

RAJASTHAN HIGH COURT

Megha Enterprises Pvt. Ltd.

Vs.

Official Liquidator

S. B. Co. Appln. No.12 of 2008

(Shiv Kumar Sharma, J.)

28.04.2008

ORDER

Shiv Kumar Sharma, J.

1. This application raises an important question which relates to interpretation of Section 55(1)(d) of the Transfer of Property Act, 1882 (for short the 'TP Act').

2. Contextual facts depict that in Company Petition No. 36/2000, the land, building, plant and machinery existed at Plot No. 204 and 204-A M.I. Area, Alwar belonging to M/s. Rathi Alloys and Steel Ltd. (company in liquidation) were put to auction. The highest bid of Rs. 48.20 crores raised by Megha Enterprises Pvt. Ltd. applicant herein, was approved and confirmed by this Court vide order dated November 27, 2007. The applicant deposited the amount with the Official Liquidator (for short OL) on December 11, 2007 and January 3, 2008 through demand drafts. However, the applicant vide letter dated January 4, 2008 requested the OL to execute conveyance in favor of applicant's nominee viz. M/s. Havells India Ltd. when OL did not accede the request, instant application has been filed seeking direction to the OL :-

(i) to transfer of land by a deed of conveyance favouring purchasers or in favor of its nominees for plot No. 204-A at MI Area, Alwar;

(ii) to hand over original title deed to purchasers or its nominees;

(iii) to execute deed of conveyance in respect of plot No. 204-A MI Area, Alwar in favor of M/s. Hovels India Ltd.

3. The OL filed reply to the application stating therein that since the bid has not been accepted in favor of M/s. Havells India Limited the conveyance deed cannot be executed in favor of the alleged nominee of the applicant. It is further averred that if the applicant wants he can transfer the property to Havells India Limited as per law

after getting the conveyance deed executed by the OL in applicant's favor. According to OL, the State Government is a necessary party in the matter since payment of stamp duty and registration fee is involved and no transaction which has the effect of avoiding the stamp duty can be carried out. The course suggested by the applicant cannot be permitted in view of the fact that Havells India Limited had not participated in the process of auction and the auction purchaser is the applicant in whose favor alone deed can be executed.

4. The applicant in the rejoinder to the reply averred that it can always nominate its nominee before the execution of conveyance deed. Since M/s. Havells India Ltd. is its nominee, the conveyance deed is to be executed directly in its favor. The applicant further averred that in the matter of Karnav Leather Ltd. the OL had auctioned its assets including land and building at A-145 RIICO Industrial Area, Bhiwani on Feb. 12, 2007. The property was auctioned in favour of Choudhary and Sons (Forg) Pvt. Ltd. Ghaziabad U. P. in a sum of Rs. 446.10 lacs. The auction-purchaser Choudhary and Sons nominated Arpit Granite Pvt. Ltd. and the official liquidator accepted the same. In these circumstances it is requested that the sale certificate can be issued in favor of its nominee.

5. On March 13, 2008, the applicant filed another application along with the documents related to M/s. Karnav Leather. The OL filed further reply to this application reiterating its earlier view and submitted that no sale deed was executed by the OL in the matter of Karnav Leather and what has been transpired in between Megha Enterprises and M/s. Havells India Limited will not bind the OL to execute the conveyance deed in favor of its nominee M/s. Havells India Ltd. as M/s. Havells India Limited is not an auction-purchaser.

6. I have pondered over the submissions advanced before me and scanned the case law placed for my perusal.

7. In order to resolve the controversy poised for my consideration, a look at the order dated November 27, 2007 passed by this Court appears necessary. The order reads as under -

"Instant application has been filed by official liquidator *inter alia* with the prayer to accept highest bid of Rs. 48.20 crores for entire assets/entire Unit of M/s. Rathi Alloys and Steels Ltd. (in liquidation) in favor of M/s. Megha Enterprises Pvt. Ltd., New Delhi in respect of tender notice published on 8th and 9th August, 2007 in Newspapers Rajasthan Patrika (Hindi) and the Times

of India (English) respectively.

Vide order dated 24-8-2001 in Co. Petition No. 36/2000, M/s. Rathi Alloys and Steels Ltd. having its premises situated at 204 and 204A Matsya Industrial Area. Alwar (Rajasthan) (for short "the Company") was wound up and Official Liquidator attached to the Court was appointed as official Liquidator; and in pursuance whereof, the OL took possession of entire assets of the Company in Liquidation on 4-9-2001.

It is relevant to mention that tender notice was earlier widely published and circulated for disposal of the assets of the company pursuant to which, highest bid only of Rs. 21.21 crores (Apprx.) came forward which was not considered to be adequate price as such it was ordered to initiate proceedings de novo. Reserved price of assets of the company to the tune of Rs. 38,66,52,500 was assessed through approved valuer and confirmed by one of the secured creditor - IDBI after taking note of report of approved/Registered Valuer R.B. Shah, and after seeking approval from RIICO - one of Government undertaking organization.

In compliance of orders dated 6-8-2007 in Co. Appln. No. 49/07 fresh tender notice was published in newspapers Rajasthan Patrika (Hindi Rajasthan Edn.) and The Times of India (English National Edn.) respectively on 8th and 9th August, 2007 specifically stating therein reserved price (supra) pursuant to which only two bidders basically participated along with deposit of earnest money of Rs. Three crores and as per Official Liquidator highest bid is of Rs. 48.20 crores of bidder M/s. Megha Enterprises (P) Ltd., New Delhi.

Second highest bidder was M/s. Kajaria Housing and Infrastructure Ltd. on whose behalf application was made to return his earnest money of Rs. Three Crores deposited pursuant to tender notice, which was allowed vide order dated 5-10-2007.

Counsel for OL has brought to the notice that there was an order earlier passed on 7-2-2003 in Co. Appln. No. 4/2003 with regard to settlement of security amount deposited after the possession was taken over on 4-9-2001 in terms of winding up order dated 24-8-2001 that question of share of expenses by secured creditors on security from today onwards shall be considered at the time of final order of sale of the assets of the Company in liquidation. In this regard, the Official Liquidator will be free to file separate application.

Taking into consideration value of assets/ properties of the company in liquidation and the fact that pursuant to 2nd tender notice (supra) highest bid

offer (supra) is of M/s. Megha Enterprises (P) Ltd. to which no objection either way has come forward by secured creditors, this Court considers it proper to approve and confirm highest bid being of M/s. Megha Enterprises (P) Ltd. (supra). Ordered accordingly and highest bid (supra) is accepted in favor of M/s. Megha Enterprises (P) Ltd. who and the Official Liquidator are directed to proceed further expeditiously in accordance with terms and conditions of the tender notice in question (supra).

Consequently, Company Application No. 58/2007 stands disposed of (supra)."

8. Evidently in the afore quoted order the applicant and the OL were directed by this Court to proceed further in accordance with the terms and conditions of the tender notice. Conditions 13 and 28 of Terms and conditions for the sale (Annexure-A. 17) provide as under:-

"13. The purchaser:-

a. Shall procure himself the transfer of land by a Deed of Conveyance from the Company in liquidation through Official Liquidator to himself or as the Court may decide.

b. shall obtain necessary permission under the Land Ceiling Act from the competent authority.

c. shall obtain water connection, electricity connection and all other necessary amenities required by them at their cost.

d. shall obtain all other necessary permission/quotas, if any, as may be required by them at their cost and consequences."

28. The sale will be strictly on these terms and conditions and any conditional offer will not be entertained."

(Emphasis supplied)

9. In *Rahimtulla Lowji Damani v. Official Assignee*¹ on which reliance is placed by the learned Senior Counsel, the question for consideration before the Division Bench of the Bombay High Court was whether the single Judge was right in saying that the Official Assignee was not bound to execute a conveyance in favor of a nominee of the purchaser. The appellant before the Division Bench was the highest bidder at the auction and he signed a contract agreeing to buy on the terms and conditions of sale and the sale to him was confirmed by the Official Assignee on October 12, 1933. After the date of the sale the appellant entered into a sub-contract to resell the property at a slightly enhanced, figure to a sub-purchaser and he required the Official Assignee to execute a conveyance in favor of the sub-purchaser. A draft conveyance was sent to

the Official Assignee, which was expressed to be made between the Official Assignee as vender of the first part, the original purchaser of the second part, and the sub-purchaser of the third part. The Official Assignee refused to execute that draft or any other draft which did not provide for the assignment of the property to the original purchaser. He took the point that he was not bound under the contract to convey the property to any sub-purchaser. The learned single Judge upheld that objection on the part of the Official Assignee and from this decision appeal was brought before the Division Bench.

10. Hon'ble Beaumont C.J., after having considered the facts of the case indicated as under -

"The law on the subject in England is clearly established. The learned Judge in his judgment says that there is a dearth of direct authority, but so far as my own experience goes, I think that nobody at the English bar would question the general proposition that a purchaser is entitled to a proper conveyance in the name of himself or a nominee. That principle applies in the ordinary case, such as we have to deal with here, in which no obligation is placed on the purchaser under the conveyance. Where the purchaser has to perform obligations, or to indemnify the vendor against liabilities, his solvency is a matter of materiality to the vendor and different considerations apply, but where, as here, the property is to be conveyed out and out to the purchaser on payment of the purchase money, it is a matter of no particular consequence to the vendor whether the purchaser is solvent or not. The learned Judge was of the view that the English rule do not apply in India, primarily because under English law the purchaser takes an equitable interest in the property under the contract and before the conveyance, whereas in India under Section 54. T.P. Act, the contract passes no interest in the property. In my view that distinction between English and Indian law is immaterial for the present purpose. The right of a purchaser in England to require the conveyance to be made in his own name or in that of a nominee does not depend on his equitable interest under the contract; it depends on the terms of the contract. I have no doubt that the terms of the contract could negative that right, and the equitable interest which the purchaser takes would not override any express provision in the contract. In India the rights of the vendor are governed by Section 55. T.P. Act and sub-Clause (1)(d) of that section provides that the seller is bound, on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when

the buyer tenders it to him for execution at a proper time and place. The obligation under that sub-section is merely to execute a proper conveyance, the section being silent as to the person in whose favour that conveyance is to be executed.

But the words "proper conveyance" must be used in the sense in which they would be understood in English law as meaning a proper conveyance in favor of the purchaser or as he shall direct."

(Emphasis supplied)

11. Another Hon'ble member of the Division Bench Mr. Justice Rangnekar agreeing with the view expressed by Beaumont C.J., observed as under :-

"It is well established in England that a purchaser can always demand a conveyance from the vendor not only in his favor, but in favor of any person as he would direct. and the vendor cannot refuse to execute a conveyance in favor of the nominee of the purchaser. I do not propose to refer to the authorities, but the position is put by Halsbury at p. 419 of Vol. 25 of the Laws of England in this wise :"

"When the purchaser has disposed of the land before the completion of the contract, it is usual for the purpose of saving the expense of a second conveyance and double stamp duty, to take the assurance direct to the second purchaser."

This, of course, is subject to certain exceptions such as, for instance, where there is a personal covenant by which the purchaser is bound. In this case there is no such covenant included in the conditions of sale subject to which the sale was held. Section 55, sub-section (1)(d). T. P. Act provides that the seller is bound, on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place. There is nothing as far as I can see, in the terms of this section which would affect the right of the purchaser to demand a proper conveyance of the property either in his favor or in favor of his nominee. It is said however, and the learned Judge seems to have made a point of it, that in this country the position is different, because under a contract of sale relating to immovable property the purchaser does not get any equitable interest in the land. That, no doubt, follows from Section 54, which provides that a contract for the sale of immovable property does not of itself create any interest in or charge on such property. On the other hand, so far as the English

law is concerned, upon the making of an enforceable contract for sale of immovable property the purchaser becomes the owner of the land in equity. But I am unable to see how this distinction on this point affects the question which arise in this appeal, because It is clear that in this country, as in England, either party to such a contract may dispose of the benefit of the contract in favor of another person, and such disposition may be either by way of assignment or by a sale or in any other way. I think, therefore, that there is nothing in the Transfer of Property Act which puts the law on this point on a different footing from that in England."

(Emphasis supplied)

12. In *B. Himantharaju Setty v. Corporation of the City of Bangalore* ² the Division Bench of the Mysore High Court indicated that "the obligation under Section 55 (1)(d) is merely to execute a proper conveyance, the section being silent as to the person in whose favor the conveyance is to be executed. The seller is therefore bound to execute a proper conveyance to the purchaser's nominee.

13. In *G. Gopala Chettiar v. N. Giriappa Gowder* ³ the parties entered into a formal agreement Ex. A-1. clause 4 of which was as follows :-

"(4) The sale deed be executed in the name of the purchasers herein described above or in any other name fixed by the purchasers, by the vendor." The Division Bench of Madras High Court held that in absence of any covenant to the contrary the vendee can insist on a sale deed to be made in favor of himself and his nominee. The vendor declining to do so is liable for breach of contract.

14. The question that emerges for consideration is whether provisions contained in Section 55(1)(d) are applicable to the auction sale where highest bid is accepted and confirmed by the Company Court and the purchaser deposited entire sale price with the OL. Section 55(1)(d) reads as under :-

"55. Rights and liabilities of buyer and seller - In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold: (1) The seller is bound - (a) to (c) xxx xxx xxx

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place."

15. The obligation on the seller, to execute a proper conveyance is statutorily recognized in Section 55(1)(d) of T. P. Act. It is the duty of the buyer not only in the first instance to pay or tenders the price, but also to propose a conveyance and tender it to the seller for execution. The words "proper conveyance" incorporated in Section 55(1)(d) were used by the Division Bench of Bombay High Court in *Rahimtulla Lowji Damani* (AIR 1935 Bombay 340) (supra) in the sense in which they would be understood in English Law as meaning a proper conveyance in favor of purchaser or as he shall direct. But in India on the date of confirmation of sale the title of property passes to the purchaser. In *Bishan Paul v. Mothu Ram* ⁴ the Apex Court held that the title to the property passed to the respondent on the date of confirmation of sale and was not in abeyance till the issue of certificate and the certificate when issued related back to the date when the sale becomes absolute.

16. In *Hans Raj Bafna v. Ram Chandra Agarwal* ⁵ their Lordships of the Supreme Court reiterated the view expressed in *Bishan Paul v. Mothu Ram* (AIR 1965 Supreme Court 1994) (supra) and indicated thus :-

".....The view taken by the High Court is against the law laid down by this Court in *Bishan Paul v. Mothu Ram* ⁶ and also against the principles of jurisprudence as it is an established fact that a valid sale confirmed by the authorities confers title as well as ownership rights in the purchaser. Valid sale of property and ownership are inseparable and the moment the price is paid and sale is confirmed the purchaser becomes the owner.....

(Emphasis supplied)

17. In the instant case the situation would have been different had the applicant made request to the Court before confirmation of sale, to execute conveyance of M/s. Havells India Ltd., but after confirmation of sale by the Court, the applicant being owner of the property, cannot ask the seller to execute conveyance in favors of third party.

18. Even otherwise word 'Nominee' does not connote the transfer or assignment to the nominee of any property in or ownership or the rights of the person nominating him. The dictionary meaning of word "nominee" in "Words and Phrases" Permanent Edition Volume 28A at page 316 is as under :-

"The word "nominee" in its commonly accepted meaning connotes the delegation of authority to the nominee in a representative or nominal capacity only, and does not connote the transfer or assignment to the nominee of any

property in or ownership or the rights of the person nominating him. *Cisco v. Van* ⁷

(Underlining is mine)

19. Considering the matter from all angles, I find no force in the submissions of learned Senior Counsel. The case law cited by him is not applicable to the facts of the instant case.

20. Resultantly, the application being devoid of merit, stands dismissed without any order as to costs.

Petition dismissed.

Cases Referred.

1. (AIR 1935 Bom 340)
2. (AIR 1954 Mysore 145)
3. (AIR 1972 Madras 36)
4. (AIR 1965 SC 1994)
5. (2005) 4 SCC 572: (AIR 2005 SC 2384)
6. (AIR 1965 SC 1994)
7. Lew. 141 P. 2d 433. 438 60 Cal App 2d. 575