferred to Vinith Private Limited. Since certain errors had crept in the said order dated September 26, 2000, the said petitioners filed an application for correction and modification of the said order. The Company Court allowed the said prayers on March 26, 2001.

Since A.R.C. Case No. 5 1989(FR)92 was pending before the Additional Rent Controller against Sudera Enterprises Private Limited and as in view of the scheme of arrangement/amalgamation Sudera Enterprises Private Limited has been amalgamated with A.B.L. International Limited, the learned advocate of the Sudera Enterprises Private Limited by his letter dated May 15, 2001 informed the learned advocate for the petitioner about the orders dated September 26, 2002 and March 26, 2001 passed by this Court in Company Petition No, 317 of 2000 sanctioning the arrangement/ amalgamation and, further, informed that the disputed property stood transferred and vested in A.B.L. International Limited. Along with the copy of the said letter xerox copies of the said two orders were supplied. The learned advocate for the petitioner received the said letter on the said May 15, 2001. The Additional Rent Controller in his order date May 15, 2001 recorded that Sudera Enterprises Private Limited has merged with A.B.L. International Limited.

6. Although the carriage of the proceeding was with the petitioner, in spite of said intimations to her learned advocate, she took no step in the A.R.C. Case No. 92 of 1989 (FR) to substitute the transferee company in stead and place of the transferor company. It is equally true that the transferee company did not file any application for correction of the cause title of A.R.C. Case No. 92 of 1989 (FR), although factually the transferee company contested the said case.

7. The Additional Rent Controller, however, by his order dated January 4, 2002 disposed of the application for fixation of fair rent in favour of the tenant.

8. On or about February 6, 2002 A.B.L. International Limited, being aggrieved by and dissatisfied with the said order dated January 4, 2002 passed by the Additional Rent Controller in A.R.C. Case No. 92 of 1989 (FR), preferred an appeal before the learned Chief Judge, Presidency Small Causes Court at Calcutta and the said appeal has been registered as R.C.A. No. 1 of 2002 in the said court

9. The appellant has been described in the memorandum of appeal as under;

"Sudera Enterprises Pvt. Ltd., a company incorporated under Companies Act, 1956.

And

Presently known as

A.B.L. International Ltd., having its registered office at 1, Shakespeare Sarani, within police station Shakespeare Sarani (formerly Park Street) Calcutta 700001."

10. By order dated March 24, 2002 the learned Chief Judge, Presidency Small Causes Court at Calcutta dismissed the said appeal holding, inter alia, that the same was not maintainable.

11. Being aggrieved A.B.L. International Private Limited moved this Court u/s 115 of the Code of Civil Procedure, which was registered as Civil Order No. 694 of 2002.

12. By judgment and order dated April 17, 2002 Narayan Chandra Sil. J. set aside the order dated March 14, 2002 and remanded the appeal to the court of learned Chief Judge, Presidency Small Causes Court, Calcutta for a fresh findings on the materials on record. It was, however, observed that the hearing of the appeal before the learned Chief Judge, Presidency Small Causes Court would remain stayed till the passing of the final order by the apex Court in connection with the applications for amendment of the cause title and clarification/modification of the orders dated September 25, 2002 and March 12, 2001 and for permission to submit additional documents being LA, Nos. 5 to 14 in Civil Appeal Nos. 5484 to 5485 of 2000. However, the learned Chief Judge was directed to proceed with the other connected matters including the application for stay.

13. There is another facet of the litigation concerning the dispute between the parties.

14. The tenant of Air-conditioned Market at 1, Shakespeare Sarani, Calcutta-71 formed Air-conditioned Market Association and it is alleged that the petitioner is one of the members of the said association. The said association filed a suit being No. 601 of 1989 in the Ordinary Original Civil Jurisdiction of this Court against Sudera Enterprises Private Limited, inter alia, for declaration and permanent injunction. In the said suit a learned judge of this court appointed a receiver with directions upon the tenants to pay the last paid rents to the landlord and to deposit the balance amounts with the learned receiver till the decision by the Rent Controller in the proceedings for fixation of fair rent.

15. By order dated August 8, 1995, passed in the said suit, a learned judge of this court allowed the Sudera Enterprises Private Limited to withdraw a sum of Rs. 35 lacs upon furnishing bank guarantee. The said order dated August 8, 1995 was, however, modified by order dated December 5, 1995, inter alia, permitting Sudera Enterprises Private Limited to withdraw the said sum upon giving

personal undertaking by the Directors of Sudera Enterprises Private Ltd.

16. The plaintiffs of the said suit preferred two appeal being Nos. 464 of 1995 and 465 of 1995 against the orders dated August 8, 1995 and December 5, 1995 respectively. The said appeals were ultimately referred to a Special Bench and the Special Bench by judgment and order dated May 18, 2000 dismissed the appeal No. 464 of 1995, but allowed the appeal No. 465 of 1995. The order dated December 5, 1995 was, therefore set aside.

17. Challenging the order passed by Special Bench, Sudera Enterprises Private Limited approached the apex Court under Article 136 of the Constitution of India. The Special leave was granted on September 25, 2000. The apex Court passed an order of stay of the operation of the judgment and order dated May 18, 2000 passed by the Special Bench and the learned Receiver was directed to handover Rs. 1.34 crore to the landlord upon furnishing personal security subject, however, to the decision of the suit as well as the proceedings for fixation of fair rent. It was made clear that the said order would not preclude the Rent Controller to decide the applications for fixation of the fair rent.

18. The said appeals have been registered as Civil Appeal Nos. 5484-5485 of 2002 in the apex court.

19. By order dated February 16, 2001 the apex Court, inter alia, directed the Rent Controller to decide the applications for fixation of fair rent expeditiously, preferably within six months from the date of the said order. The learned advocates appearing for the parties undertook before the apex Court that they would co-operate with the Rent Controller and would not take unnecessary adjournment.

20. Sudera Enterprises Private Limited filed applications in connection with the said Civil Appeal Nos. 5484-5485 of 2002 for amendment of the cause title and clarification/modification of the orders dated September 25, 2000 and March 12, 2001 and for permission to submit additional documents. Two other applications have been filed for directions and for discharge of the learned receiver.

21. By order dated August 24, 2001 the apex Court fixed the hearing of the applications on September 21, 2001 and directed the parties to maintain status quo in the meantime and the learned receiver was directed not to pay the amount received by him towards the rents from the tenants to Sudera Enterprises Private Limited or any successor company.

22. The apex Court on November 18, 2002 passed yet another order, inter alia, directing that the tenants should pay the rents as determined by the Rent Controller subject to any order passed finally in this regard. It has been, further, ordered that the appeal filed against the order of the Rent Controller required expeditious hearing and, therefore, directed that the appeal might be decided expeditiously preferably within three months.

23. In the background of the order dated September 18, 2002 passed by the

apex Court, the appellant in R.C.A. Appeal No. 1 of 2001 filed an application in the appeal court for securing compliance of the order of the Apex Court. The Court below fixed the hearing of the appeal and the application for stay on January 20, 2003. At this stage the tenant/petitioner raised an objection that the appeal was not maintainable in law and submitted that the appeal was required to be dismissed on the ground of maintainability. The appeal was actually taken up for hearing on January 24, 2001 and the tenant objected to the maintainability of the appeal filed by the A.B.L. International Limited. The appeal court fixed January 30, 2003 for hearing of the appeal on the point of maintainability.

24. By order dated January 20, 2001 the Chief Judge, Presidency Small Causes Court at Calcutta observed that in view of the order passed by the Apex Court it has been necessary to fix a date for hearing of the appeal on merits and fixed February 11, 2003 for hearing of the appeal on merits. On February 11, 2003 the petitioner in this application filed an application before the appeal court praying for modification of the order dated January 30, 2001 and for direction on the appellant in R.C.A. No. 1 of 2002 to clarify regarding its present status and the present state of affairs before the apex Court. The hearing of the said application was fixed on February 17, 2003 and leave was granted to the appellant to file a written objection. The appellant filed a written objection, supported by an affidavit.

25. The learned Chief Judge by the order impugned dated February 21, 2003 disposed of the application filed by the tenant, petitioner in this application, holding that in view of the statements made in the written objection by A.B.L. International Limited there was no ambiguity on the status of A.B.L. International Limited as an appellant in the said appeal.

26. Being aggrieved the petitioner has come up with this application.

27. Mr. Jayanta Mitra learned senior advocate, appearing for the petitioner, argued that it was not permissible on the part of the A.B.L. International Limited to prefer the appeal against the order passed by the Additional Rent Controller as A.B.L. International was not a party in the proceeding before the Additional Rent Controller. It has submitted that no leave was obtained by the said A.B.L. International Limited to prefer the said appeal as person aggrieved. Mr. Mitra has drawn my attention, specifically, to the orders passed by the apex Court in connection with the applications filed by the Sudera Enterprises Private Limited for amendment of the cause title and clarification/modifications of orders dated September 25, 2000 and March 12, 2001 and submitted that the apex Court directed the parties to maintain status quo and as such till the disposal of the said applications, the hearing of the appeal should remain stayed. My attention has, also, been drawn to the order passed by N.C. Sil, J. dated April 17, 2002 where it has been directed that the hearing of the appeal would remain stayed till the passing of the final order by the apex Court in connection with the said applications for amendment of the cause title and clarifications/modifications of

the said orders filed in Appeal Nos. 5484-5485 of 2000. Mr. Mitra argued, further, that the learned judge misconstrued the order of apex Court dated November 18, 2002, inter alia, directing the appeal court to decide the appeal expeditiously; it is submitted that the Supreme Court of India passed an order assuming that the appeal was filed by the Sudera Enterprises Private Limited as A.B.L. International Limited was yet to be born before the apex court.

28. I am unable to hold that the appeal preferred by A.B.L. International Limited against the order of the Additional Rent Controller, in the facts and circumstances of the case, is not maintainable. The real effect of an amalgamation depends upon the terms of the scheme of the merger. I have already indicated hereinabove the terms of the scheme of merger which has been sanctioned by the Company Court. Under the terms of the scheme, the real estate division of Sudera Enterprises Private Limited including the major portion of the said premises No. 1, Shakespeare Sarani, Calcutta has been transferred to A.B.L. International Limited. The petitioner in this application is a tenant in respect of shop No. B-203, Lower Basement, at 1 Shakespeare Sarani. Under the terms of the scheme, the said premises devolved upon the transferee company, namely, A.B.L. International Limited. Sudera Enterprises Private Limited and A.B.L. International Limited amalgamated and merged into one and as a consequence thereof the transferor company loses its entity as the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective.

29. The proceeding for fixation of fair rent was commenced against the transferor company. The attention of the petitioner was drawn about the scheme of amalgamation including the orders passed by the Company Court. The petitioner did not take any step. A.B.L. International Limited the transferee company for all practical purposes, contested the case before the Additional Rent Controller and the Additional Rent Controller in his order dated May 15, 2001 recorded that Sudera Enterprises Private Limited has merged with A.B.L. International Limited. The petitioner/tenant is now wants to take advantage of her omissions to substitute the transferee company before the Additional Rent Controller. The transferor company has been amalgamated with the transferee company and as such the transferee company is entitled to pursue the remedy in appeal.

30. Moreover, the petitioner is only a tenant and she has no right to say "no" to the amalgamation inasmuch as she is entitled only to the protections under the existing rent restrictions Act. It is settled law the order of amalgamation passed by the Company Court is a judgment in rem and as such the order of amalgamation is binding on the tenant.

31. The apex court in the order dated August 24, 2001, while considering the applications filed by the Transferor Company for amendment of the cause title and clarifications/modifications of the orders dated September 25, 2000 and March 12, 2001 and for permission to submit additional documents, inter alia, directed the parties to maintain status quo. The said order of status quo was

subsisting on the date when N.C. Sil, J. passed the order dated April 17, 2002. N.C. Sil, J. has no option, but to direct that the hearing of the appeal would remain stayed till the passing of the final order by the apex court.

32. However, the apex court, by the subsequent order dated November 18, 2002, passed in connection with those applications, directed that the appeal against the order of the Additional Rent Controller should be decided expeditiously preferably within three months.

33. I am unable to accept the contentions that the Supreme Court of India passed the said order dated November 18, 2002 under an impression that Sudera Enterprises Private Limited has preferred the appeal. Sudera Enterprises Private Limited ceases to exist and it has been amalgamated with A.B.L. International Limited. The papers concerning such amalgamation were before the Supreme Court of India and Sudera Enterprises Private Limited did never prefer any appeal and as such when the Supreme Court of India directed expeditious disposal of the appeal filed against the order fixing fair rent, the appeal preferred by A.B.L. International Limited must be disposed of expeditiously.

34. I am convinced that the present objection by the tenant as to the maintainability of the appeal preferred by A.B.L. International Limited is not a bona fide one, but such objection has been taken only to delay the disposal of the appeal.

35. I do not, therefore, find any merit in this revisional application, which is, accordingly, rejected without, however, any order as to costs.

Xerox certified copy of this order, if applied for, is to be supplied to the applicants expeditiously.