



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 2505 OF 2020
IN
COMMERCIAL SUIT NO. 128 OF 2021

Ocean Deity Investment Holdings
Limited, PCC in respect of Mack Star
Holdings (Mauritius) Limited,
A company incorporated under laws of
Mauritius, having its registered office at
Ebene House, Hotel Avenue, 33 ... Applicant No.1/
Cybercity, Ebene, 72201, Mauritius Org.Plaintiff No.1

Mack Star Marketing Private Limited
A company incorporated under the
Companies Act, 1956 having its
registered office at 1102, 11th Floor,
Peninsula Business Park, Lower Parel
Mumbai-400013 ... Plaintiff No.2

Versus

Sarang Wadhawan
A resident of India addressed at
Wadhawan House, Union Park Road
Bandra (West), Mumbai-400 050 ...Defendant No.1

Rakesh Wadhawan
A resident of India addressed at
Wadhawan House, Union Park Road
Bandra (West), Mumbai-400 050 ...Defendant No.2

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Waryam Singh

A resident of India addressed at
1401-2, Stellar Tower, 2nd Cross Lane
Lokhandwala, S.V. Patel Nagar,
Andheri (West), Mumbai-400 053 ... Defendant No.3

Amanpreet Singh

A resident of India addressed at
1401-2, Stellar Tower, 2nd Cross Lane
Lokhandwala, S.V. Patel Nagar,
Andheri (West), Mumbai-400 053 ... Defendant No.4

Vikram Homes Private Limited

A company incorporated under the
Companies Act, 1956 having its
registered office at 215, Aashirwad
Complex, 2nd Floor, D-1, Green Park
New Delhi-110 016 ... Defendant No. 5

Dr. Birendra Saraf a/w. Mr. Siddhartha Ranade, Mr. Prakash
Jain, Ms. Arunima Athavle, Ms. Neeraja Barve, Ms. Mahima
Tahiliani i/b. Trilegal for the Plaintiffs.

Mr. Nikhil Sakhardande a/w. Ms. Shubhra Swami, Mr. Pratik
Pawar, Ms. Shanaya Cyrus Irani and Mr. Jatin Asrani i/b. M/s.
Sagar Associates for Defendant No. 5.

CORAM : GAURI GODSE, J.

RESERVED ON : 5th JANUARY 2026

PRONOUNCED ON : 4th MAY 2026

JUDGMENT:

1. This suit is filed for cancellation of an agreement for sale pursuant to which defendant no. 5 purportedly purchased an entire floor of a Grade A commercial building owned by plaintiff no. 2. It is alleged that the agreement is ultra vires, plaintiff no. 2's Articles of Association, intended for an unlawful object, vitiated by fraud, void ab initio, and contrary to law. It is pleaded in the plaint that plaintiff no. 1 is an investment company formed and existing in accordance with the laws of Mauritius and holds a 78.09% stake in plaintiff no. 2 on a fully diluted basis and has a direct beneficial interest in the affairs of plaintiff no. 2, company.

2. The interim application is filed for the appointment of a Court receiver to take possession of units 701, 702, 703 and 704 ("said units") from defendant no.5 and for an injunction restraining defendant no. 5 from creating any third-party rights or parting with possession in favour of any third-party in respect of the said units. The plaintiff has also prayed for a direction restraining defendant no. 5 from deriving any benefits from the said units, or in the alternative, to deposit in

this court the benefits received by defendant no. 5.

3. Heard respective learned senior counsels for the plaintiffs and defendant no. 5. None appeared for the remaining defendants.

FACTS IN BRIEF AS PLEADED IN THE PLAINT:

4. Defendant no. 1 and his father, defendant no. 2 are promoters of a company by the name of Housing Development and Infrastructure Limited ("HDIL"), which is undergoing a corporate insolvency resolution process. Certain privately held Indian companies that are owned and controlled by defendants nos. 1 and 2 hold a 21.91% stake in plaintiff no. 2 on a fully diluted basis. Defendant nos. 1 and 2 were the signatories authorised to operate almost all of plaintiff nos. 2's bank accounts. Defendants nos. 3 and 4 are individuals who formerly served on plaintiff no. 2's board of directors as nominees of defendant nos. 1 and 2, and are associated with HDIL, and acted under the control and directions of defendant nos. 1 and 2. Defendant no. 4 is the son of defendant no. 3, and has served as a director of

several HDIL group companies for a number of years. Defendant no. 5 is a company which entered into an agreement for sale in 2009 to purchase an entire floor of a Grade A commercial office building owned by plaintiff no. 2.

5. R.T. Constructions, a proprietary concern of HDIL, was undertaking a Slum Rehabilitation Scheme at Sambhaji Nagar. By a Development Agreement dated 17th January 2008, R.T. Constructions transferred the right to construct a free sale commercial building in Andheri to plaintiff no. 2 for a consideration of INR 900 crores. This agreement was signed on behalf of R.T. Constructions by defendant nos. 1 and 2. In furtherance of this joint venture arrangement, on 27th February 2008, plaintiff no. 1 invested USD 250 million (equivalent to approximately INR 1,000 crores at that time) in plaintiff no. 2 and subscribed to common and preference shares issued by plaintiff no. 2, representing its 83.36% of share capital on a fully diluted basis. As a result of this investment, the aggregate shareholding of the defendant nos. 1 and 2 privately held companies in plaintiff no. 2 fell to 16.64%.

6. In 2009, defendant nos. 1 and 2 wanted to confirm certain benefits for Mr Satyapal Talwar, who was serving on the board of directors of HDIL. Thus, they conspired and colluded, causing wrongful gain to defendant no. 5, which was owned by Satyapal Talwar's family. By taking undue advantage of the day-to-day management of plaintiff no. 2, a sham and bogus sale transaction was orchestrated to benefit defendant no. 5.

7. Plaintiff no. 1 had settled for a passive role in the management of plaintiff no. 2 under whose stewardship HDIL had already developed 19.3 million square feet of real estate and built land reserves aggregating to about 125 million square feet of saleable area across several states.

8. Plaintiff no. 1 believed the repeated assurances made by defendant nos. 1 and 2 that plaintiff no. 2, which had almost completed the construction of a commercial office building using funds invested by plaintiff no. 1, was in sound financial health. Plaintiff no. 1 did not have any reason to doubt that plaintiff no. 1 was being managed responsibly since defendant nos. 1 and 2 had been periodically

purchasing shares of plaintiff no. 2 from plaintiff no. 1 at healthy valuations, resulting in the plaintiff no. 1's stake in plaintiff no. 2 falling to 78.09% (from 83.36%) and the stake of defendant nos. 1 and 2 rising to 21.91% (from 16.64%).

9. On 29th September 2014, plaintiff no. 2's Articles were amended to ensure that plaintiff no. 1, which had already invested in plaintiff no. 2, would have an opportunity to monetise its investment when market conditions would be favourable. Article 20.26.2 vested a committee comprised solely of plaintiff no. 1's Directors with the exclusive authority to make decisions and take actions in respect of selling all or part of the Office Building. Article 20.25 mandated that the proceeds of any sale, disposal, or transfer of plaintiff no.2's assets, i.e. the said units, were to be deposited in a bank account of plaintiff no. 2 operated solely by the plaintiff no. 1's Directors. Articles 20.26.1(1) and 20.26.2(i)(c)(iii) authorised plaintiff no. 1's Directors to use proceeds of sales of plaintiff no.2's assets for the purpose of facilitating an exit for plaintiff no. 1.

10. On 8th June 2017, a section of the media reported that

HDIL had defaulted on repayment of an INR 144 crore loan owed to Central Bank of India, resulting in the bank enforcing its security interests over real estate owned by HDIL in Kurla. Shortly thereafter, pursuant to an order passed by the Ld. NCLT on 24th July 2017, an insolvency application filed by Union Bank of India in connection with payment defaults relating to an INR 250 crore loan facility was admitted against Guruashish Construction Private Limited, a wholly owned subsidiary of HDIL. This was followed by several news reports in early August 2017 that the Bank of India had recalled an INR 306 crore loan provided to Privilege Power and Infrastructure Private Limited, another HDIL group company. Alarmed by these news reports about the rapidly deteriorating financial health of HDIL, i.e. the flagship business managed by defendant nos. 1 and 2, plaintiff no. 1, which was already concerned that plaintiff no. 2 had still not filed its annual financial statements for the financial year 2015-16, instructed its legal advisors to perform a very thorough due diligence on plaintiff no. 2's management by defendant nos. 1 and 2.

11. An Extraordinary General Meeting ("EGM") of plaintiff no.2's shareholders was convened on 1st September 2017, after plaintiff no. 1 discovered that ultra vires sales of plaintiff no.2's assets had been effected by defendant nos. 1 and 2. At this EGM, plaintiff no. 1 removed defendant nos. 1 and 2, who were serving on plaintiff no. 2's Board at this time.

12. In February 2020, the plaintiffs discovered that the ultimate beneficial owners of defendant no. 5 are closely associated with Defendant Nos. 1 to 3 and they had orchestrated the sale in favour of defendant no. 5.

REPLY ON BEHALF OF DEFENDANT NO.5:

13. The dispute raised in the suit is a dispute between the shareholders and managerial personnel of the plaintiffs and defendant nos. 1 to 4. The suit is filed to challenge the agreement in favour of defendant no. 5 after more than 10 years from its execution and more than 13 years from the date of the Memorandum of Understanding that records the understanding between RT constructions and defendant no.5 with respect to the sale of the proposed construction,

including the modalities of payment. Hence, the prayers are time-barred.

14. After the MOU, plaintiff no. 2 took over the development rights, but the terms of the MOU remained unaltered. Hence, defendant no. 5 made payments as per the terms of the MOU to HDIL on the instructions and acceptance of plaintiff no. 2. Therefore, all the allegations made in the plaint are unsustainable, and the disputes, if any, are clearly the internal issues between the shareholders of plaintiff no.2. The correspondence with plaintiff no. 2 and the receipts issued acknowledging the payments made by defendant no. 5 even admitted the amounts paid to HDIL on behalf of plaintiff no. 2. Defendant no. 5 is therefore legitimately in possession of the said units and is also paying the entire outgoings. The rectification document annexed to the plaint is executed by the then director of plaintiff no. 2, who is defendant no. 3 for the purpose of rectifying certain grammatical and typographical errors in the sale agreement. Thus, defendant no. 5 is a bonafide purchaser of the said units based on a validly executed sale.

15. Admittedly, as per the Articles of Association existing on the date of the sale, it conferred unfettered ability upon the directors appointed by defendant nos. 1 and 2 to enter into contracts to sell the units owned by plaintiff no. 2. Thus, if the dispute arose inter se between the plaintiffs and their directors, it is an internal affair and cannot be extended to the validly executed sale in favour of defendant no. 5. The allegations of fraud by referring to deceased Satyapal Talwar, being the director of HDIL and an associate of defendant nos. 1 and 2 would not show any involvement of defendant no. 5. Mr. Satyapal Talwar was neither a director of defendant no. 5, nor did he hold any shareholding in defendant no. 5. Admittedly, there is no dispute on the complete consideration paid by defendant no. 5. Hence, any internal disputes amongst the plaintiffs and its directors or shareholders cannot be extended to defendant no. 5.

16. The reliance placed on plaintiff no. 2's Articles of Association and the Cushman Wakefield report are completely misconceived and misdirected. Both these documents would have no relevance to hold that the sale

agreement in favour of defendant no. 5 was invalid. Thus, defendant no. 5 has lawful possession of the said units.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

17. Learned senior counsel for the plaintiff relied upon the relevant pleadings in the plaint to support his submissions that it was only in February 2020 that the plaintiffs discovered that the ultimate beneficial owners of defendant no. 5 are closely associated with defendant nos. 1, 2 and 3, who had purportedly executed the sale agreement on behalf of plaintiff no. 1. The plaintiffs discovered that defendant no. 5 was owned by the family of late Mr Satyapal Talwar, who at the time of the impugned transaction served as a director of HDIL along with defendant nos. 1, 2 and 3. Defendant no. 5, i.e. Vikram Homes, is owned by Dharampal Talwar, who is the brother of the deceased Satyapal and a director of HDIL.

18. Learned senior counsel for the plaintiff submitted that, as per the media reports, it was learned that the financial health of HDIL was deteriorating. The HDIL was managed by the Wadhawans (defendant nos. 1 and 2), and plaintiff no. 1

was concerned that plaintiff no. 2 had not filed its annual financial statements for the financial year 2015-16. Hence, as instructed by its legal advisor, a thorough due diligence of plaintiff no. 2 management was conducted. It was revealed that to favour the HDIL group the impugned sale transaction was entered into in favour of defendant no. 5. Accordingly, after conducting an extraordinary general meeting of plaintiff no. 2's shareholders, the Wadhawan directors who were on the board of directors of plaintiff no. 2, were removed. According to the learned senior counsel for the plaintiffs, after intense enquiries into the transactions entered into by the Wadhawan directors who were managing the affairs of plaintiff no. 2 it was discovered that fraudulent transactions were entered into by taking undue advantage of the day-to-day management affairs of plaintiff no. 2. Hence, considering the relations between the Wadhawans and HDIL and the ownership of the defendant no.5, it is clear that defendant no. 5 is occupying the said units based on a fraudulent transaction. Hence, the plaintiffs would be entitled to the cancellation of the document. Hence, during the pendency of

the suit, the said units need to be protected by granting the necessary interim relief.

19. To support his submissions, learned senior counsel for the plaintiffs relied upon the decisions in *Dale & Carrington Invt (P) Ltd. and Another vs. P. K. Prathapan and Others*.¹, *Kotta Venkataswami vs. Chinta Ramamurti and Others*² and *Shashank Bhagat and Another vs. Shefali Varma and Others*³.

SUBMISSIONS ON BEHALF OF DEFENDANT NO. 5:

20. According to defendant no. 5, it has nothing to do with HDIL. The suit prayers are hopelessly barred by limitation. If the cause of action is pursued, it would be clear that the suit filed to cancel the 2009 document is hopelessly time-barred. The cause of action regarding the internal management and the due diligence would be a matter of evidence. The document in favour of defendant no. 5 is based on the market value after payment of the stamp duty. Hence, there is no undervaluation of the document. Paragraph 4 of the

1 (2005) 1 SCC 212

2 (1934) 4 Comp Cas 289

3 2019 SCC OnLine Del 9237

MOU recorded that the transfer would be binding on any subsequent transferee. Although the MUO is not referred to in the sale document, all payments mentioned therein were made as per the MOU before plaintiff no. 1 came into the picture. Hence, there is no merit to the allegations of a fraudulent transaction.

21. All the allegations in the suit pertain to the internal management and affairs of the plaintiffs, their directors and shareholders. Therefore, the remedy is under Sections 241 and 242 of the Companies Act. In view of Section 430 of the Companies Act, the civil court's jurisdiction would be barred from trying and deciding the dispute pertaining to allegations in the plaint concerning the internal management affairs of the plaintiffs and their directors and shareholders. The allegations against defendant no. 5 are based on internal disputes between the plaintiffs and their directors and shareholders. Hence, based on their internal dispute, no relief can be claimed against defendant no. 5, who is the bonafide purchaser of the said units. The plaintiffs have not made out a prima facie case for equitable discretionary relief

as claimed in the application. Defendant no. 5 is in possession of the said units based on a validly executed and registered document after payment of full consideration and stamp duty. There is no prima facie evidence to show any connection of defendant no. 5 with HDIL, against whom the plaintiffs have made allegations. As there is no question of any fraudulent transaction for any beneficial gain to defendant no. 5, the document in favour of defendant no. 5, validly executed on payment of full consideration, cannot be cancelled. Hence, no equitable relief can be claimed by the plaintiffs against a true owner. In the absence of any prima facie case, balance of convenience or irreparable loss, the plaintiffs would not be entitled to seek any interim relief as prayed in the interim application.

ANALYSIS AND CONCLUSIONS:

22. I have carefully perused the pleadings. The allegations in the plaint pertain to the internal management disputes of plaintiff no. 2. Plaintiff no. 1 claims to be an investor of plaintiff no. 2 holding 78.09% stake in plaintiff no. 2 on a fully diluted basis and thus claims a direct beneficial interest in the

affairs of plaintiff no. 2. The plaint contains allegations against defendant nos. 1 and 2, described as the Wadhawans, who are alleged to be promoters of HDIL. It is further alleged that HDIL is undergoing a corporate insolvency resolution process. Thus, according to the plaintiffs, to support HDIL, defendant nos. 1, 2 and 3 who were on the board of directors of plaintiff no. 2, entered into a fraudulent transaction in favour of defendant no. 5, who is sought to be linked with HDIL on an allegation that it is owned by the family of late Satyapal Talwar, the director of HDIL, who was a close associate of the Wadhawans. There appears to be no dispute that Dharampal Talwar, the brother of Satyapal Talwar, owns defendant no. 5. However, no link between Dharampal Talwar and HDIL is shown. The allegation is that Satyapal Talwar was the director of HDIL. It is therefore alleged that, to support HDIL, the Wadhawans executed a fraudulent transaction in respect of the said units in favour of defendant no. 5, who is allegedly connected with HDIL.

23. Thus, the allegations in the plaint appear to be twofold.

Firstly, defendants nos. 1 and 2, who were on the board of directors of plaintiff no. 2, executed the impugned transaction in favour of defendant no. 5 to indirectly support HDIL, which was under a corporate insolvency resolution process. Secondly, it is alleged that defendant no. 5 is owned by the brother of Satyapal Talwar, who was the director of HDIL. Thus, the allegations are against defendant nos. 1 and 2 that they, being closely associated with Satyapal Talwar and HDIL, took undue advantage of the management of plaintiff no. 2, and executed the fraudulent transaction in favour of defendant no. 5 for monetary gain to HDIL, which caused monetary loss to plaintiff no. 2.

24. The plaint contains allegations regarding the affairs of the management of plaintiff no. 2, the shareholdings of plaintiff no. 1 in plaintiff no. 2, and the removal of defendants nos. 1 and 2 from the board of directors of plaintiff no. 2, which have been elaborately pleaded. The cause of action for filing the suit is also based on the internal enquiry into the company's affairs and its financial status. Thus, prima facie, the dispute in the suit appears to concern the affairs of the

plaintiff no. 2 company, in which plaintiff no. 1 claims to have a stake. Hence, there is substance in the submissions made on behalf of defendant no. 5 that the disputes raised in the suit would pertain to the jurisdiction of the company law tribunal as contemplated under Sections 241 and 242 of the Companies Act. Therefore, in view of Section 430 of the Companies Act, the civil court's jurisdiction would be barred from dealing with the allegations regarding the affairs of the company, which are required to be dealt with under Sections 241 and 242 of the Companies Act. Hence, at this preliminary stage, the plaintiff would not be entitled to seek any interim relief on the ground of mismanagement of the affairs of plaintiff no. 2 company by making allegations against its erstwhile board of directors and shareholders.

25. Except for the allegations against defendant nos. 1 and 2 that the Wadhwas executed the fraudulent transaction to favour HDIL, no other allegations are made directly against defendant no. 5. Defendant no. 5 is in occupation and possession of the said units based on a registered document. The documents on record prima facie show that

the transaction in favour of defendant no. 5 is executed for the payment of full consideration, and the document is registered after payment of stamp duty based on the market value. Therefore, in such circumstances, an injunction as prayed for in the suit cannot be granted against a true owner at this stage, in the absence of any prima facie case, a balance of convenience, or irreparable loss shown by the plaintiffs.

26. No case is made out for the appointment of a court receiver. Defendant no. 5, who is in possession of the said units based on a registered document of title, cannot be dispossessed at this interim stage. In the absence of any just and satisfactory grounds, a court receiver cannot be appointed, which would amount to depriving a true owner of the enjoyment of the property. It is a well-established legal principle that an order appointing a court receiver can be made for the protection of property or the prevention of injury, in accordance with the applicable legal norms. In the present case, no such grounds are pleaded and proved, warranting the appointment of a court receiver.

27. In *Dale & Carrington Invt. (P) Ltd.*, the points for consideration were concerning the validity of allotment of equity shares of the company, making the party a majority shareholder, reducing his wife to a minority shareholder, its effect of not obtaining permission of Reserve Bank of India under the Foreign Exchange Regulation Act (FERA) regarding transfer of shares and the scope of power of the High Court in an appeal under Section 10-F of the Companies Act. Hence, in view of the facts of the present case, the decision is of no assistance to the plaintiffs.

28. In *Kotta Venkataswami*, the controversy before the Madras High Court concerned the company's liability under a mortgage bond purportedly executed on its behalf. By referring to the Articles of Association of the company, it was held that since an illegality appeared on the face of the bond, the plaintiff was not entitled to enforce it. In *Shashank Bhagat*, the controversy before the Delhi High Court arose from a dispute pertaining to a development agreement signed by the respondent in her individual capacity and on behalf of the company. It is held that the persons dealing with

a company that has taken all reasonable steps to satisfy that the transaction is an authorised one are entitled to assume that all internal proceedings of the company would have been duly complied with. It is further held that a doctrine of indoor management has limited application, and a person who has either a constructive or actual notice of any irregularity cannot seek protection under the doctrine of indoor management and that such a doctrine would also have little application in cases of fraud and forgery. In the present case, the plaintiff has alleged indoor mismanagement of its own company; hence, in a suit seeking relief against the third party based on the allegations regarding internal affairs of the company, neither of the decisions would be of any assistance to the plaintiffs to seek interim relief as prayed in the present application.

29. Therefore, for the reasons recorded above, the interim application is dismissed.

[GAURI GODSE, J.]