
(2010) 10 DEL CK 0211

In the Delhi High Court

Case No : Company Appeal (SB) No. 46 of 2006

Vardaan Agro-Tech Pvt. Ltd. and Others

APPELLANT

Vs

Shri Dinesh Sharma and Another

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Companies Act, 1956 — Section 10(F), 397, 398

Citation : (2011) 161 CompCas 1 : (2011) 4 ComplJ 185

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Jagjit Singh and Kuldeep Tiwari, in CA Nos. 1042-43/2009, for the Appellant; Yashpal Rangi, for Dy. Commissioner, S.V. Tyagi, Bank of India, Dinesh Sharma and Krishana Kumar for Jugal Kishore, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—This is an application filed by Vardaan Agro-Tech Private Limited for direction that the Respondent Nos. 1 and 2 should place all assets, factory land and building and nuclear resource- Cobalt 60 at the original place and the order maintaining status quo dated 18th April, 2009 should be enforced and complete inventorisation should be undertaken. Another prayer made is that the Respondents should be restrained from carrying on any construction or causing damage to the factory land and the building.

2. The applicant herein has filed an appeal u/s 10F of the Companies Act, 1956 against the order passed by the Company Law Board dated 29th August, 2006 disposing of the petition under Sections 397 and 398 of the Act filed by Dinesh Sharma and Bina Sharma against Vardaan Agro-Tech Private Limited , Dwarka Nath and others.

3. The appeal was admitted to hearing vide order dated 13th December, 2006 and two questions of law have been framed. The questions of law relate to oppression and mismanagement under Sections 397 and 398 of the Act and

issue of directions by the Company Law Board in the impugned order dated 29th August, 2006. The second question is in respect of resolutions dated 15th December, 2002 and 23rd July, 2002 and whether the same are legal and binding between the parties. The order records that the dispute is between father on one side and the son and daughter in law on the other side. Certain other interim directions to protect the interest of the parties have been passed. The appeal has remained pending since then.

4. One Mr. Jugal Kishore, who is not a share holder of Vardaan Agro-Tech Private Limited and not concerned with the allegation of oppression and mismanagement had filed a suit for specific performance against Dwarka Nath in respect of agricultural land situated in revenue estate of Village Kishora and Joshi Chouhan on the basis of an agreement to sell dated 12th January, 2000. The suit was instituted on or about 10th July, 2003 and was decreed in favour of the Jugal Kishore vide judgment and decree dated 24th February, 2006.

5. In appeal, the learned Additional District Judge sustained the decree of the trial court to the extent of 5/6 of the subject land vide judgment dated 1st March, 2008.

6. Further appeal filed by Dwarka Nath was dismissed by the Punjab and Haryana High Court vide judgment dated 29th May, 2009. Before the Punjab and Haryana High Court, Vardaan Agro-Tech Private Limited, Bank of India and Technology Development Board had filed applications for being impleaded as parties. Vardaan Agro-Tech Private Limited had pleaded that Dwarka Nath had entered into a 99 years perpetual lease with them vide lease document dated 2nd September, 2003. It was also alleged that Dwarka Nath had earlier also executed a lease document dated 9th July, 2001, which was registered on 13th July, 2001 but the said document was cancelled by mutual consent by Dwarka Nath and Vardaan Agro-Tech Private Limited. Bank of India had claimed that Vardaan Agro-Tech Private Limited had mortgaged the property with them and, therefore, they should be impleaded as parties.

7. By the order dated 29th May, 2009, the applications filed by Vardaan Agro-Tech Private Limited, Bank of India and Technology Development Board were dismissed. By the same order, the learned single Judge of Punjab and Haryana High Court recalled the earlier order by which Dinesh Sharma and Bina Sharma had been impleaded parties to the second appeal.

8. Against this judgment/order, four SL Ps were filed before the Supreme Court by Bank of India, Vardaan Agro-Tech Private Limited, Technology Development Board and Dwarka Nath. SL Ps have been dismissed.

9. In the present application, Vardaan Agro-Tech Private Limited has relied upon order passed in SLP (Civil) No. 12689-12692/2009 filed by the Bank of India. The said order while rejecting the SLP records that the said bank had initiated proceedings before the Debt Recovery Tribunal and under the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act,

2002. It is recorded that it will be open to the bank to take all steps to recover the amounts due by pursuing the said remedies in accordance with law. It is further recorded that non-impleadment of the bank in the suit for specific performance filed by Jugal Kishore against Dwarka Nath will not come in the way of the bank. The bank is not an applicant before this Court. The bank is not aggrieved by any order passed by this Court.

10. The Punjab and Haryana High Court while dismissing the Regular Second Appeal filed by Dwarka Nath vide judgment dated 29th May, 2009 had directed the Appellant therein Dwarka Nath and the Receiver to handover possession of the disputed land to Jugal Kishore within a period of three weeks. Punjab and Haryana High Court had appointed Deputy Commissioner, Sonapat as a Receiver vide order dated 29th May, 2008 on an application filed in the Regular Second Appeal. The said order was passed as it was alleged that Jugal Kishore had taken possession of the property including land and building, machinery and stocks available in the factory. It was contended that the decree, which was passed was in respect of agricultural land and not plant and building. Later on another order dated 9th July, 2008 was passed appointing Dwarka Nath as an agent of the Receiver, i.e., Deputy Commissioner, Sonapat. While issuing said directions it was observed that one of the machines involved use of hot cell Housing Cobalt-60, which generates radiation and was/is hazardous. This aspect and other aspects were considered by the Punjab and Haryana High Court in the judgment dated 29th May, 2009 and were not accepted. As noticed above, this judgment dated 29th May, 2009 has become final and the SLP filed by Dwarka Nath and the application filed by the Vardaan Agro-Tech Private Limited have been dismissed.

11. The present appeal u/s 10F of the Act pertains to and challenges/assails the order dated 29th August, 2006 passed by the Company Law Board. It arises out of the petition under Sections 397 and 398 of the Act. The scope of the appeal is, therefore, limited and circumscribed by the issues raised and questions of law which have to be decided. This Court as such, therefore, is not concerned with the validity of the decree passed in the civil proceedings, which were initiated by Jugal Kishore against Dwarka Nath and the orders / judgments passed, which have been upheld right till the Supreme Court. The said orders and judgments cannot be assailed and made subject matter of the present appeal before this Court. In these circumstances, the interim order passed on 18th April, 2009 directing status quo with regard to title, possession and construction of the properties of the company, both movable or immovable, is partly modified to the limited extent that it would not affect execution of the decree passed in favour of Jugal Kishore against Dwarka Nath in respect of the land subject matter of the said decision. It is pointed out that pursuant to the directions issued by Punjab and Haryana High Court, the Receiver, Deputy Commissioner, Sonapat has handed over possession of the land, which was subject matter of decree to Jugal Kishore. It is clarified that in case the Deputy Commissioner, Sonapat has handed over the possession of the property/land to Jugal Kishore in terms of the decree passed by the civil court, same will not be considered as violation of the interim

order passed by this Court on 18th April, 2009. It was not the intention of this Court while passing the said order to stay the operation of the said decree, which has become final. It is also clarified that the observations in this order will not be construed as observations which will affect rights of the Bank of India, to the extent protected by the Supreme Court in their order dated 31st August, 2009 passed in SLP No. 12689-12692/2009.

12. At this stage, learned Counsel appearing for Vardaan Agro-Tech Private Limited has submitted that the land/property, which was not subject matter of the decree has been handed over by the Deputy Commissioner, Sonapat to Jugal Kishore. This Court is not concerned with the said question and it is open to Vardaan Agro-Tech Private Limited to raise this question before appropriate forum and in accordance with law, if so advised. This Court has also not expressed any opinion whether or not said proceedings will be maintainable.

The application CA No. 2125/2010 is disposed of.

CA Nos. 1042-1043/2009

Learned Counsel for the applicant seeks permission to withdraw the present applications.

The applications are dismissed as withdrawn.

CA No. 657/2009

This application is rendered infructuous.

COMPANY APPEAL (SB) No. 46/2006 and CA Nos. 320/20007, 1267/2007, 29/2008, 481/2008

List the Company Appeal along with the applications on 1st February, 2011.