

Sudarshan Trading Company Ltd.

Vs

PP. Saffiya and Others

I.A. Nos.3-5, 6-8 of 1990 in Special Leave Petn. (Civil) No. 15731 of 1989

(M.M. Punchhi, S.C. Agarwal JJ)

08.11.1990

ORDER

1. These contentions six applications being I.A. Nos. 3-8 of 1990 in Special Leave Petition No. 15731 of 1989 are the aftermath-of an order dated 19th March, 1990 passed by a two Judge Bench of this Court disposing of the Special Leave Petition. That order reads as follows

"There will be no order on this petition except that the respondents will pay the balance sum due to be paid, which they have undertaken to pay, by 31-3-1990 and the sale thereafter will take place subject to the land acquisition proceedings. The Special Leave Petition is disposed of."

2. The Order came to be passed in these circumstances Sudershan Chits India Ltd. is a Company in liquidation before the Kerala High Court. Sudershan Trading Company Ltd. the petitioner in the Special Leave petition was the Holding company of the company in liquidation. The holding company was required to discharge its liability of Rs. 8.09 crores to the company in liquidation. To facilitate payment thereof, the petitioner company obtained permission from a Division Bench of the Kerala High Court on 11-6-1987 to sell its 20.79 acres of land, together with Coconut trees standing thereon, the land being situated on the outskirts of Madras city. To facilitate the sale of land and to ensure that the sale consideration was paid over to the Company in liquidation the Kerala High Court appointed a retired Judge of the Madras High Court, Justice K. S. Venkatraman as Receiver of the Company in liquidation. The High Court also granted permission for sale of land in separate plots. Some effort was made to sell the land to begin with but later directions were obtained from the Court to advertise sale of land in newspapers. In response to publication some offers came, the highest of which was at Rs. 2 lakhs per acre. Such highest offer was made by the applicant in interim application No. 5 of 1990.

3. The applicant in interim application No. 3 of 1990 is the All India Subscribers Association of Sudershan Chits India Limited. It appears that there were more than one lakh creditors of the company in liquidation. It transpires that about 72 thousand creditors and odd have been paid off already. Some of the creditors formed an association and got constituted itself a registered society under the Societies Registration Act. Now this society got itself impleaded in the liquidation proceedings before the Kerala High Court making an offer that it was willing to pay Rs. 2.5 lakhs per acre for the land proposed to be sold. A Division Bench of the Kerala High Court on 6-10-1989 considered the offer of the society and finding this offer to be the highest directed the petitioner-Sudershan Trading Company to sell the same to the society subject to the society paying Rs.5 lakhs

within one month from 6-10-1989 and the balance within nine months thereafter. The Court also worked out the total price to be about Rs. 52 lakhs. To allay the fears of the petitioner company the High Court put the society to terms in the sense that in the event of failure to pay Rs. 5 lakhs within one month from 6-10-1989 it was open to the holding company to sell the land to the highest offerer at the rate of Rs. 2 lakhs per acre. On the other hand in the event of payment of Rs. 5 lakhs within time and the remaining balance not being paid within time the sum of Rs. 5 lakhs was directed to be forfeited and the said amount too to be credited in reduction of its liability to the company in liquidation. This order of the High Court was the subject matter of challenge before this Court in Special Leave Petition (Civil) No. 15731 of 1989 which as said before was disposed of by the Order quoted.

4. Before the expiry of the date 31-3-1990, the petitioner-company moved an Interim Application No. 4 of 1990 in this Court on 26th March, 1990 asking for modification of the order dated 19th March, 1990 contending that it would be appropriate in the circumstances narrated therein to extricate the company from the direction of the High Court of Kerala in selling the land to the Society, as otherwise it was hopeful of paying off the creditors without sale of land but if driven to the wall the land was saleable at a higher price. On the other hand Interim Application No. 3 of 1990 was filed after 31-3-1990 by the Society on 4-4-1990 claiming that the Society had tendered a sum of Rs ' 46,97,500/-' by means of 50 pay orders at the residence of the Receiver Justice K. S. Venkatraman but since he was not present there personally, actual delivery of pay orders could not be made to him on that date. However, it was further alleged that he could be contacted on phone a day or two later and he showed his willingness to accept the pay orders, if valid and timely obtained on a later date. In this situation the applicant society asked this Court to give direction to the Receiver to accept the pay orders and in the alternative to receive pay orders itself for proper appropriation. It is a matter of detail that on 6-4-1990 itself the Receiver received those 50 pay orders as ostensibly those 50 pay orders were either of 31-3-1990 or of earlier dates.

5. Interim Application No. 5 was moved on 8th August, 1990 in this Court by the highest offerer of Rs.2 lakhs before the Kerala High Court asserting that as he was already interested in the deal inasmuch as on the failure of the society to complete its deal it was left open to the petitioner Company to sell the land to him at the price of Rs. 2 lakhs per a 1 ere, and he was willing at this juncture to buy the land at the rate of Rs. 3.5 lakhs per ere thereby enhancing the price by about Rs. 21 lakhs.

6. Interim Application Nos. 6, 7 and 8 are on behalf of some members of the society highlighting the difficulties in which they had raised money to procure pay orders which they had handed over to the society and the society in turn to have handed them over to the Receiver. They pray for completion of the deal by appropriate directions.

7. We have heard counsel for the parties at length. The first and foremost question which arises for consideration is whether Interim Application No. 4 of 1990 of the petitioner-company is in the nature of a review petition. It has been brought to our notice when this matter came before a two Judge Bench on 28-8-1990, the Bench directed listing of the applications before an appropriate Bench since any order which it could make on the application/ applications would involve review of the order dated March 19,1990. The matter was then placed before the Bench which had passed orders on 19th March, 1990 being the late Chief Justice Hon'ble Mr. Sabyasachi Mukharjee and one of us (Hon'ble Punchhi, J.) for disposal. On 5-9-1990 the Bench required the parties to file their counter affidavits and ordered status-quo in the meantime to continue. Now these matters listed before it would require construing of the order dated 19th March, 1990 before it can be determined

whether the relief sought by the petitioner-company is in the nature of review.

8. The order can be splitted in this manner. It is significant that the Bench directed that there will be no order on the Special Leave Petition and that the Special Leave Petition was disposed of with no adjudicatory order. Leave was neither granted nor refused. The only exception made was to record the undertaking of the Society (respondent therein) to pay the balance sum due by 31-3-1990 and accepting the sale thereafter to take place subject to the land acquisition proceedings. The land acquisition proceedings figured in the order because the society initially wanted a direction that the sale should take place by directing the State Government of Tamil Nadu to drop land acquisition proceedings but that claim eventually had been given up. This order of the Bench disposing of the Special Leave petition is predominantly based on the concessional undertaking of the Society, as otherwise but for that undertaking no alteration in the order of the Kerala High Court was made by taking any subjective view of the matter. It virtually meant that in the body of the order of the High Court instead of the date of payment of the balance money postulated as 6-8-1990 being the end of the nine month period the date 31-3-1990 was substituted. But for that, no change in the said order was made by this Court. That' order cannot in any event be termed as an order of dismissal. It only meant that the Special Leave Petition was disposed of for the purposes of the Court. Had there been any conscious order by the process of adjudication then the well known impediments of review would have come in the way. But, for the view we are taking, the interim application of the petitioner-company is not in the nature of review and the modification sought by it in sum and substance is for modification or recall of the order of the Kerala High Court, directing it to sell the land to the society. That application, for the clarification we have made about its efficacy and purport, is transferred to the Kerala High Court for adjudication. That in our view would be the most appropriate course in the situation, specially when the Society has already moved an application in the Kerala High Court detailing out the circumstances in which its 50 pay orders could reach the hands of the Receiver on 6th April, 1990 and has also require'd the High Court to complete the deal in its favour, or in favour of its nominees, when asked, as the case may be, by condoning the delay in handing over of the pay orders to the Receiver. The High Court is said to have embarked on an inquiry to find whether the cause shown by the Society was justified and further to determine whether the Society actually is the body which is pursuing the purchase or some other people such as real estate agents or property brokers had clandestinely appeared behind the scenes to profiteer and swallow the bargain. Therefore, already we send interim application No. 3 of the Society to the Kerala High Court for disposal.

9. When the two main contestants have been relegated to the Kerala High Court, we see no justification to pass any orders on the remaining applications. They too are sent to the Kerala High Court to be dealt with in accordance with law.

10. Before we conclude this order we wish to record that this Court has in Civil Miscellaneous Petition Nos. 1043-55 of 1989 in Special Leave Petition Nos. 7634-36 of 1983 directed the petitioner-company on 19-4-1989 to pay tip all its debts uptill 31-3-1990 and it is ordered that no further time shall be asked for by the company. In such time constraint, it would be proper for the High Court of Kerala take on the matters in a Division Bench and other relevant matters pending before the Company Judge and dispose them of together most expeditiously. We would request the High Court for the same. Let these applications be transmitted to the High Court forthwith. Parties through their counsel are directed to appear before the Chief Justice's Court in the High Court for appropriate orders on 20th November, 1990. The order of status quota is vacated. Interim applications Nos. 3-8 are disposed of accordingly.

Order accordingly.

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