Bhasdeep Infrastructure Dev. Ltd. Vs. the Official Liquidator

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Court : Kolkata

Decided On : May-14-2014

Judge : Nadira Patherya

Appellant : Bhasdeep Infrastructure Dev. Ltd.

Respondent : The Official Liquidator

Judgement :

ORDER
SHEET CA No.455 of 2013 With CP No.336 of 1982 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF: BENGAL ENAMEL WORKS LTD.(IN LIQN.) AND BHASDEEP INFRASTRUCTURE DEV.

LTD.versus THE OFFICIAL LIQUIDATOR BEFORE: The Hon'ble JUSTICE PATHERYA Date : 14th May, 2014.

Mr.Reetobroto Mitra, Mr.Biswanath Chatterjee, Mr.A.Gupta for the applicant.

Mr.Aniruddha Mitra for Tara Shankar Ganguli.

Mr.Joydeep Banerjee for ARSEC Limited.

Mr.Amiya Kr.

Sur of United Bank of India.

MRS.Ruma Sikdar for Official Liquidator.

Mr.Mrinal Kanti Das, Mr.Subhabrata Das For North Barrackpore Municipality.

The Court : By this application the applicant herein seeks delivery of the original deed of release presented for registration by the United Bank of India to itself and handing over possession of the land mentioned in the deed of release.

Counsel for the applicant submits that a loan was advanced and taken by the company (in liquidation) from the United Bank of India and as securities certain immovable properties were given by deposit of title deeds by the company (in liquidation) and its Director to the secured creditor United Bank of India.

The company went into liquidation in 1984.

Thereafter a settlement was reached between the secured creditor and the company for a sum of Rs.4.50 crores.

One of the terms and conditions of the said settlement was that security would be released on receipt of the entire settled amount.

Part payments were made and thereafter no payment made.

Therefore, the secured creditor terminated the settlement and an intimation in this regard was given by the secured creditor to the company by letter dated 14th January, 2006.

The company approached the High Court and by consent of parties an order was passed on 8th March, 2006 whereby the letter dated 14th January, 2006 was stayed on the condition that the respondent nos.2 and 3, viz.

the company or the applicant herein would pay a sum of Rs.72.50 lakhs to the secured creditor who would appropriate the sum in protanto satisfaction of its dues.

On payment of the said sum the secured creditor would release the land equivalent to 25% of the total land of the company at Palta and hand over title deeds relating thereto to either the applicant or the company.

On the basis of the said order sums were paid to the secured creditor and an agreement executed in 2008 between the company, the applicant herein, the bank so also the Director Tara Shankar Ganguli which is termed as a deed of release.

Certain plots of land were released by the secured creditor in favour of the applicant and although the agreement exists physical possession of the said immovable properties has not been handed over to the applicant.

Hence this application has been filed and reliefs sought.

Counsel for the secured creditor United Bank of India submits that the C.A.in which the order dated 8th March, 2006 was passed was dismissed on 5th March, 2012.

Therefore, the applicant cannot take recouRs.to the said order as the order today has lost its force.

In fact, 225 lakhs is still outstanding and payable by the applicant to the United Bank of India and it is only for nonpayment of the said sum that some of the mortgaged properties have not been released to the applicant.

In fact, as the entire settled amount was not paid by the applicant the settlement was terminated and proceedings initiated before the Debts Recovery Tribunal.

In March, 2013 in fact the rights of the secured creditor has been assigned in favour of ARSEC Limited.

Therefore, payment if any be made or recovery of immovable properties be made from ARSEC Limited who is the successor-in-interest of the secured creditor.

Therefore, no order be passed against the secured creditor.

Counsel for ARSEC submits that by virtue of the assignment agreement dated 19th March, 2013 it has been assigned all rights of the secured creditor UBI.

After such assignment agreement no payment has been made by the applicant to ARSEC.

Therefore, the question of return of any immovable property does not arise.

Counsel for Tara Shankar Ganguly, director of the company in liquidation submits that pursuant to deed of release, the mortgaged property has been released in favour of the company, which today is in the possession of the Official Liquidator.

The applicant is claiming a right as a mortgagee as will appear from paragraph 11 of the petition.

It is not an auction purchaser, therefore, the release in favour of the applicant is only in its capacity as a mortgagee.

The applicant besides seeking possession of the lands set out in the deed of release has also alternatively sought for payment of sums and to enable the counsel to take instruction in the matter, matter be adjourned, as the director may be ready and willing to make payment of sums to the applicant in view of its alternate prayer.

The only reason for seeking possession of the land by the applicant is escalation in the price of land.

Therefore, no order be passed on this application this day.

Counsel for the Official Liquidator submits that there is no doubt that C.A.No.9 of 2006 and C.A.No.139 of 2006 were dismissed on 5th March, 2012.

Possession of the assets and properties of the company in liquidation so also all books, records and documents has been taken recently.

Having considered the submission of the parties there is no doubt that the secured creditor UBI lent and advanced sums to one Bengal Enamel Works Limited, which went into liquidation in 1984.

A settlement was reached between UBI and the company on 12th February, 2005.

This was pursuant to proceedings filed under sections 391(1) and 393 of the Companies Act, 1956 and an application filed under section 466 of the Companies Act, 1956.

Although the settled amount was Rs.450 lakhs, for payment of only a part thereof, termination notice was issued on 14th January, 2006 which by consent of parties was stayed by order dated 8th March, 2006 on the condition that the company and the applicant herein would pay a sum of Rs.72.50 lakhs to the secured creditor UBI and on such payment land equivalent thereto would be released and title deeds in respect thereof would be handed over either to the company or to the applicant.

On the basis of the said order an agreement was entered into between the company, its director, applicant and UBI on 18th March, 2008.

In the said agreement which the parties referred to as a deed of release it was recorded that a sum of Rs.225 lakhs out of Rs.450 lakhs had been paid by the applicant and the company.

Payment of balance Rs.225 lakhs was also set out in the said agreement which sum admittedly has not been paid.

A schedule has been appended to the said deed of release wherefrom the plots of land which stood released in favour of the company finds mention.

According to the parties, the properties which were released in favour of the applicant is at present in the custody of the Official Liquidator.

Therefore, any direction that may be passed be on the Official Liquidator to hand over possession of the said properties to the applicant.

In fact, a certificate has also been appended to the deed of release wherein the United Bank of India has certified that its dues has been liquidated and the company absolved of its liabilities, therefore, the properties mentioned be released in favour of the applicant herein who will hold the same as a mortgagee.

Admittedly, Rs.225 lakhs has been paid by the applicant and to the extent thereof the properties ought to be released in its favour.

The agreement postulated payment of Rs.450 lakhs and as Rs.225 lakhs is 50% of the settled amount, let land equivalent to the said sum be released by the Official Liquidator in favour of the applicant herein within eight weeks from date.

In the event valuation is required to be made the said exercise be undertaken by the Official Liquidator out of the funds lying with it, if any, in the account of the company (in liquidation).In the event no money is held by the Liquidator to the credit of the said company (in liquidation).let expense be borne from the Official Liquidators Establishment fund for which the Official Liquidator will be entitled to reimbursement.

It is an admitted fact that the settled amount in its entirety has not been paid by either the contributories, shareholders or the company or the applicant herein.

Therefore, it is made clear that it is only to the extent that payment has been made, the properties be released.

The applicant will hold the said land released in its favour as a mortgagee and therefore will not be entitled to deal with the same.

In view of the aforesaid, this application is disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(PATHERYA, J.) pa/sb/nm