

Smt. Jatan Kumar Golcha

Vs

M/s. Golcha Properties (P) Ltd.

Civil Appeal No. 1104 of 1970

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

16.12.1970

JUDGMENT

GROVER, J. -

1. This is an appeal from a judgment of the Rajasthan High Court holding that the appellant was not entitled to file an appeal against the order of the Company Judge directing sale of lease-hold rights of the Golcha Properties (P) Ltd. (in liquidation), in the land belonging to the appellant.

2. The facts briefly are that on November 5, 1960, an agreement was entered into between the appellant and the respondent company allowing Golcha Properties (P) Ltd., to construct a cinema theater within three years from the issue of the 'No Objection Certificate' on land measuring 42,900 sq. feet at Bhagwandas Road, Jaipur, belonging to the appellant. The Company deposited a sum of Rs. 5 lakhs by way of security. In October, 1963, No Objection Certificate is stated to have been issued for construction of a cinema theater. In 1966 a petition for winding up of the company was filed in the Rajasthan High Court. On May 10, 1968, an order for winding up of the company was made and a liquidator was appointed. On July 11, 1969, the Official Liquidator made a report to the Company Judge for sale of the lease-hold rights of the company in the land belonging to the appellant and the structures standing on it. It appears that the Official Liquidator made a report under Section 457 of the Indian Companies Act, 1956, to obtain the necessary orders for sale. On July 21, 1969, the Company Judge without hearing any one or issuing notice to the appellant ordered that the lease-hold rights and the structures be auctioned as proposed by the Official Liquidator. On October 3, 1969, the appellant's attorney sent a letter to the Official Liquidator stating that the licence granted to the Company under an agreement, dated November 5, 1960, stood revoked and called upon him to deliver possession of the land and also pay compensation amounting to Rs. 10 lakhs. On February 9, 1970, the Official Liquidator sent a reply claiming that the company was entitled to a lease for 20 years under the agreement. On March 14, 1970, a notice was issued in a newspaper (Times of India) in respect of the proposed auction sale of lease-hold rights which was to take place on April 14, 1970. According to the appellant she enquired from the Official Liquidator under whose authority the property was being sold to which no reply was sent by the Official Liquidator. On April 3, 1970, the appellant applied for a certified copy of the order, dated July 21, 1969, after taking inspection of the record in the High Court. The certified copy was sent on April 24, 1970. On the same date the appellant filed an appeal before the High Court. The High Court rejected that application summarily but recorded a short order.

3. In the order of the High Court reference has been made to Rule 139 of the Companies (Court) Rules, 1959, and it has been pointed out that since the appellant had not appeared before the Company Judge she was not entitled to maintain the appeal. It was conceded that no notice had ever

been sent to her either by the Official Liquidator or the Company Judge before the order appealed against relating to appellant's property was made. The High Court was of the view that the only remedy of the appellant was by way of a suit after obtaining leave of the Company Judge under 446 of the Act. Now an appeal lies under Section 483 of the Act from any order made or decision given in the matter of winding up of a company by the court and it lies to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction. There can be no manner of doubt that an appeal was competent against the order made by the Company Judge on July 21, 1969, in view of the terms of Section 483. The only question is whether because the Official Liquidator failed to discharge his duties properly by having a notice issued to the appellant, whose rights were directly affected by the order proposed to be made, the appellant was debarred from filing the appeal. In our opinion apart from Rule 139 to which reference has been made by the High Court the Official Liquidator as well as the learned Company Judgment were bound by the rules of natural justice to issue a notice to the appellant and hear her before making the order appealed against. If there was default on their part not following the correct procedure it is wholly incomprehensible how the appellant could be deprived of her right to get her grievance redressed by filing an appeal against the order which had made in her absence and without her knowledge. It would be a travesty of justice if a party is driven to file a suit which would involve long and cumbersome procedure when an order had been made directly affecting that party and redress can be had by filing an appeal which is permitted by law. It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the judgment.

4. Rule 103 of the Companies (Court) Rules provides for taking out summons for directions not only with reference to the settlement of the list of contributories and the list of creditors but also the exercise by the Official Liquidator of all or any of the powers under Section 457(1) and any other matter requiring directions of the court. The exercise of the power under Section 457(1)(C) of the Act to sell the immovable and moveable property of the Company by public auction or private contract would certainly fall within the ambit of the rule. That rule expressly provides for issuing of a notice of the summons to the petitioner on whose petition the order for winding up was made. It is implicit that if the directions which have to be given by the Court would affect any person prejudicially he must be served with a notice of the summons under the general rule of natural justice and that no order should be made affecting the rights of a party without affording a proper opportunity to it to represent its case. The High Court was thus clearly in error in not entertaining and deciding the appeal preferred by the appellant who was the owner of the land in which leasehold rights said to have been created by her in favour of the Company in liquidation were sought to be sold.

5. The appeal is allowed and the order of the High Court is set aside. The case is remanded to the High Court for disposing of the appeal in accordance with law. Costs shall abide the event.

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