

2016 (199) CC 584

GUJARAT HIGH COURT

Hon'ble Judges:Vipul M.Pancholi, J.

Janak Specific Family Trust Through Its Trustees Versus Official Liquidator Of
M/s Minal Oil And Agro Industries

COMPANY APPLICATION No. 167 of 2010 ;
COMPANY PETITION No. 207 of 2001 ; *J.Date :- OCTOBER 30, 2015

- [COMPANIES ACT, 1956](#)

Companies Act, 1956 - company in liquidation - order of winding up - appointment of Official Liquidator - Official Liquidator took over possession the property in dispute - sale of property in question challenged - application - held, Official Liquidator has given the report - pursuant to the report, property in question is private property of the applicant - said property was mortgaged by the applicant with the respondent bank as a guarantor but the fact remains that the property in question is a private property of the applicant - when property in question is private and personal property of applicant, Official Liquidator ought not to have taken over possession of the said property and Official Liquidator had wrongly and under mistaken belief taken over the possession of the said property - hence, Official Liquidator is directed to hand over possession of the property being office premises to the applicant within a period of six weeks - moreover, the request made by the respondent bank that respondent bank is having decree in its favour against the applicant and therefore the possession of the property in dispute be handed over to respondent bank is not accepted - said relief cannot be granted in the application filed by applicant - if respondent bank is of opinion that bank is entitled to get possession of property in question, it is open for respondent bank to file appropriate proceedings before appropriate Court and as and when such proceedings are filed, it is open for applicant to take all available contentions - if proceedings are initiated by respondent bank, the same shall be decided in accordance with law without being influenced by the present order - application allowed.

Imp.Para: [[14](#)] [[17](#)]

Equivalent Citation(s):
2016 (199) CC 584 : 2015 JX(Guj) 927

JUDGMENT :-

1 The applicants have taken out this Judge's Summons, wherein they have prayed for the following relief/s:

"b. That this Hon'ble Court be pleased to hold and declare that the property bearing office premises No.802 situated on 8th Floor, Popular House, Ashram Road, admeasuring 2100 sq. mtrs. of Final Plot No.173 of T.P.S. No.3 of mouje Shaikhpur - Khanpur, Taluka City, District Ahmedabad, be declared as the personal property of Janak Specific Family Trust - the applicant herein.

c. That this Hon'ble Court be pleased to hold and declare that the Official Liquidator by whom the possession of the said office premises is taken over is illegal and accordingly declaration be made and the seals which are applied to the said property be also declared as illegal and further directions be issued to remove the seals and handover the possession of the office premises No.802 situated on 8th Floor, Popular House, Ashram Road, Ahmedabad to the present applicant."

2 Heard learned advocate Mr. M.B.Gandhi with learned advocate Mr.Chinmay Gandhi for the applicant, learned advocate Ms. Ameer Yajnik for respondent No.1 - Official Liquidator and learned advocate Mr. Nandish Chudgar for respondent No.2- Kalupur Commercial Cooperative Bank Ltd.

3 Learned advocate Mr. M.B.Gandhi appearing for the applicants submitted that office bearing No.802 of Popular House situated at Survey No.173 at Ashram Road is the property which was purchased by Janak Specific Family Trust and a registered sale deed was executed in favour of the said trust. Applicant No.1 was also a Director of the company viz. Minal Oil & Agro Industries Pvt. Ltd. The said company was in need of certain fund and therefore loan was taken from respondent No.2 - Bank to the tune of Rs.250 lakhs. For the purpose of securing the said debt, applicant No.1, on behalf of the company, in the capacity as a Director, had given a security for the repayment by hypothecation against the stock facility. However, the machineries, which are known as Sodium Salt Purification Plant lying in the factory at Nandasan, were also pledged with the bank. The valuation of the said machineries was to the tune of Rs.283 lakhs. It is contended that during the existence of the said arrangement with respondent No.2, the said bank wanted further security and, therefore, applicant No.1, in his personal capacity, had entered into an agreement by deposit of title deeds and at that time, applicant No.1 as a trustee of Janak Specific Family Trust, deposited the title deeds of the aforesaid office premises and the original documents of the same are lying with respondent No.2 bank. However, the Official Liquidator has illegally taken over the possession of the said property by applying seals.

4 Learned advocate Mr. Gandhi referred to the Memorandum of deposit of title deeds/documents and second schedule of the said document which refers the office premises in question. Thus, it is contended that the office premises in question is a private property of Janak Specific Family Trust and said trust has created mortgage by deposit of title deeds in favour of Kalupur Commercial Cooperative Bank Ltd. in October 2001.

5 Learned advocate Mr. Gandhi submitted that the Official Liquidator filed OLR No.35 of 2009, wherein it was prayed that one N.K. Proteins Limited has given the offer of Rs.58 lakhs for the purchase of the office premises in question. It was also prayed that Official Liquidator be permitted to meet with the expenditure of the advertising agency and other expenses. This Court, by an order dated 08.10.2009 directed the Official Liquidator to get the search of the concerned Sub-Registrar's office for the property in question and to verify whether any subsequent transfer has taken place or not. On 16.02.2010, report has been submitted. In the said report, it is found by the Court that the ownership of the said property is of Janak Specific Family Trust and the property was mortgaged against the credit facility of Kalupur Commercial Cooperative Bank Ltd. and the original documents of the aforesaid premises are lying with the said bank and therefore no further order is required to be passed with regard to the same. Thus, it is contended that the Official Liquidator has no right to sell and takeover the possession of the property in question and therefore possession taken over by the Official Liquidator be declared as illegal and void.

6 Learned advocate Mr. Nandish Chudgar appearing for respondent No.2 submitted that the company in liquidation has borrowed certain funds from respondent No.2. On behalf of the company the applicant i.e. Janak Specific Family Trust has remained one of the guarantors and also mortgaged its property i.e. the office premises in question by way of mortgage by deposit of title deeds. This Court, vide order dated 19.04.2010 in OLR No.35 of 2009, has clearly observed that the premises in question is mortgaged as security against credit facility granted by respondent No.2 herein. It is contended that huge amount is outstanding from the borrower company. He further contended that the said property is mortgaged with respondent No.2 by way of deposit of title deeds. The bank initiated recovery proceedings against the borrower and the guarantors by filing Arbitration Suit being Suit No.1886 of 2002 under the Cooperative Societies Act. The final award and order dated 30.06.2003 for recovery of the said dues has also been passed. Though award is passed in favour of respondent No.2, till date it has not received any amount. Thus, respondent No.2 bank is entitled to enforce its security and recover its outstanding dues by sale of the property. The property in question belongs to Janak Specific Family Trust and not of the company in liquidation. Therefore, Official Liquidator has wrongly taken over the possession and therefore he may be directed to handover the possession of the property in question directly to respondent No.2.

7 Learned advocate Ms. Yajnik submitted that M/s. Minal Oil and Agro Industries Limited has been ordered to be wound up by this Court by an order dated 04.12.2001 passed in Company Petition No.207 of 2001 and the Official Liquidator attached to this Court has been appointed as Liquidator of the said company. By an order dated 28.07.2006 passed by this Court, the sale committee was constituted for sale of the assets of the company in liquidation. The Official Liquidator thereafter appointed an advocate for carrying out the title search of the property in question. Title search report was given on 16.02.2010 considering the documents lying with Kalupur Commercial Cooperative Bank Ltd. and as per the revenue record up to 31.03.1997. It is contended that the proprietary concern i.e. M/s. Minal Oil & Agro Industries has entered into a partnership deed dated 01.11.1998 and further rectification deed dated 02.11.1998 and thereafter converted the said partnership firm into Part IX company as per the provisions of the Companies Act, 1956 in the name of M/s. Shree Minal Oil & Agro Industries Pvt. Ltd. The certificate of incorporation was issued by the Registrar of Companies on 21.01.1999 and therefore all the property of partnership were vested with the company as per the provisions of Section 575 of the Companies Act, 1956 . Thereafter, the order of winding up was passed on 04.12.2001. Learned advocate Ms. Yajnik further contended that the interim report regarding title search was received from the concerned advocate on 10.03.2015. The Official Liquidator asked for certain details from the applicant who was one of the Directors of the company in liquidation.

However, he informed that he has no records/details available with him.

8 Learned advocate Ms. Yajnik lastly submitted that in terms of the order dated 24.07.2015, respondent No.2 - Kalupur Commercial Cooperative Bank Ltd. has furnished the documents relating to the office No.802, Popular House, Ashram Road, Ahmedabad to the office of Official Liquidator. After receiving the said documents, the Official Liquidator forwarded the copy of the said documents along with company documents, which were collected from Registrar of Companies to the concerned advocate for verification. Learned advocate Ms. Yajnik submitted that on perusal of Memorandum of Association, Article of Association and certificate of incorporation, etc., it reveals that the company M/s. Shree Minal Oil & Agro Industries Pvt. Ltd., earlier were carrying its business under name and style of M/s. Minal Oil & Agro Industries, a partnership firm and subsequently on 21.01.1999 said partnership firm was converted and registered as Part-IX Company under Section 565 and 566 of the Companies Act, 1956 . Therefore, in light of provisions of Part IX of the Companies Act and more particularly in light of provisions of Sections 565, 566 and 575 of the Companies Act, 1956 , all the properties whether movable or immovable under the ownership of the erstwhile firm would, after the incorporation of the company, vest with the company exclusively.

9 Learned advocate Ms. Yajnik thereafter contended that at the time of incorporation of company from partnership organization, an amount of Rs.40.39 crores towards the fixed assets has been transferred to the company. However, details of the said assets are not submitted by the ex- management at the time of incorporation of the company in the office of the Registrar of Companies. The ex-management has not taken any steps to enter the name of company in revenue records after creating Part IX company from partnership firm. In view of these submissions, learned advocate Ms. Yajnik submitted that present application be dismissed.

10 In response to the arguments advanced by learned advocate Ms. Yajnik for the Official Liquidator, learned advocate Mr. M.B.Gandhi for the applicant submitted that the property belongs to Janak Specific Family Trust - the applicant herein. Mr. Gandhi submitted that long back M/s. Minal Oil and Agro Industries, a proprietary concern had taken place and that remained as a proprietary concern and ended as a proprietary concern and thereafter M/s. Minal Oil & Agro Industries, a partnership firm was created. However, that partnership firm was created for a day only and the partners had dropped the idea of formation of partnership firm but it was advised to have a company and therefore Minal Oil & Agro Industries Private Limited was established. This was an independent company and no property of the partnership firm is taken over. Mr. Gandhi further submitted that not only that but from new share capital of the company several properties were purchased and all the purchased properties have been sold off by the Official Liquidator. The Official Liquidator has illegal taken over possession of several other lands which are the personal lands for which separate application No.164 of 2010 is already filed. In the said matter, the Official Liquidator has submitted a report of title and it is stated that the properties are private properties of one of the trustees of the applicant trust. Similarly, the office situated at Popular House is also a private property of Janak Specific Family Trust and it was never a property of the company or even the partnership firm. Learned advocate Mr. Gandhi submitted that Janak Specific Family Trust is an independent trust which was managed by M/s. Minal Oil & Agro Industries, a proprietary concern. Learned advocate Mr. Gandhi further submitted that the Official Liquidator could verify the statements of facts which were submitted way back in 1999 to the Official Liquidator and upto now no objection is raised against the statement of facts being submitted. In the balance-sheets also, which have been handed over to the Official Liquidator, the property in dispute is not shown as a property of the company. In light of this, Section 575 of the Companies Act is not applicable since when the company itself is newly established without any conversion or without taking over of any of the concern, there would be no shifting of the property or transmission/vesting of the property in to the company and therefore only an assumption is raised under Section 575 which is wrong and therefore the same is required to be discarded by this Court.

11 Learned advocate Mr. Gandhi for the applicant further submitted that if the property in question had been of the company, then in that case, it would have been taken over by the bank also in the first instance and not by way of additional security by the guarantors. When everything is in the custody of the Official Liquidator, the question of demanding anything from the applicant does not arise. Learned advocate Mr. Gandhi for the applicant further submitted that no property of the partnership concern was taken and the life of the partnership firm was for a day only and thereafter from the independent shares and funds, the company was established. Learned advocate Mr. Gandhi submitted that the properties which the Official Liquidator had taken over without verifying the titles for which applications are made for returning the said properties. Thus, the assumption and the conclusion which is drawn by the learned advocate, who had carried out title search, is absolutely illegal and unfair. On the basis of these submissions, learned advocate Mr. Gandhi submitted that the present application be allowed.

12 I have considered the rival submissions canvassed on behalf of learned advocate for the parties. I have also gone through the material produced on record. From the record following facts have emerged:

(i) Minal Oil & Agro Industries, a proprietary concern of Janak Specific Family Trust purchased the property in dispute by registered sale deed on 31.03.1997 from Patel Specific Family Trust. The said sale deed is produced on record.

(ii) The proprietary concern M/s. Minal Oil & Agro Industries entered into partnership deed dated 01.11.1998, whereas rectification deed was executed on 02.11.1998.

(iii) That the company viz. M/s. Shree Minal Oil & Agro Industries Pvt. Ltd. was incorporated under the Companies Act, 1956. The Registrar of Companies, therefore, issued the certificate of incorporation on 21.01.1999.

(iv) On 04.12.2001, this Court passed an order in Company Petition No.207 of 2001, whereby the aforesaid company was ordered to be wound up and the Official Liquidator attached to this Court has been appointed as liquidator of the said company.

(v) In pursuance of the order dated 26.07.2006 passed by this Court in OLR No.72 of 2004, sale committee was constituted for sale of the assets of the company in liquidation subject to the confirmation of this Court. The said sale committee initiated the process of auction of the property in question with the permission of this Court.

(vi) Official Liquidator filed OLR No.35 of 2009 on 03.04.2009, wherein he had prayed that the highest offer of Rs.58 lakhs received from M/s. N.K. Proteins Ltd. for the office premises situated at 802, 8th Floor, Popular House, Ashram Road, Ahmedabad, be considered by this Court. The Official Liquidator also prayed for other relief/s.

(vii) On 08.10.2009, this Court directed the Official Liquidator to get the search report with regard to the aforesaid property in question. Pursuant to the order passed by this Court, Official Liquidator appointed Mr. Mrugesh Jani, advocate on the panel of O.L. to carry out the title search of the said property.

(viii) On 16.02.2010, learned advocate Mr. Jani furnished search report with regard to the property in question to the office of Official Liquidator wherein he has given the opinion that the property in question belongs to M/s. Minal Oil & Agro Industries, a proprietary concern of Janak Specific Family Trust since 31st March 1997.

(ix) Relying upon the aforesaid title search report given by the advocate of the Official Liquidator, this Court disposed of OLR No.35 of 2009 by an order dated 19.04.2010 and only prayer contained in para 9(C) was considered by this Court. Other prayers were not granted in view of the report of learned advocate Mr. Jani.

(x) The applicant has, thereafter, filed this application on 21.06.2010.

(xi) Thereafter, the Official Liquidator filed a separate report being OLR No.132 of 2010 on 30.09.2010, wherein the Official Liquidator had prayed that he may be permitted to handover the possession of the property in question to Janak Specific Family Trust (the applicant). However, on 18.01.2012 the said report was dismissed for non-prosecution. From the record, it appears that Official Liquidator has not filed any application for restoration of O.L.R. No.132 of 2010.

13 In view of the aforesaid important facts produced on record, it is clear that the present application is pending since June 2010 and now recently in March 2015, once again learned advocate Mr. Jani on the basis of certain documents which were supplied to him, has given different opinion, wherein he has stated that the property in question can be considered as property of the company in liquidation. While giving the said opinion, learned advocate has verified Memorandum of Association of the company and mainly relied upon the fact that the partnership firm was converted into Joint Stock Company under Part IX of Companies Act, 1956 and thereafter he considered the provisions contained under Sections 565, 566 and 575 of the Companies Act.

14 It is revealed from the record that advocate engaged by the Official Liquidator has given the report on 16.02.2010 in which he has stated that, 'looking to the above, it is stated that, the property more particularly described in the first schedule, hereunder written is belonging to M/s. Minal Oil and Agro Industries proprietary concern of Janak Specific Family Trust. In the first schedule of the report, the description of the property in dispute is given. Sale deed dated 31.03.1997 by which the aforesaid proprietary concern of Janak Specific Family Trust has purchased the property from Patel Specific Family Trust is also on record. Thus, from the aforesaid documents, this Court is of the opinion that the property in question is private property of the applicant. The said property was mortgaged by the applicant with the respondent bank as a guarantor but the fact remains that the property in question is a private property of the applicant. When this Court came to know about the same, this Court passed an order on 19.04.2010 in O.L.R. No.35 of 2009 and not granted prayer (a) of the said report. Prayer (a) in the said report reads as under:

"a. To consider the highest offer of Rs.58.00 lakhs (including AMT Tax + Building Association Dues) received from M/s. N.K.Proteins Limited, Ahmedabad for the office premises situated at 802, 8th Floor, Popular House, Ashram Road, Ahmedabad."

15 This Court further observed in the said order as under:

"A further report has been submitted by the Official Liquidator 14.10.2010 submitting that pursuant to the order dated 8.10.2009 passed in Official Liquidator Report No. 35 of 2009, the Official Liquidator appointed Shri Mrugesh Jani, Advocate to carry out the search and furnish the search report dated 16.2.2010 regarding the ownership of the aforesaid office. It is submitted that learned advocate has concluded in his report that the office No. 802, 8th Floor admeasuring 2100 sq.ft., situated at Popular House, Ahmedabad belongs to M/s. Minal Oil and Agro Industries proprietary concern of Janak Specific -Family Trust and said property was mortgaged as security against the credit facility granted by Kalupur Commercial Cooperative Bank and the original document of the said office are lying with the Kalupur Commercial Cooperative Bank, Ashram Road Branch, Ahmedabad. In view of the above, no further order is required to be passed in the present Official Liquidator Report except disposing of the present Official Liquidator Report and granting prayer in terms of para 9(c)."

16 In fact, the Official Liquidator has also thereafter filed O.L.R. No.132 of 2010 for handing over the possession of the property in question to the applicant. However, the said report was dismissed for non-prosecution and thereafter it is not restored. This Court passed an order to that effect on 18.01.2012.

17 Thus, in view of the aforesaid facts and circumstances of the present case, this Court is of the opinion that when the property in question is private and personal property of the applicant, the Official Liquidator ought not to have taken over the possession of the said property and the Official Liquidator had wrongly and under mistaken belief taken over the possession of the said property. Hence, Official Liquidator is directed to handover the possession of the property being office premises situated at 802, 8th Floor, Popular House, Ashram Road, Ahmedabad to the applicant within a period of six weeks from the date of receipt of this order. Moreover, the request made by learned advocate for the respondent bank that the respondent bank is having decree in its favour against the applicant and therefore the possession of the property in dispute be handed over to the respondent bank is not accepted. The said relief cannot be granted in the application filed by the applicant. If the respondent bank is of the opinion that the bank is entitled to get the possession of the property in question, it is open for the respondent bank to file appropriate proceedings before appropriate Court and as and when such proceedings are filed, it is open for the applicant to take all available contentions. If the proceedings are initiated by the respondent bank, the same shall be decided in accordance with law without being influenced by the present order.

18 With these observations and directions, this application is allowed.