

IN THE HIGH COURT AT CALCUTTA
ORIGINAL JURISDICTION
ORIGINAL SIDE

CA/5/2023
In
CP/22/1989

In the matter of:

Khemka Plastic Udyog Pvt. Ltd. (In Liquidation)
-And-
Amit Vanijya and others
-Versus-
Official Liquidator

BEFORE :

THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA

Date : 17th January, 2025

Appearance :

*Mr. Shaswata Nayak, Adv.
Mr. Gaurav Kumar Das, Adv.
Mr. Manish Joshi, Adv.
Mr. Kajal Kumar Dutta, Adv.
..for the applicant in CA/ 5/2023.*

*Mr. Soumabho Ghosh, Adv.
Ms. Tiana Bhattacharyya, Adv.
Mr. Dilip Kumar Ghosh, Adv.
..for the applicant in CA/ 6/2023 & CA/ 7/2023.*

*Mr. Tilak Kumar Bose, Sr. Adv.
Ms. Smita Das De, Adv.
Ms. Tanushree Dasgupta, Adv.
..for the Official Liquidator.*

*Mr. Debrup Bhattacharyya, Adv.
Mr. Steven S. Biswas, Adv.
...for the respondent no.2.*

1. The Court: the present application has been filed by one Amit Vanijya, a partnership firm, and its five partners, seeking disclaimer with regard to the subject-property of the Company (in liquidation) situated at Mysuru.

- 2.** Learned counsel for the petitioner argues that one Ramesh Dhandhanian came into possession of the property some time in 1983 and 1986, simultaneously with four agreements for sale being executed by the Company in his favour prior to commencement of the liquidation process. It is alleged that subsequently the said Ramesh Dhandhanian became the owner of the said property by dint of four deeds of conveyance executed respectively on December 13, 2013, December 16, 2013 and September 17, 2014. The said deeds were executed by one Sudam Paul, the alleged constituted attorney of the Company (in liquidation).
- 3.** Subsequently, Ramesh Dhandhanian allegedly executed a registered deed conveyance on December 14, 2021, thereby transferring the said property in favour of the applicants for a total consideration of Rs.81,00,000/- and allegedly handed over physical possession of the property in favour of the applicants. Thus, it is argued that the applicants are the owners of the said property and were wrongfully dispossessed by an order passed by this Court in Company Jurisdiction on January 18, 2023.
- 4.** During arguments, learned counsel for the applicants, however, concedes that the transfer of the property in favour of the applicants' vendor Ramesh Dhandhanian was effected during the Company being in liquidation. However, it is argued that insofar as the possession of the said vendor prior to liquidation is concerned, there is no dispute to the same from any corner. Accordingly, as physical possession of the

property was handed over by the said vendor to the applicants, it cannot be denied that the applicants are entitled to get back such possession.

5. It is contended by the applicants that since the applicants were dispossessed by dint of an order passed by the Company Court unlawfully, without giving any hearing to the applicants, it is the Company Court which ought to restore such possession in favour of the applicants, irrespective of whether the scheme filed by the applicant in CA/6/2023 and CA/7/2024 is accepted or not.
6. It is argued that even if an order was passed by the Company Court on September 14, 1992 directing possession to be handed over to one Mineral Syndicate, the purchaser of the property, there is nothing on record to show that such order was ever implemented. As such, it is argued that CA/5/2023 be allowed, thereby releasing the property in favour of the applicants or at least directing possession of the property to be restored to the applicants.
7. At the outset, this Court expresses its appreciation for the immense help given by learned senior counsel for the Official Liquidator (for short, "OL") by collating the facts of the case in the form of a short note, without which it would be extremely cumbersome for this Court to arrive at a decision in the present application.
8. Be that as it may, learned senior counsel for the OL argues that the alleged transfers in favour of Ramesh Dhandhanian during the pendency of the winding up proceeding was bad in law and no title passed in favour of the said Ramesh Dhandhanian by dint of such purported

transfers, since the Company was then in liquidation and no transfer could be effected by it independently as the Company Court, through the OL, was in control of the subject property. Moreover, the purported constituted Attorney of the Company, namely Sudam Paul, is apparently a fictitious person and there is nothing on record to show that the Company ever executed a valid Power of Attorney in favour of the said person empowering the latter to transfer the property on its behalf.

- 9.** Thus, it is argued that the very premise of acquisition of title by the applicants from the said Ramesh Dhandhanian was bad in law. Hence, the applicants never acquired any title to the property.
- 10.** Insofar as possession is concerned, learned senior counsel submits that although Ramesh Dhandhanian might have had possession of the property prior to the commencement of the liquidation process, however, the alleged agreements for sale in his favour at best created an actionable claim but did not pass any title to the property in his favour.
- 11.** By an order September 14, 1992, the Company Court had directed the OL to hand over possession to one Mineral Syndicate, the purchaser of the property by virtue of a sale conducted under the aegis of the Company Court, by September 18, 1992.
- 12.** The minutes of a meeting dated January 18, 1993 signed by the authorized representatives of the said Mineral Syndicate, the OL and the security guard agency shows that the seal existing on the property was removed and possession handed over to the said purchaser and the services of the security guards were terminated. Thus, the possession,

which was all along with the OL, was duly handed over in favour of Mineral Syndicate, which remained in possession thereafter at all material times prior to the order dated January 18, 2023 passed by the Company Court directing the OL to take possession of the assets of the Company (in liquidation). Although the purchaser Mineral Syndicate, represented by one Gobindo Biswas, had applied to the Company Court seeking execution of a deed of conveyance in its favour, such prayer was turned down by the Company Court due to the inordinate delay in making the same.

- 13.** From the minutes of a meeting dated January 25, 2023 attended by the Police Authorities, the OL and a caretaker of Mineral Syndicate, it is evident that the said property was identified by the said caretaker but the police refused to break open the lock affixed thereto in the absence of Gobindo Biswas, the representative (alleged proprietor) of Mineral Syndicate. The OL affixed his own lock on the entrance to the property and deployed security guards to protect the same.
- 14.** On January 31, 2023, a Receiver was appointed by order of the Company Court to take actual physical possession and the police was directed to give assistance to the OL for such purpose.
- 15.** The minutes of the meeting dated February 2, 2023, which is also a part of the report of the OL dated November 7, 2024, shows that the padlock was broken and a new padlock was affixed and the OL took possession of the subject-property on as is where is basis and directed the security guards to keep strict vigilance.

- 16.** CA/5/2023 was filed thereafter, only on February 16, 2023.
- 17.** Thus, it is argued that the property was all along in possession of the OL, who had handed over the property to Mineral Syndicate and thereafter took back possession pursuant to the order of the Court dated January 18, 2023 and thereafter, till date, the OL is in possession of the property. Hence, the contention of the applicants in CA/5/2023 to the effect of the said applicants are in possession of the property is untrue.
- 18.** Accordingly, learned senior counsel seeks dismissal of the said application.
- 19.** Upon hearing learned counsel for the parties, it is seen that the applicants in CA/5/2023 have made a two-pronged claim to the property – on the basis of their purported title by virtue of the sale deeds executed by Ramesh Dhandhanian in the years 2013 and 2014, and on the basis of their alleged possession of the subject-property before they were “unlawfully” dispossessed from the same by the order of the Court dated January 18, 2023.
- 20.** While examining the question of the title of the applicants as claimed by them, the Court finds such claim palpably baseless. Even if it is assumed that Ramesh Dhandhanian had been in possession prior to the commencement of the liquidation process by virtue of four agreements for sale, the said agreements did not confer any title on him, since Section 54 of the Transfer of Property Act is clear on the question of no

title being created merely by an agreement for sale unless there is registered conveyance duly executed in favour of the purchaser.

- 21.** The claim of title of Ramesh Dhandhanian is on the strength of purported deeds of conveyances dated December 13, 2013, December 16, 2013 and September 17, 2014, all of which were executed much after the commencement of the winding up proceeding. At that juncture, the OL was *custodia legis* and the Company Court was in seisin of the matter. Hence, the Company did not have any independent right to transfer title in any of the assets of the Company (in liquidation) at the relevant point of time. Thus, no title could have passed by virtue of such sale deeds in favour of Ramesh Dhandhanian.
- 22.** That apart, I do not find anything on record to establish even the existence of the said Sudam Paul, who was the alleged constituted attorney of the Company. Neither any Power of Attorney has been produced, nor did the Company, in its independent capacity, have any legal right to execute such Power of Attorney and/or to transfer the property during pendency of the winding up petition.
- 23.** The applicants claim title to the property through a sale deed executed purportedly by the said Ramesh Dhandhanian on December 14, 2021, also during pendency of the winding up proceeding, who himself did not derive title by virtue of the alleged deeds of conveyance executed in his favour. Thus, going by the principle that one cannot convey more than one himself has, no title in the property-in-question passed in favour of the applicants by virtue of the registered deed of conveyance executed

by Ramesh Dhandhanian, since the said vendor himself did not have valid title to the property. Accordingly, the very premise of the disclaimer application, that is, the title of the applicants in the subject-property, is without any basis whatsoever.

- 24.** Even on the count of possession, the applicants have failed to produce any independent document, apart from the purported deed of conveyance in their favour executed by Ramesh Dhandhanian, to show that they were ever in physical possession of the property. Although the applicants claim that they have mutated the property and paid tax for the same, no mutation certificate is available on record, as rightly pointed out by learned senior counsel for the OL.
- 25.** Only a tax challan dated November 9, 2022 has been produced. However, unilateral deposit of tax does not create or confer any title to a property. The payment of tax borne out by such challan was during a period when the winding up petition was pending and the Company Court was in seisin of the matter, being in possession of the property through the OL.
- 26.** That apart, it is borne out by the order dated September 14, 1992, which is also a part of the records, that the Company Court directed the OL to hand over possession to Mineral Syndicate, the successful purchaser of the property by virtue of a sale conducted under the aegis of the Company Court. The minutes of the meeting dated January 18, 1993 go on to show that possession was handed over to the said Mineral Syndicate on the said date and the services of the then existing security

guards were terminated. The said minutes were signed by the OL, the previous security guard agency as well as the authorized signatory of Mineral Syndicate, the purchaser. There is no whisper of either Ramesh Dhandhanian or the applicants being in possession of the property at that juncture.

- 27.** The subsequent development worth mentioning is that the Company Court, by an order dated January 18, 2023, directed the OL to take possession of the assets of the Company (in liquidation) and the concerned police station was directed to give assistance in that regard.
- 28.** The minutes of the meeting dated January 25, 2023 bears out that when such attempt was made by the OL, the caretaker of Mineral Syndicate, the purchaser, was present, showing the possession of Mineral Syndicate in respect of the property at that juncture. Such presumption of possession has not been rebutted by any cogent evidence by the applicants in CA/5/2023.
- 29.** By a subsequent order dated January 31, 2023, actual possession was again directed to be taken by the OL with the help of a Receiver and the police was directed to give all assistance in that regard.
- 30.** Next comes the minutes of a meeting dated February 2, 2023 which records that the OL took possession of the property on as is where is basis and deployed security guards.
- 31.** Thus, at no point of time were the applicants in CA/5/2023 in possession of the property. The order dated September 14, 1992 passed by the Company Court indicates that the OL was in occupation and was

directed to hand over possession to the successful purchaser, Mineral Syndicate. The minutes of the meeting dated January 18, 1993 shows that possession was accordingly handed over to the said Mineral Syndicate. The next significant development is the order dated January 18, 2023 when the Company Court directed the OL to take back possession of the assets of the Company (in liquidation), including the subject-property at Mysuru. Even the minutes of the meeting dated January 25, 2023 shows that although the OL could not take physical possession of the said property on that date, a lock was put on the entrance of the property by the OL. The presence of the caretaker of the purchaser Mineral Syndicate at the locale also shows that it was the said entity, and not the applicants, which was in possession even at that juncture. The applicants were conspicuous by their absence.

- 32.** Ultimately, by virtue of a further order of the Company Court dated January 31, 2023, the OL took actual possession of the property, which was recorded in the minutes of the meeting dated February 2, 2023, and deployed security guards to keep strict vigilance. An inspection of the property was also taken, which disclosed that the factory shed was found in a damaged condition and there were no movables available at the premises.
- 33.** Thus, at no point of time were the applicants in possession of the subject property. There is nothing to show, apart from the purported invalid sale deed dated December 14, 2021 executed by Ramesh Dhandhanian in favour of the applicants, to show that possession was

handed over to the applicants. As discussed earlier, mere production of an isolated tax challan does not create or establish title or physical possession of the applicants in respect of the said property.

34. In the entire process, if any, a raw deal was handed over to the purchaser Mineral Syndicate, since it had paid the consideration for the purchase and had been put in possession by the OL by dint of the order of the Company Court as long back as in 1992. However, it is only the said purchaser which is to blame for its plight, since it waited inordinately long to seek execution of a deed of conveyance in its favour. Upon the said application of the purchaser having been turned down and the possession being restored to the OL by dint of the orders of the Company Court, the legal position is that both title and possession of the property has been retained by the Company Court through the OL.
35. Hence, the applicants have utterly failed to make out any case either of title or possession in respect of the subject-property in support of their disclaimer application.
36. Although learned counsel for the disclaimer applicants has argued much on the legal provisions of the Companies Act, 1956, in particular Sections 456 and 457 of the same and has cited a judgment of this court in the matter of *In re: Indo Burma Wood Products (P.) Ltd.*, reported at *AIR 1968 Cal 198* for the proposition that the OL had to adhere to due process of law before taking physical possession of the properties, such arguments are rendered academic in view of the specific finding of this court, as discussed above, that the applicants have failed to

establish that they ever came into physical possession of the subject property or to acquire valid title therein.

- 37.** Thus, the conundrum as to whether Section 535 or Section 446 of the Companies Act, 1956 is applicable takes a back seat, as both the arguments of the applicants in support of disclaimer on the basis of title and possession have been turned down..
- 38.** As such, the disclaimer application fails.
- 39.** CA/5/2023 is, accordingly, dismissed on contest without any order as to costs.

(SABYASACHI BHATTACHARYYA, J.)