

**In The High Court at Calcutta
Original Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

C.A. No.27 of 2024

In

C.P. No.452 of 2013

In the matter of:

Laxmi Narayan Udyog Limited

And

Vijay Kumar and Another

VS

The Official Liquidator

For the applicants	:	Mr. Sambuddha Dutta, Adv., Mr. Chandra Sekhar Banerjee, Adv., Mr. Shamit Dutta, Adv., Mr. Rahul Kumar Singh, Adv.
For the petitioning creditor	:	Mr. Pradip Sancheti, Adv., Mr. Anurag Bagaria, Adv., Mr. A. Podder, Adv.
For the O/L	:	Mr. Susanta Dutta, Adv.
Heard on	:	22.08.2024, 05.10.2024, 31.01.2025, 14.02.2025
Judgment on	:	28.02.2025

Sabyasachi Bhattacharyya, J:-

1. C.A. No.27 of 2014 has been filed by one Vijay Kumar and his wife Smt. Rajbala, for disclaimer of a property being Flat No.20 I on the 20th Floor of Diamond City South, situated at Premises No.58, Mahatma Gandhi Road, Kolkata – 700 001 and an open terrace pertaining thereto. The genesis of the application is a registered sale

deed dated September 30, 2021 by which the applicants claim to have purchased the disputed property from one Nivedita Chowdhury.

2. Learned counsel for the applicants submits that Nivedita Chowdhury had purchased the property from the original owner Rajat Merchandise Private Limited, where the developer Shree Rajat Enterprises was also a party.
3. It is contended that subsequently, when the applicants were sought to be ousted from the physical possession of the property, the applicants became aware of an order dated June 27, 2019 whereby the purchase deed of Nivedita, the vendor of the applicants, had been held to be invalid by an order passed by the Company Court in connection with a winding up petition bearing C.P. No.452 of 2013.
4. Learned counsel appearing for the applicants submits that the relevant facts attending the valid purchase of Nivedita from the original owner had been suppressed before the Company Court and relies on the principle of *Actus Curiae Neminem Gravabit*. Since the order declaring the said purchase deed of Nivedita invalid was vitiated by fraud and a patent error committed by the court, it is argued that the same ought to be held as null and void and the property be restored to its legal owner, the applicants.
5. In support of his contention, learned counsel relies on the judgment of *South Eastern Coalfields Ltd. v. State of M.P. and others*, reported at (2003) 8 SCC 648, where it was held that if one party gained an unlawful advantage it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have

suffered but for the erroneous order of the court, such mistake or error can be corrected to do real and substantial justice.

6. Learned counsel next cites *Bhupinder Singh v. Unitech Limited*, reported at *2023 LiveLaw (SC) 263*, where it was held that if true and correct facts had been pointed out to the court, the court might have passed a different order, in which case the court ought to reconstitute the parties to their original position by correcting such error.
7. Learned counsel next cites *M.M. Thomas v. State of Kerala and another*, reported at *(2000) 1 SCC 666*, where it was held that a High Court, being a 'Court of Record' under Article 215 of the Constitution of India, envelopes all such powers whose acts and proceedings are to be enrolled in a perpetual memory and testimony and it is the duty of the High Court to keep its records correct.
8. It is submitted that *M.M. Thomas's* case was relied on and applied in a Single Bench judgment of this Court in *Radha Bhattad v. Rashmi Cement Limited*, reported at *2023 SCC OnLine Cal 2570*.
9. Learned counsel for the applicants also places reliance on *Bhaurao Dagdu Paralkar v. State of Maharashtra and others*, reported at *(2005) 7 SCC 605*, and *T. Vijendradas and another v. M. Subramanian and others*, reported at *(2007) 8 SCC 751*, in support of the proposition that if a judgment or an order is obtained by fraud, the same is a nullity or *non est* in the eye of law and has to be treated as a nullity in every court, superior or inferior.

10. Learned counsel, in support of the same proposition, cites *Ram Kumar v. State of Uttar Pradesh and others*, reported at 2022 LiveLaw (SC) 806.
11. The applicants further rely on *Sambhaji and others v. Gangabai and others*, reported at (2008) 17 SCC 117, where it was stressed that procedure is the handmaiden of justice.
12. It is argued that in view of the title of Nivedita, the vendor of the applicants, being based on a transfer deed by the original owner, the same cannot be said to be invalid. The mere procedure prescribed in Section 531(1) of the Companies Act, 1956 (hereinafter referred to as “the 1956 Act”) and/or other provisions of statute could not nullify the said deed.
13. It is argued that the company-in-liquidation, namely Laxmi Narayan Udyog Limited, has relied on a purported allotment in favour of the company upon the company having paid consideration to the original owner. However, it is pointed out that subsequently, the company itself wrote to the owner nominating initially Ajay Chowdhury, one of its Directors, and thereafter upon cancellation of the previous nomination, Ajay’s wife Nivedita, as its nominee to purchase the property. In terms thereof, the registered sale deed dated March 19, 2015 was executed by the vendor in favour of Nivedita.
14. It also transpires from the records that the company, by its letter dated March 19, 2015, had confirmed that Nivedita had reimbursed to the company the advance for purchase which had been paid to the

company by the owner and the said amount, thus, be credited to the transferee Nivedita.

- 15.** On a more basic premise, learned counsel for the applicants contends that no transfer can be effected in favour of a person without the execution of a valid sale deed and due registration of the same in accordance with law. In support of such proposition, learned counsel places reliance on the following decisions of the Supreme Court:
- (i) *Suraj Lamp & Industries Private Limited (2) v. State of Haryana and another*, reported at (2012) 1 SCC 656;
 - (ii) *Sanjay Sharma v. Kotak Mahindra Bank Limited*, an unreported judgment of the Supreme Court passed in *SLP (C) No.330 of 2017* on December 10, 2024; and
 - (iii) *Babasaheb Dhondiba Kute v. Radhu Vithoba Barde*, reported at (2024) 4 SCC 310.
- 16.** It is reiterated by the applicants that the Supreme Court in *Ram Kumar (supra)* had placed reliance on its previous judgment in *S.P. Chengalvaraya Naidu (Dead) by Lrs. v. Jagannath (Dead) by Lrs. and others*, reported at (1994) 1 SCC 1 to reaffirm that non-disclosure of relevant material documents with a view to obtain an undue advantage would amount to fraud and the judgment or decree so obtained by fraud is to be treated as a nullity.
- 17.** Thus, it is argued that the subject-property may be restored to its original owner, the applicants, by treating the order of this Court dated June 27, 2019, declaring the purchase of the applicants' vendor Nivedita invalid, as *non est* in the eye of law. It is further submitted

that the subsequent orders of the Company Court directing possession of the property to be taken from the applicants were also vitiated by error on the part of the court, premised on the initial order dated June 27, 2019 and also vitiated by fraud practised on the court in obtaining such orders.

- 18.** Learned counsel for the petitioning creditor and the Official Liquidator (O/L) reiterate that the company had acquired indefeasible rights in respect of the concerned property. Learned counsel rely on the letters exchanged between the company and the original owner M/s Rajat to substantiate the acquisition of such title by the company. Since the transfer in favour of Nivedita took place within the prohibited period as mandated in Section 531(1) of the 1956 Act, which is applicable to the present case, those were rightly held to be invalid under the said provision by the learned Single Judge in his order dated June 27, 2019, passed on an application bearing C.A. No.266 of 2017 filed by the O/L to such effect.
- 19.** Learned counsel for the respondents also rely on an order dated August 1, 2014 where it was recorded that the company had undertaken before the Company Court in connection with the winding up petition that it would not take any step to deal with, dispose of, alienate, encumber or part with possession of its assets and properties on the basis of which it was held by a learned Single Judge (Company Court) that no injunction need be passed. Thus, the subsequent nomination of Nivedita and sale in favour of Nivedita were violative of such undertaking and accordingly were unlawful.

- 20.** The Company Petition was presented for winding up of the company-in-liquidation on June 28, 2013. Thus, no transfer could be effected by the Board of Directors of the company after the said date without the leave of the Company Court. Hence, the subsequent transfers relied on by the applicants are vitiated on such score.
- 21.** Before adjudicating the issues involved in the present application, a brief chronology of events is required to be noted, which given below:

List of Dates

Date	Events
01.10.2011	Two letters of vendor (M/s Rajat) to Co. allotting flat + open terrace to Co. on full payment of consideration.
22.11.2011	Two letters by Co. to vendor confirming receipt of peaceful and vacant possession (flat + open terrace)
28.06.2013	Co. petition presented.
01.08.2014	Order in CP 452 of 2013 recording submission of Co. that no step being taken to deal with, dispose of, alienate, encumber or part with possession of its assets and properties. (Patherya, J.)
31.01.2015	Letter by Co. to vendor asserting its purchase and possession of flat + terrace and revoking 12.12.2013 consent to transfer to Ajay Chowdhury (Director) and confirming no objection to transfer to Nivedita (Ajay's wife).
01.03.2015	BoD meeting of Co. for nomination in favour of Nivedita.
19.03.2015	Two letters by Co. to vendor reiterating allotment to Co. and payment of full consideration by Co. of Rs.21,50,610/- to vendor – but asking for nomination to Nivedita and to complete transfer of property in her favour + confirming that Nivedita reimbursed to Co. advanced for purchase, which be credited to Nivedita (transferee).
19.03.2015	Transfer deed by vendor (M/s. Rajat to Nivedita)
09.04.2015	Co. directed to be wound up by H.C. Order (Samaddar, J.)

14.05.2015	O/L took possession with police help
27.06.2019	CA 266 of 2017 (by O/L) allowed, declaring nomination and conveyance dated 22.03.2015 (19.03.2015) invalid. (Arindam Sinha, J.)
30.09.2021	Nivedita executed Regd. Sale Deed in favour of Disclaimer Applicants
05.12.2022	(R. Kapoor, J.) O/L directed to take immediate steps for sale of said property.
03.02.2023	(R. Kapoor, J.) O/L directed, with help of police to take actual physical possession of flat by putting padlock.
26.06.2023	(R. Kapoor, J.) March 9, 2023 report by O/L recording completed e-auction process kept on record. Consideration directed to be paid and O/L directed to refund earnest money of other bidders.

- 22.** The first question which arises is whether the order dated June 27, 2019 passed by the Company Court declaring that the nomination and conveyance in favour of the vendor of the applicants, namely Nivedita Chowdhury, was invalid, was a nullity. The applicants have pleaded *Actus Curiae Neminem Gravabit* in support of their contention that the said order is *non est* in the eye of law.
- 23.** That apart, it has to be considered independently, whether the order could have been different even if the attending circumstances as alleged by the applicants were brought to the notice of the court.
- 24.** Upon a careful consideration of the arguments of the parties, the relevant provisions of law and the materials on record, I come to the following conclusions which are discussed under broad heads:

Whether the transfer deed in favour of Nivedita Chowdhury, the vendor of the applicants, was void

- 25.** The learned Single Judge of the Company Court, while deciding C.A. No.266 of 2017, an application filed by the O/L to declare the said transfer as *void*, had declared the said conveyance and the preceding nomination to be invalid, by placing reliance on Section 531 of the 1956 Act. Section 531(1), while dealing with fraudulent preference, provides that any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly.
- 26.** On the other hand, Section 441 of the 1956 Act speaks about commencement of winding up by the Tribunal (read in the present context as “court”, since the matter has been retained by the Company Court and not sent to the Tribunal). Sub-section (1) of Section 441 deals with a voluntary winding up following a resolution passed by the company and, as such, is not applicable to the present case.
- 27.** Sub-section (2) of Section 441 provides for other cases where the winding up of a company by the court shall be deemed to commence

at the time of the presentation of the petition for the winding up. The said provision is attracted to the present case.

- 28.** Admittedly, and as evident from the records, the winding up petition, registered as C.P. No.452 of 2013, was presented to this Court on June 28, 2013. Thus, taking into account the language of Section 531(1), the sale in favour of Nivedita which took place on March 19, 2015, for being declared fraudulent preference under Section 531(1), would have to take place within six months before the commencement of the winding up, that is, the presentation of the winding up petition. However, it is not so in the present case, since the transfer happened about two years after the presentation of the Company Petition.
- 29.** Even if we go by the actual order recording a direction for the company to be wound up, which was passed in the Company Petition on April 9, 2015, the transfer took place prior to six months from the winding up order and could not come within the purview of Section 531(1).
- 30.** The question which thus comes up for consideration before this Court is whether the erroneous quotation of a Section in an order of court, in line with the caption of the application which gave rise to the same, vitiates the legality of the said order, if it is otherwise in consonance of law.
- 31.** It is well-settled that the caption is immaterial, whether in an application or an order, if the conclusion of the order is correct and the court otherwise had power to pass such order, even if under legal provisions not quoted therein. An analogy can be drawn with an order

of injunction which was purportedly passed under Section 151 of the Code of Civil Procedure but is deemed, for all practical purposes, to be one under Order XXXIX Rules 1 and 2 of the Code, against which an appeal lies under Order XLIII.

- 32.** While examining the order of this Court dated June 27, 2019, we are, thus, required to explore other relevant provisions having direct bearing on the same. Two very important Sections of the 1956 Act are required to be considered in such context.
- 33.** The first is Section 536, which speaks about avoidance of transfers, etc., after commencement of winding up. Sub-section (1) of Section 536 deals with voluntary winding up, which is not applicable in the present case. Sub-section (2), which is applicable here, provides that in the case of winding up by the court, *any disposition of the property (including actionable claims) of the company made after the commencement of the winding up shall, unless the court otherwise orders, be void.*
- 34.** The second germane provision is Section 537(1)(b) which provides that where any company is being wound up by the court, any sale held, without leave of the court, of *any of the properties or effects of the company after such commencement, shall be void.*
- 35.** It is noteworthy that both the provisions mandate that transfers or dispositions as envisaged therein are automatically rendered void by operation of law and without the requirement of any further order of court. On the contrary, if such character of the transfer as void is to be reversed, an order of the court is required under Section 536(2),

since the language of the said provision is that such a transaction *shall be void* “unless the court otherwise orders”.

- 36.** Even such a mitigation by discretion of court is not permitted under Section 537(1)(b), which does not leave any scope for any order being passed “otherwise” by the court.
- 37.** It is also important that the expression “shall” has been used in both the provisions, thus, making it mandatory that the rendering of such transactions as void is, by operation of law, automatic.
- 38.** In the case at hand, the Company Petition was presented on June 28, 2013, which is the date from when the winding up is deemed to commence under Section 441(2) of the 1956 Act. Thus, the nomination in favour of Ajay, one of the Directors of the company on December 12, 2013, the subsequent revocation of the same and nomination in favour of Nivedita dated January 31, 2015, the Board of Directors’ meeting of the company-in-liquidation deciding in favour of nomination to Nivedita, held on March 1, 2015, the two letters of the company dated March 19, 2015 reiterating such nomination and asking for transfer of the property in her favour, as well as the actual registered transfer deed executed by the original owner in favour of Nivedita on March 19, 2015, all come squarely within the purview of Section 536(2) and Section 537(1)(b) and are, accordingly void ab initio.
- 39.** Hence, even otherwise than under Section 531(1), the nomination of Nivedita (the vendor of the applicants) and the transfer in her favour was automatically rendered void by operation of law. Not only so, the

transfer was void ab initio since the winding up proceeding had already commenced and as per Sections 536(2) and 537(1)(b), immediately upon being effected, the transfer stood void even as on such date. Thus, the invalidity and nullity of the said transactions do not stem merely from the order of the Company Court dated June 27, 2019 but arise by virtue operation of law. Hence, the entire superstructure of the argument of the applicants assailing the order dated June 27, 2019 is based on thin air, being in direct contravention of the above provisions of law. Since the applicants claim through Nivedita, the applicants could not be said to have derived title on the strength of such void transfer in favour of Nivedita. More importantly, the transfer deed in favour of the applicants themselves was also executed and registered during pendency of the winding up proceeding and as such is void ab initio by operation of the aforesaid provisions even independently, irrespective of the void transfer in favour of their vendor.

Whether the order passed by the Company Court dated June 27, 2019 was vitiated by Actus Curiae Neminem Gravabit and/or fraud

40. In the judgments of *South Eastern Coalfields Ltd. (supra)*, *Bhupinder Singh (supra)* and *M.M. Thomas (supra)*, the Supreme Court was dealing with the High Court's plenary powers to correct its own records on the premise that it is a "Court of Records" under Article 215 of the Constitution of India. The plinth of such proposition was

that if there is an unjust impoverishment of one side and an unlawful enrichment on the other in favour of the contesting parties, which would not have happened if the correct facts were brought to the notice of the court, such order ought to be recalled and the mistake ought to be rectified.

- 41.** The said principle is not applicable on any of the counts in the present case.
- 42.** First, there was no error on the part of the court, as discussed while adumbrating on the earlier issue. Secondly, the disclosures of the fact now brought to the notice of this Court by the applicants would not have made a difference to the outcome of the application of the company-in-liquidation for declaring the sale in favour of Nivedita invalid (although erroneously captioned to be under Section 531(1)), since not only were the said facts broadly within the notice of the court, as reflected (though in a cryptic fashion) in the order dated June 27, 2019, but also that the said facts, rather than altering the conclusion of the said order, would endorse and bolster the same. Hence, there is no question of any error on the part of the court in passing the order dated June 27, 2019 in any event.
- 43.** Also, for reversing an order passed by a co-ordinate Bench on the ground of *Actus Curiae Neminem Gravabit*, the Company Court has to be satisfied on a much higher footing than an ordinary challenge thereto, since the subsequent Bench is neither sitting in appeal over the previous order, nor hearing an application for review of the same,

which have their respective legal parameters for exercise of jurisdiction.

- 44.** To bypass the said statutory provisions of review and appeal, the applicants have to make out a far stronger case, showing that there was a palpable mistake and an error on the part of the court which would prompt the court immediately to rectify the same. If detailed arguments are necessary, the matter would not come within the purview of the doctrine of *Actus Curiae Neminem Gravabit*, which cannot be resorted to at the drop of a hat to bypass other statutory provisions of challenge.
- 45.** Also, on the facts of the case, even if the circumstances now relied on by the applicants were brought to the notice of the court, the same would not have made a difference, as held earlier. Secondly, in any event, the deed in favour of the applicants and that in favour of their vendor and the nomination in favour of the vendor were all void ab initio by operation of Section 536(1) and Section 537(1)(b) of the 1956 Act and, therefore, the present issue is redundant from such perspective.
- 46.** The propositions laid down in *Bhaurao Dagdu Paralkar (supra)*, *T. Vijendradas (supra)* and *Ram Kumar (supra)* in respect of fraud are also not attracted to the present case simply because there was no fraud practised upon the court and all material facts were disclosed in the application of the O/L before the court at the relevant juncture. There would not have been a material difference in the outcome of the

application even if those circumstances were spelt out specifically in the said order.

- 47.** At the worst, two minor errors could be attributed to the said order, the first being that the amount specified as consideration fell short of the total consideration and secondly, that a wrong provision, that is, Section 531(1) of the 1956 Act was quoted, being drawn from the caption of the application itself.
- 48.** The first of such minor errors can easily be explained away since it was an obvious oversight. At all points of time there were two sets of letters allotting the flat and the open terrace to the company-in-liquidation (before the winding up commenced) by the original owner and two letters by the company confirming the receipt of peaceful and vacant possession, respectively dated October 1 and November 22 in the year 2011, which pertained to the flat and the open terrace respectively. The same process followed at the time of nomination of Nivedita. However, the transaction, at all material points of time, although sometimes bifurcated into two sets of parallel communications, pertained to a single composite transaction of transfer of the flat as well as the open terrace between the parties concerned. Only one of such letters was noted by the learned Single Judge sitting in Company Court in the order dated June 27, 2019 whereas the other was not spelt out, which gave rise to the discrepancy between the consideration recorded in the order and the actual consideration which passed in respect of the flat and the open terrace. Such mistake is absolutely technical and procedural and

thus does not vitiate the order at all. The second, being the quotation of an erroneous provision, also does not have any bearing on the validity of the order, as discussed above. Thus, the principles of fraud are not germane in the present context at all.

- 49.** The applicants also rely on *Sambhaji's* case (*supra*), which reliance is not relevant but misplaced. The said judgment reiterates that procedure is the handmaiden of justice. The rendering of the transactions in favour of the applicants and their vendor void ab initio, however, is not by mere procedure but flow from substantive provisions of law vitiating the transfers themselves.
- 50.** Hence, it cannot be said that the order dated June 27, 2019 was void or a nullity from any perspective.

Whether the applicants come with clean hands

- 51.** The conduct of the applicants is also suspect. The applicants feign ignorance of the previous transactions between the company, before its liquidation, and the original owner and the developments thereafter and seek to present an innocent facade before the court. It has been argued that the applicants are *bona fide* purchasers for value without notice, since their search revealed no interest of the company with regard to the disputed property, in view of there being no registered deed in favour of the company.
- 52.** As rightly contended by the petitioning creditor and the O/L, however, such veil of ignorance is belied, and ought to be pierced, since a proper search befitting a prudent person would clearly disclose the

interest of the company-in-liquidation and the prior allotment in its favour, upon full consideration being paid by the company-in-liquidation to the owner even before the commencement of the winding up process.

- 53.** The purchase deed of the applicants themselves dated September 30, 2021 categorically mentions about the transfer in favour of their vendor Nivedita, through whom they claim title in any event. Although the preceding events of the company's interest were carefully suppressed in the said sale deed by Nivedita, as the transfer in favour of Nivedita, their vendor, was disclosed in the applicants' purchase deed, it was the incumbent duty of the applicants to at least look at the transfer deed in favour of their vendor Nivedita. As opposed to the contentions of the applicants, the purported transfer deed in favour of Nivedita dated March 19, 2015, executed by the original owner, as evident from the certified copy of the same annexed to the disclaimer application itself, was registered with the District Sub-Registrar-II at Alipore, District: South 24 Parganas. The purported deed of conveyance dated September 30, 2021 in favour of the applicants, as also evident from the certified copy thereof annexed to the same application, was registered before the same office.
- 54.** Also, the purported search report produced by the applicants clearly indicates that a search was carried out at the office of the District Sub-Registrar-II at Alipur, District: South 24 Parganas which immediately would have revealed the sale deed in favour of Nivedita.

- 55.** The very fact that the applicants have taken out and produced a certified copy from the said Sub-Registration office shows that they were well aware that the registered sale deed in favour of Nivedita was lying in the said office. A mere glance at the same would show that in Clause A(xvi) thereof, an allotment letter dated October 1, 2011, issued by the developer to the purchaser, was mentioned. More importantly, it was clarified in such deed that the unit was originally agreed to be purchased by Laxmi Narayan Udyog Limited (the company-in-liquidation), who nominated the purchaser to complete the purchase. For any prudent person, the natural course of action would be to enquire from the company and/or from the relevant records about the attending circumstances of such agreement/nomination. There is not a single pleading by the applicants in the present disclaimer application as to any attempt on their part to have undertaken such enquiry. If it was the case of the applicants that they approached the company and were refused information, the position still might have been otherwise, although it would still not have any material bearing on their transfer deed being void by operation of law.
- 56.** Yet, such deliberate inaction on the part of the applicants speaks volumes about their intent to deliberately bypass the interest of the company-in-liquidation and the effects of the orders passed by the Company Court at various points of time.
- 57.** Section 3 of the Transfer of Property Act, 1882 provides that a person is said to have notice on a fact not only when he actually knows that

fact but when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. Such principle applies squarely in the present case.

- 58.** Also, Explanation II following such provision categorically provides that any person acquiring any immovable shall be deemed to have noticed of the title, if any, of any person who for the time being is in actual possession thereof.
- 59.** The turn of events in the present case goes on to show that after the Company Petition was presented on June 28, 2013, an impression was given to the Company Court that the company was in possession of the assets and properties, including the present disputed property. On such premise, it was recorded in the order dated August 1, 2014 passed by the Company Court that the company submitted that no step was being taken to deal with, dispose of, alienate, encumber or part with possession of its assets and properties, only on which basis, the Company Court observed that no further injunction need be passed.
- 60.** Subsequently, in the teeth of such undertaking, the Board of Directors of the company-in-liquidation went recalcitrant and shot off letters on January 31, 2015 revoking their previous nomination dated December 12, 2013 in favour of Ajay Chowdhury, one of the Directors of the company-in-liquidation, and confirming a no objection to transfer the property-in-question to Nivedita, the wife of the said Director.
- 61.** On March 1, 2015, the Board of Directors went so far as to resolve in their meeting to approve the nomination in favour of Nivedita, the wife

of one of the Directors of the company-in-liquidation, which was finalised on March 19, 2015 by two letters by the company-in-liquidation, not at the behest of the O/L but the Board of Directors of the company, pursuant to which the property was transferred on March 19, 2015 to Nivedita.

- 62.** The entire exercise, as narrated above, being in gross contravention of the specific contrary undertaking given to the Company Court by the Board of Directors of the company, is tainted by fraud and misrepresentation before the court, which vitiates the entire transaction and renders the same unlawful. The involvement of the Board of Directors in the said illegality and their culpability therein is palpable.
- 63.** Hence, even apart from the operation of Sections 536(2) and 537(1)(b) of the 1956 Act, the transfer in favour of the vendor of the applicants is vitiated by fraud and illegality, thus also rendering it void on such account. The entire claim of the applicants is on the strength of Nivedita's purchase deed which itself being void ab initio, no title could pass in favour of the applicants by virtue of the same. Thus, the applicants have no *locus standi* to present the instant application either, let alone raise any question as to any previous order of this Court, since no valid title passed in favour of the applicants or their predecessor-in-interest in any event.
- 64.** Further dwelling on the point of notice, it is found from the records that the O/L took possession on May 14, 2015 by virtue of his powers under the 1956 Act and under the order of the Company Court, as is

evident from its reports. Such possession was taken with police help, pursuant to the order of winding up passed by the Company Court on April 9, 2015. It was followed up by the order dated June 27, 2019 invalidating the transfer in favour of Nivedita.

- 65.** Thus, if not anything else, when the applicants purchased the property on September 30, 2021, they would be deemed to have notice of the rights and the interest of the company in the disputed property since the O/L was in actual possession of the property on behalf of the company-in-liquidation. Explanation II of Section 3 of the Transfer of Property Act squarely applies on such score.
- 66.** Hence, the applicants were not *bona fide* purchasers for value without notice but were complicit in the illegalities committed by the Board of Directors of the company and Nivedita, the vendor of the applicants. Thus, having come with unclean hands, the applicants are not entitled to any relief even on such count.

Whether any title passed in favour of the company to entitle it to the protection of Sections 536(2) and 537(1)(b) of the Companies Act, 1956

- 67.** Learned counsel for the applicants cites *Suraj Lamp & Industries Private Limited (supra)*, *Sanjay Sharma (supra)* and *Babasaheb Dhondiba Kute (supra)* in support of the proposition that no title can be transferred without a registered conveyance deed, thereby hitting at the very root of the rights of the company to retain the property. To

assess the worth of such argument, we are required to scrutinize the language used in the relevant provisions of the 1956 Act.

- 68.** Section 536(2) uses the expression “any disposition of the property (including actionable claims) of the company”. The expression “actionable claims” need not be confined to the definition of the said term as provided in the Transfer of Property Act, since the 1956 Act does not import the definitions of the Transfer of Property Act by any of its provision. Although under the Transfer of Property Act, “actionable claims” means a claim to any debt or to any beneficial interest in movable property, the said definition is not exclusive and cannot be said, from its very language, to include all broader connotations of the term “actionable claim”. Even if it is construed that the company had a “chose in action” on the strength of its transactions with the original owner before the commencement of the winding up proceeding, it can be said to come within the broad purview of “actionable claims”, which is within the term “property” as expressed in Section 536(2). Also, the term “disposition” too broad to be confined to a registered transfer deed.
- 69.** Again, the expression used in Section 537(1)(b) is wide enough, being “the properties or effects of the company”. The expression “effects” includes all incidents of property, including possession. Also, the term “properties” need not necessarily be restricted to full ownership or title. The notion of ‘property’ is comprised of a bundle of rights, which may very well be lesser than absolute right of ownership or title. Hence, read in appropriate perspective, the intention of the Legislature

behind the relevant provisions as discussed above are to protect all interests of the company-in-liquidation in respect of the properties in which it has a semblance of interest in order to facilitate the process of winding up. Thus, even if a registered sale deed was not executed in favour of the company by the original owner at any point of time, the company had sufficient interest in the disputed property by virtue of allotment of the same in its favour by the owner, possession being handed over to the company and payment of full consideration by the company for such purpose, which is borne out amply by the attending circumstances.

- 70.** On October 1, 2011, two communications were made by the original owner in writing to the company “allotting” the flat and the open terrace, which comprise the present disputed property, to the company before liquidation on full payment of consideration. Thus, in terms of the intention which transpired between the parties, the allotment upon passage of full payment of consideration was sufficient to create an irrevocable and indefeasible interest in the property in favour of the company. By its two letters dated November 22, 2011, the company, still before liquidation, confirmed the receipt of peaceful and vacant possession of the property from its vendor. Thus, as on that date, the company had paid the full amount of consideration and thereupon, the original owner M/s. Rajat allotted the flat and handed over vacant and peaceful possession thereof to the company. Hence, an indefeasible interest was created in favour of the company which definitely comes within the broad purview of the language of Section

536(2) and Section 537(1)(b) of the 1956 Act. Accordingly, the absence of execution of a registered transfer deed in favour of the company is immaterial to bring into operation the provisions of Sections 536 and 537 of the 1956 Act upon the presentation of the winding up petition on June 28, 2013, which is deemed to be the commencement of the winding up under Section 441(2) of the said Act.

- 71.** When the applicants purchased the disputed property from Nivedita on September 30, 2021, in any event, a winding up order had already been passed six years back on April 9, 2015. Thus, under no stretch of imagination can it be said that the applicants have acquired any title in respect of the property at any point of time. The question of registration of a sale deed in favour of the company, thus, is rendered irrelevant and academic in the context.
- 72.** In view of the above observations, this Court finds that the applicants acquired no title by virtue of the purported transfer deed in their favour, executed on September 30, 2021, since the said transaction was void ab initio, as was the transfer deed dated March 19, 2015 in favour of their vendor, through whom the applicants claim, and the preceding nomination in favour of the said vendor, all by operation of Section 536(2) and Section 537(1)(b) of the Companies Act, 1956.
- 73.** Accordingly, the application fails.
- 74.** Hence, C.A. No.27 of 2024 is dismissed on contest without, however, any order as to costs.

- 75.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)