

(1996) 05 AHC CK 0152
In the Allahabad High Court
Case No : Special Appeal No. 136 of 1995

Simbhaoli Sugar Mills Ltd.

APPELLANT

Vs

Official Liquidator and Others

RESPONDENT

Date of Decision : 15-05-1996

Acts Referred:

Companies (Court) Rules, 1959 — Rule 272
Companies Act, 1956 — Section 446, 446(1), 446(2)

Citation : (1996) 05 AHC CK 0152

Hon'ble Judges : D.P. Mohapatra, C.J;U.P. Singh, J

Bench : Division Bench

Advocate : R.K. Agarwal, for the Appellant; Official Liquidator, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—At the very threshold, the question raised in this special appeal is:

Whether in terms of Section 446(2)(a)(b) of the Companies Act, 1956, the learned Company Judge while disposing of the Company application was Justified in giving direction that the dispute raised by the objectors in respect of their right, title and interest over six biswas of land would be decided by the civil court, where, admittedly the objectors had filed a suit No. 59 of 1994 in the Court of Munsif, Ghaziabad, after the Company M/s. Pioneer Glass Works Limited had been ordered to be wound up by this Court.

And, whether in this view, this Court alone has the jurisdiction u/s 446(2)(a)(b) of the Act to entertain any suit or proceedings by or against the Company or any claim by or against the Company. In other words, the contention raised is that since the Original Suit No. 59 of 1994 filed in the Court of Munsif, Ghaziabad was not maintainable, the learned Company Judge ought to have declared the same to be not maintainable and should not have directed the parties to approach the court where the suit was pending.

2. The provisions contained in Section 446 of the Act may be noticed:

446. Suits stayed on winding up order:

(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceedings shall be commenced, or if pending at the date of winding up order, shall be proceeded with, against the company, except by leave of the court and subject to such terms as the court may impose.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have Jurisdiction to entertain, or dispose of:

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India).

3. By order dated 16.2.1989 passed by this Court, M/s. Pioneer Glass Works Private Limited (in liquidation) was ordered to be wound up and the Official Liquidator, High Court, was appointed the liquidator for the purposes of the winding up proceedings. The Official Liquidator, after obtaining appropriate orders from this Court, took possession of the assets of the company including the plant, machinery, land and buildings and an inventory was prepared and the assets were valued by the Company approved Valuer. On the application of the Official Liquidator, this Court permitted him to sell the assets of the Company by inviting public tenders. The sale of the assets, i.e., the plant, machinery, land and buildings of the company were widely advertised after giving opportunity to the proposed purchasers to inspect the property. The tenders were opened on 30.4.1993. Only three tenders were received and the highest bid was Rs. 6,50,000. The ex-Director filed objections regarding the price offered, on which the Court directed the Official Liquidator to invite fresh tenders. In pursuance of the fresh advertisement, tenders were received and the highest offer made by M/s. Simbholi Sugar Mills Limited, the Appellant herein, was Rs. 7,50,000 for the land, plant, machinery and the buildings of the Company (in liquidation). There being no objection to the price offered, the highest offer was accepted and the entire amount was deposited with the Official Liquidator.

4. Under Rule 272 of the Companies Rules, 1959 when the matter was listed for confirmation of the sale, the objection (A-48) was filed on behalf of two persons, Sri Basudeo Singh and Banarsi Lal (Respondent Nos. 2 and 3) claiming that they are the owners and are in possession of one Biswa and five biswas of the land respectively which had not been sold by them to the Company in liquidation and the same has been included in the list of assets prepared by the office of the Official Liquidator and are subject-matter of sale. The objectors claimed that the said land was never transferred by them to the Company in liquidation, namely, M/s. Pioneer Glass Works Limited and, therefore, it may be excluded from the

auction sale. These objectors, Respondents No. 2 and 3 in this Special Appeal did not appear to contest the case.

5. The Official Liquidator filed counter-affidavit to the said objections and stated that as per the Valuer Report, about 10,000 sq. yards was in possession of the company, whereas, according to the revenue records, the total area, if converted into sq. yards, would be about 12,800 sq. yards. According to the valuer, the entire area is within the boundary wall and inside the bounded area, there were factory sheds and certain constructions in dilapidated conditions. The land is bounded by a boundary wall.

6. On 19.8.1993, the Company Judge directed that the sale be confirmed in favour of the purchaser M/s. Simbhaoli Sugar Mills Ltd. for a sum of Rs. 7,50,000 subject to final orders passed on the objections in respect of the ownership and possession over six biswas of disputed land. The Official Liquidator was directed to hand over the possession of the land, buildings, plant and machinery to the Appellant being the auction purchaser. The Official Liquidator submitted the report on 12.9.1993 to the effect that he handed over the physical possession of the following assets to the purchasers:

A Land--10,000 sq. yards approximately.

B. Complete factory building, structures alongwith boundary wall, gates, workshop, guardroom and quarters standing on the land inside the boundary wall or of factory of the company (in liq).

C. Plant and machinery as per description mentioned in the auction report.

7. The Appellant, the auction purchaser, also filed their reply and written statement opposing the prayer of the objectors. In reply, the Official Liquidator stated that at no point of time the objectors had ever claimed the ownership and possession over six biswas of land before the property was sold. The Appellants, in their reply and written statement have submitted that the entire area of the land including the disputed area of six biswas and plot No. 373 were bounded with the boundary wall constructed by the company in liquidation which was in complete possession of the same. The objectors had no right, title or interest over the six biswas of land, nor they were in possession of the same after the transfer of the land covered by the two sale deeds were executed by the objectors In favour of the company. They further stated that assuming the said objectors had any right, title or interest over that small fraction of land, the same stood extinguished on account of continued possession of the Company adversely to all others and the Company had full title over the same. The Appellant further stated that in their objections, the objectors claimed to have been in possession of unspecified six biswas of land within the boundary wall covered by some constructions but, subsequently in the rejoinder affidavit it was stated that they had let out the said six biswas of land to the company (in liquidation) which in turn had let out the same on lease to M/s. Narendra Glass Works, therefore, it was contended that the objectors were themselves not clear about their stand.

8. On assessment of these facts, the learned Company Judge held that since the objectors had filed Suit No. 59 of 1994 in the Court of Munsif. Ghaziabad, in which the ex-Managing Director of the Company in liquidation and the Managing Director of the purchasers are parties, it would be Just and proper that the dispute raised by the objectors relating to right, title or interest over six biswas of land be decided by the civil court and the parties may agitate their respective cases in the said suit. The Company Judge further directed that the sale deed in respect of 10,000 sq. yards of land can be executed by the Official Liquidator in favour of the purchaser provided the said 10,000 sq. yards of land is demarcated and for that purpose also it shall be open to the parties to approach the court where the suit is pending. With these observations, the objection (A-48) was disposed of.

9. The facts are not in dispute that in pursuance of the auction notice published by the Official Liquidator for the sale of the assets of M/s. Pioneer Glass Works Ltd. (in liquidation), offers were invited for sale of land, building, plant and machineries lying in the factory premises and the sale being "as is where is basis" and the area of the land described as about 10,000 sq. yards, the bid of the Appellant was in respect of the entire land belonging to M/s. Pioneer Glass Works Ltd. The Appellant's bid being the highest for the entire land put to auction which belonged to M/s. Pioneer Glass Works Ltd., the company was in possession and enjoyment of the entire area within the boundaries and the Official Liquidator as well gave possession to the Appellant over the entire area. Even according to the affidavit filed by the objectors, right from the very beginning, the Company has been in peaceful possession of the entire land.

10. In terms of the provisions contained in Section 446 of the Companies Act and on the facts of this case that the Company M/s. Pioneer Glass Works Limited had been ordered to be wound up by the Company Judge on 16.2.1989 and the Official Liquidator had been appointed for the purposes of winding up proceedings, no suit or other legal proceedings could be commenced in view of the Section 446(1) of the Companies Act. Thus, the original suit No. 59 of 1994 filed by the objectors (Respondent Nos. 2 and 3) in the Court of Munsif, Ghaziabad in respect of the properties belonging to the Company (in liquidation) namely, M/s. Pioneer Glass Works Limited was not maintainable and, therefore, in terms of Section 446(2)(a)(b) of the Act, the Court which was winding up the Company, alone, had the Jurisdiction to entertain any claim made by or against the Company and the learned Company Judge was not justified in directing the parties to approach the Munsifs Court where the suit was pending. The order of the learned Company Judge is thus modified to that extent and the Official Liquidator is directed to execute the sale deed in favour of the Appellant being the purchaser in respect of the entire land belonging to the Company (In liquidation) namely, M/s. Pioneer Glass Works Ltd. The sale deed is to be executed for the property as specified in the order of confirmation of sale. The objection filed by the objectors (A-48) thus stands disposed of and the order of the learned Company Judge dated 6.2.1995 is modified to the extent indicated

above.

11. In the result, the appeal is allowed with the modifications indicated above.
No order as to costs.