

Asim Kumar Dutta Vs. Official Liquidator, High Court,

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Court : Kolkata

Decided On : Jun-06-2014

Judge : Nadira Patherya

Appellant : Asim Kumar Dutta

Respondent : Official Liquidator, High Court,

Judgement :

ORDER

SHEET CA No.512 of 2013 CP No.91 of 1973 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF : NATOBAR DUTTA PROPERTIES P.

LTD.(IN LIQN.) AND IN THE MATTER OF : ASIM KUMAR DUTTA VS OFFICIAL LIQUIDATOR, HIGH COURT, CALCUTTA & ORS.BEFORE: The Hon'ble JUSTICE PATHERYA Date : 6th June, 2014.

Mr.Dhruba Ghosh, Mr.Debasish Ghose, Adversus for Mr.Amit Kumar Dutta
Mr.Mantha Rajshekar, Mr.Arindam Moitra, Adversus for Asim Kumar Dutta
Mr.Moinak Bose, Mr.P.Das, Adversus for respondent No.2 MRS.Smita Das De,
Adv.for O/L The Court : By this application the applicant herein seeks recall or modification of the order dated 14th June, 2013.

The case of the applicant is that the company (in liquidation) is the owner of several properties and the dispute which has arisen in this application is in respect of one of the properties namely, 14B Amritlal Bose Street, Kolkata.

Premises Nos.14A and 14B, Amritlal Bose Street is comprised as one single unit.

This has also been accepted by the Official Liquidator and was brought to the notice of Court on 5th April, 2013.

In spite thereof 14A, Amritlal Bose Street was sold to one Amit Kumar Dutta.

There is a common entrance for 14A and 14B, Amritlal Bose Street.

The Official Liquidator has categorically in his affidavit stated that not only 14A and 14B is one single unit but supporting wall has also been broken on each floor of the two buildings.

In fact by sale of 14A, Amritlal Bose Street property to Amit Kumar Dutta great prejudice has been caused to Premises No.14B, Amritlal Bose Street as there are no buyers in respect of such property.

Although premises No.14B, Amritlal Bose Street has an entrance but such entrance is on the rear side of the said property and was meant for use by servants, maids and scavengerRs. In the event the said premises is sold as a single unit it will enure to the benefit of all concerned whose interest is paramount.

Therefore the sale in favour of Amit Kumar Dutta be set aside by recall of order dated 14th June, 2013 and alternatively in the event the Court is not inclined to recall the order, liberty be given to the purchaser to exercise his right of preemption with the rider that he will be asked to deposit sums forthwith and no adjustments be allowed in respect of the sums which he may receive in respect of his shareholding.

Counsel for Amit Kumar Dutta the purchaser of premises No.14A, Amritlal Bose Street submits that the petitioner in an appeal filed by Ranjana Dutta wherein she had stated that the said two premises is a single unit had denied that the said two premises was one single unit or could not be sold separately.

Therefore the applicant ought not to be allowed to blow hot and cold at the same time.

The order of which recall is sought is 14th June, 2013 and not the order dated 19th April, 2013 whereby the purchaser was directed to deposit suMs. The applicant was all along aware of the sale and it is only after registration has been effected that this application has been filed.

Therefore not only is the application belated but no reason has also been given for recall of the order dated 14th June, 2013.

Therefore no order be passed on this application.

Counsel for Ranjana Dutta submits that the Official Liquidator recognised the said premises as one single unit, therefore it should have been sold as a single unit to fetch the best price in order to enure to the benefit of the shareholders. In reply counsel for the applicant submits that it is not his action or reaction which is to be tested but it is the conscience of the Court which must be shaken from the facts disclosed and this case is one of those cases which warrants recall of order of sale.

Having considered the submissions of the parties undoubtedly premises Nos. 14A and 14B, Amritlal Bose Street, Calcutta is a property of the company (in liquidation) and for sale of such property an advertisement was published in the Statesman on 21st November, 2012.

Thereafter orders were passed both by the Appellate Court and by the Trial Court.

The Appeal Court in its order dated 5th April, 2013 expressed the desire that the sale which was fixed on the same day that is, 5.4.2013 be concluded and ought not be postponed.

Before the Appeal Court the applicant was represented through counsel.

Before the Trial Court at the time of sale also the applicant was represented through counsel on 5th April, 2013.

The Company Court in its wisdom did not confirm the sale in favour of any party but directed advertisement to be published and notice to be issued to all concerned.

This was done.

The applicant was also put on notice as will appear from the records of the Official Liquidator and such notice was received by him in person on 16th April, 2013.

In the notice the next date of hearing was specified that is, 19th April, 2013.

On 19th April, 2013 none appeared on behalf of the applicant in spite of notice and it was on this day that the applicant namely the purchaser was directed to deposit a certain sum of money to entitle purchase of 14A, Amritalal Bose Street by him.

This money was deposited by him and informed to Court on 14th June, 2013.

Therefore on 19th April, 2013 things started moving favourably for the purchaser but the applicant remained a mere bystander and on 14th June, 2013, in view of the deposit made sale was confirmed in favour of the purchaser.

Once again the applicant got an opportunity to either outbid the purchaser or to object to purchase of 14A, Amritalal Bose Street, Calcutta by the purchaser but no such step was taken.

In fact the applicant waited till November, 2013 that is, after registration had been effected that is, after title passed in respect of the said property in favour of the purchaser and the only reason given for recall of order dated 14th June, 2013 is that the Official Liquidator on 5th April, 2013 had brought it to the notice of the Court that the said two premises was a single unit, and if sold as a single unit both properties would fetch a higher price which would enure to the benefit of all parties.

Another reason is that there is no buyer for premises No.14B and even if 14B is sold in favour of the purchaser of 14A for realisation of sums the parties will have to wait which is not warranted in a case of sale.

This would have been a very attractive submission if the facts were in favour of the applicant but unfortunately the facts are otherwise which facts are stated hereunder : The Official Liquidator took possession of properties of the company (in liquidation) and valuation was effected for purposes of sale.

While valuing the valuer has assessed 14A and 14B, Amritlal Bose Street as two separate and independent properties.

In fact, the Official Liquidator himself has advertised 14A and 14B, Amritlal Bose Street as two separate and independent units.

Therefore, the submission of the Official Liquidator on 05.04.2013 is contrary to his own action and record and can be of no consequence and all that can be said is that such submission was irresponsible without considering his records.

In fact one of the parties, namely, Ranjana Dutta had filed an appeal wherein she had categorically stated that the two properties be sold as one unit.

This statement was denied by the applicant herein.

The exact words expressed by Ranjana Dutta is set out herein below :The premises No.14A and 14B, Amritlal Bose Street is one property and consist of one four storied building.

The said premises cannot be sold separately as the same comprises one building. The reply of the applicant to the aforesaid is set out hereinbelow:I deny that properties being 14A and 14B, Amritlal Bose Street are one property or cannot be sold separately.

It is quite possible that combined sale of premises No.14A and 14B, Amritlal Bose Street would have fetched a higher price but such objection or submission ought to have been made by the applicant at the appropriate stage and not at this belated stage when rights have accrued in favour of the purchaser.

No purchaser has also been identified by the applicant evincing any interest in the combined premises.

Therefore, a shot in the dark will not activate, recall of the order as sought.

It is true that request was made by Court to the purchaser of 14A, Amritlal Bose Street to purchase premises No.14B, Amritlal Bose Street and the purchaser also agreed to purchase the property provided an adjustment is made from the sums which he is to receive in respect of his share- holding.

But no orders can be passed in respect thereof as it is quite possible that someday 14B, Amritlal Bose Street may get a higher price than offered by the purchaser of 14A, Amritlal Bose Street and buying the property at a request made by the court and agreed to by the purchaser would not be a correct approach in a matter of sale.

Accordingly, no order is passed with regard to the alternative prayer made by Counsel for the applicant and for all the reasons given above, this application merits no order and is, accordingly, dismissed.

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

(PATHERYA, J.) TR/nm

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