

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

OFFICIAL LIQUIDATOR'S REPORT NO. 145 OF 2011

IN

COMPANY PETITION NO. 827 OF 2007

IN

COMPANY PETITION NO. 327 OF 1997

IN

COMPANY PETITION NO. 870 OF 1999

Board of Industrial and Financial Reconstruction)
M/s. Jaipur Golden Transport Co. Ltd.)
M/s. Intec Polymers Ltd.)..Petitioners.

vs.

M/s. Hindustan Transmission Products Ltd. ..Respondent
(In Liquidation)

Mr. J.P. Sen for Official Liquidator.

Mr. S. Malik along with Mr. Tanvir Shaikh for Mrs. Sunita V. Warke- occupant.

Mr. Chavan along with Mr. Suhas Patil, instructed by M/s. Navdeep Vora & Associates for the MIDC.

Ms. Vinita Hombalkar, instructed by M/s. Dhruve Liladhar & Co., for IDBI.

Mr. Y.I. Ghoghavi, instructed by Dehlvi & Co., for PNB.

Dr. T. Pandian, Official Liquidator present.

CORAM: S.J. KATHAWALLA, J.

JUDGMENT RESERVED ON: June 21, 2012

JUDGMENT PRONOUNCED ON: September 05, 2012

JUDGMENT

1. By the above report, the Official Liquidator has sought directions from this Court as follows:

“(a) In view of paras 7 and 8 of this Report, whether this Hon’ble Court would be pleased to declare the sale of the property situated at H-16, MIDC Waluj Industrial Area, Waluj,

Aurangabad to Smt. Sunita V. Warke as null and void;

(b) If prayer (a) is in the affirmative, whether this Hon'ble Court would be pleased to permit the Official Liquidator to take possession of the said property situated at H-16, MIDC Waluj Industrial Area, Waluj, Aurangabad”.

The facts in the matter are briefly set out hereunder:

2. On 7th April 1997, Company Petition No. 327 of 1997 seeking winding up of the Company - Hindustan Transmission Products Limited (“HTPL”) - was filed /presented. Smt. Sunita V. Warke (“the occupant”) claims to have paid an aggregate sum of Rs. 30 lakhs to the Company between 14th May, 2007 and 26th September 2007 towards the purchase of the Company’s leasehold rights in respect of Plot No. H-16, MIDC Waluj Industrial Area, Waluj, Aurangabad (“the said property”). It is an admitted position that no document, by way of an agreement for sale or a transfer deed, was executed between the Company and the occupant. In the Income-tax returns filed by the occupant for the period upto 31st March 2008 and thereafter, the said amount is shown as an “investment”.

3. Sometime in May, 1990, on the application of HTPL, the said property was allotted to HTPL by the Maharashtra Industrial Development Corporation (“MIDC”) on the terms and conditions stated in the allotment letter/order. On 7th September, 1990, MIDC and HTPL entered into an

agreement whereunder the said property was leased to HTPL by MIDC and the possession of the said property was handed over to HTPL. Clause 3 (m) of the Agreement to Lease provides that HTPL will not directly or indirectly transfer, assign, sell, encumber or part with its interest under or the benefit of the Agreement or any part thereof in any manner whatsoever without the previous consent in writing from the MIDC. Thereafter, the said HTPL constructed a factory building on the said plot of land for which MIDC had issued a completion certificate to HTPL.

4. MIDC on 26th March, 2008 received a letter from the occupant in her capacity as the Chief Promoter of Sairam Industrial Co-operative Society Limited (Proposed) informing MIDC that she is interested in setting up a Co-operative Industrial Society by acquiring the said property and has therefore submitted her application along with the necessary documents seeking the consent of MIDC for transfer of the said property in her favour. Along with the said letter, the occupant also forwarded to MIDC a letter dated 31st December, 2007 addressed by HTPL to MIDC inter alia stating that due to some problems HTPL is now not in a position to continue its activity on the said property and requested MIDC to grant their consent for transfer of the said property in favour of "Sau Sunita Vasudeo Warke, Chief Promoter of Sairam Industrial Co-operative Society Ltd. (Proposed)". Along with the said application, the occupant also annexed the minutes of a meeting held on 20th July 2007 of the members of the Sairam

Industrial Co-operative Society Ltd. (Proposed) which showed that the said society had 51 members and that the occupant was the Chief Promoter of the said Society. All the particulars including the age, caste, profession, number of shares held, etc. of the said 51 members were also provided by way of separate annexures to the application seeking registration of the said Industrial Co-operative Society.

5. On the next day i.e. 27th March, 2008 this Court directed winding up of HTPL and the Official Liquidator, High Court, Bombay was appointed as the Liquidator of HTPL.

6. MIDC by its letter dated 10th April, 2008 informed HTPL that as per the policy of MIDC, the said property could not be allotted to an Industrial Co-operative Society and that therefore their request for transfer of the said plot could not be accepted and the proposal of HTPL to transfer the said property in favour of Sairam Industrial Co-operative Society Ltd. stood closed.

7. Thereafter, the occupant, vide her undated letter addressed to MIDC, recorded that she had purchased the said property and that she proposed to start her business activity on the said property and requested allotment/transfer of the said property in her name. This letter was received by MIDC on 16th April, 2008. Along with the said letter, MIDC received an undated letter from HTPL

requesting for transfer of the said property in the name of “Smt. Sunita Vasudeo Warke, Prop. of M/s. Sunita Enterprises”. The said letter was signed by Mr. Vasudev Jayram Warke, authorized signatory under a Special Power of Attorney dated 12th October, 2007 issued by HTPL. The said Vasudev Warke is the husband of the occupant. In the recital of the said Power of Attorney, Mr. Rattan Kumar Talia, Director of HTPL has recorded that under a Board Resolution dated 12th September, 2007 Mr. Thalia had been authorized by the Board of HTPL to identify a buyer, negotiate and finalise the sale transaction with a purchaser and also to sign all necessary papers and documents for the sale transaction in respect of the said property, and that since Mr. Thalia was engrossed in some other matter which was of more importance, he had therefore decided to appoint his friend Mr. Vasudeo Jayram Warke, in whom he had full confidence, as his true and lawful attorney for dealing with all documentary compliance including registration and notarization of all the requisite documents relating to the transfer of the said property held by HTPL.

8. Thereafter, IDBI Bank vide their letter dated 2nd July, 2008 furnished to the MIDC a warrant of attachment issued by the Debt Recovery Tribunal (“DRT”) in respect of the said property. IDBI Bank vide its further letter dated 14th November, 2008 informed MIDC that in the proceedings before the DRT in respect of attachment of the said property, the occupant has filed an intervention application contending that she has purchased the said plot of land from HTPL,

and requested MIDC to furnish the documents pertaining to the said property. MIDC vide their letter dated 21st July, 2008 addressed to the occupant, whilst referring to letter dated 9th July, 2008 of the IDBI Bank, informed the occupant that it was not possible for the MIDC to process further her application without the decision of the DRT in Recovery Proceedings No. 212 of 2003 filed by the IDBI Bank. The Recovery Officer passed an order dated 2nd December, 2009 in favour of the occupant and IDBI Bank filed an Appeal therefrom being Appeal No. 4 of 2010. The Official Liquidator was directed by the DRT to file the status report of the said property and statement in the matter. Accordingly, the Official Liquidator filed his status report dated 7th July, 2010 before the DRT wherein he has recorded that he proposes to submit a report before the High Court, Bombay, declaring the transaction to be void and to seek possession of the said property from the occupant.

9. MIDC vide its letter dated 19th January, 2010 addressed to HTPL requested HTPL to produce the original copy of the Resolution of the Members of the Board to transfer the said property, no objection certificate from Labour Commissioner and certificate of no dues of water and service tax. However, HTPL failed to comply with the requirements of MIDC. The said property, as on date, is standing in the name of HTPL.

10. In the meantime the Official Liquidator has moved the above report

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and has prayed for the aforestated reliefs/directions.

11. Initially in his Report, the Official Liquidator had invoked Sections 531 (1) and 531 A of the Companies Act, 1956 (“the Act”). Subsequently, the Official Liquidator in his rejoinder dated 29th September, 2011 has submitted that since the alleged sale of the property is after the date of presentation of the Company Petition filed for winding up of the Company, the transaction is void as per the provisions of Section 536 (2) and 537 (1) (b) of the Act.

12. The Applicant has filed her affidavit-in-reply dated 5th September, 2011, a further affidavit dated 22nd December, 2011 and an additional affidavit dated 27th March, 2012. MIDC has filed its affidavit dated 21st January, 2012 and IDBI has also filed its affidavit dated 19th November, 2011.

13. Mr. Malik, the learned Advocate appearing for the occupant has submitted that the transaction entered into by and between the occupant and HTPL is a bona fide transaction which is completed and possession of the said property was also given to the occupant by HTPL. He has relied on a copy of the letter written by HTPL dated 14th November, 2007 enclosing a Photostat copy of a receipt of possession issued by MIDC to HTPL. In the said letter dated 14th November, 2007 HTPL has recorded “*Now that we have given you the possession of the said plot No. H-16, MIDC Waluj Ind. Estate, Aurangabad, we are handing*

over the said possession receipt to you". Mr. Malik submitted that the said transaction was entered into with the occupant by HTPL in view of the honest and compelling need to dispose of the said property. He has therefore submitted that the transaction pertaining to the sale of the said property between the occupant and HTPL is honest and bona fide and the occupant has paid an amount of Rs. 30 lakhs towards sale consideration to HTPL. He has submitted that though valuation report was not obtained by the occupant, the sale price of the said plot at the relevant time was about Rs. 65 lacs. Rs. 30 lacs was paid to HTPL and an amount of approximately Rs. 27 lacs plus Rs. 7 lacs were to be paid towards transfer fee and service charge respectively. He has submitted that a transaction need merely be honest or bona fide to deserve sanction. It is submitted that the Official Liquidator has neither alleged fraud nor has he alleged that the sale is at an undervalued price. It is submitted that the Official Liquidator must plead and prove that the transaction was fraudulent before it could be treated as void under Section 536 (2) of the Act. It is submitted that since the occupant's rights have been effectually pleaded and the permission from MIDC could not be obtained due to the wrongful attachment levied by IDBI, the sale must now receive full effect. He has submitted that the occupant is entitled to the protection of Section 53A of the Transfer of Property Act, having come into possession of the said property in part performance of the alleged agreement in her favour. In support of his aforestated submissions/contentions Mr. Malik relied on the decisions in *Kamani Metallic Oxides Ltd. Vs. Kamani*

*Tubes Ltd.*¹; *Travancore Rayons Ltd. Vs. Registrar of Companies*²; *S.P. Khanna vs. S.N. Ghosh*³; *Monark Enterprises vs. Kishan Tulpule and Ors.*⁴; and *Abdul Shukoor vs. Arji Papa Rao*⁵. Mr. Malik has therefore submitted that the transfer of the said property is liable to be validated under Section 536 (2) of the Act in favour of the occupant.

14. Mr. J.P. Sen, learned Advocate appearing for the Official Liquidator, has submitted that the contentions raised by the occupant are misconceived and the Official Liquidator ought to be directed to take possession of the said property in view of the following:

- (a) The question of validating a transaction under Section 536 (2) arises only where the transfer is complete. In the present case, there is no completed transfer in favour of the occupant which is capable of validation. Even the alleged agreement pleaded by the occupant is clearly illegal having been reached after the winding up order was passed;
- (b) Further, for a transfer to be validated under Section 536 (2), the Applicant must plead and prove not only that the transfer is bona fide but also that the transfer was in the interest of the Company. The occupant

1 [1984] 56 Com. Cas. 19 (Bom.)

2 [1988] 64 Com. Cas. 819

3 1976 TLR 1740

4 [1992] 75 Com. Cas. 89

5 AIR 1963 SC 1150

has made no attempt to show this.

(c) Section 53A of the Transfer of Property Act has no application in the present case in the absence of any agreement in writing from which the terms of the alleged transaction is capable of being ascertained with reasonable certainty.

In support of his above contentions, Mr. Sen has relied on the decisions in *the Governor and Co. of the Bank of Scotland vs. Macleod and others*¹; *M/s. JK (Bombay) Pvt. Ltd. Vs. New Kaiser-I-Hind Spinning and Weaving Company*²; *Shankar Gopinath Apte vs. Gangabai Patwardhan*³; *Rambhau Namdeo Gajre vs. Narayan Bapuji Dhotra*⁴; *Shravan Jayaram Patil vs. Garbad Ukha Nhavi*⁵; *Tulsidas Jasraj Parekh vs. Industrial Bank of Western India*⁶; *J. Sen Gupta (Pvt.)Ltd., In re*⁷; *Kanchan Kumar Dhar, Official Liquidator vs. Dr. L.M. Visrani and others*⁸; *Sarigam Containers Pvt. Ltd. Vs. Magatul Industries Ltd.*⁹; and *Laxman Yeshwant Prabhudesai and Ors. vs. NRC Ltd. and others*¹⁰

1 [1914] AC 311 at 317-318

2 AIR 1970 SC 1041, 1058 (paras 38 and 39)

3 AIR 1976 SC 2506, 2509 (Para 11)

4 [2004] 8 SCC 614, 618 (para 8),

5 AIR 1943 Bom. 406-407

6 AIR 1931 Bom. 2 at pages 18-21

7 [1956] 32 Com. Cas. 876 at pages 879-886

8 [1986] 60 Com. Cas. 746 at 748-749, 752

9 2008 (5) Bom. CR 112, 119-120 (Paras 21 and 23)

10 2011 (Supp.) Bom. CR 243-248 at 251 (Paras 19-23)

15. The learned Advocate appearing for the MIDC has submitted that though MIDC by its letter dated 19th January, 2010 addressed to HTPL requested HTPL to produce the original copy of the Resolution of the Members of the Board to transfer the said property, no objection from Labour Commissioner and the certificate of no dues of water and service tax, MIDC has not received any of the said documents. MIDC has therefore not allowed the said property to be transferred to the occupant and the said property till date stands in the name of HTPL. In the circumstances it is submitted on behalf of the MIDC that this Court may pass appropriate orders in the above Official Liquidator's report. The learned Advocate appearing for IDBI has submitted that no sale has taken place in respect of the said property in favour of the occupant and the claim of the occupant is illegal and dishonest and the Official Liquidator should be called upon by this Court to take possession of the said property from the occupant.

16. I have considered the pleadings filed by the parties, the submissions advanced on behalf of the learned Advocates appearing for the parties and the judgments cited by them.

17. Admittedly there is no document executed by and between the occupant and the Company recording the alleged sale of the said property by the Company

in favour of the occupant. However, the occupant has contended that she has paid the entire consideration of the suit property to the Company between 14th May 2007 and 26th September 2007. If the amounts paid between May and September 2007, by the occupant to the Company is indeed the purchase price of the said property, it would necessarily follow that the alleged sale was finalized on or prior to 14th May 2007. However this fact is belied by the Special Irrevocable Power of Attorney dated 12th October 2007 executed by Mr. Rattan Kumar Thalia, Director of HTPL wherein it is recorded that the Board of HTPL has by a resolution on 12th September 2007 authorized Mr. Thalia to identify a buyer, negotiate and finalize the sale transaction. If the sale of the said property was finalized between the occupant and the Company on or before 14th May 2007 and almost all the installments (except one) was paid by the occupant to the Company by 12th September 2007, the question of the Company authorizing Mr. Thalia to identify a buyer, negotiate and finalize the sale transaction on 12th September 2007 would never arise. Again, the question of Mr. Thalia authorizing his “friend” Mr. Vasudeo Warke (husband of the occupant) on 12th October 2007 to identify a buyer, negotiate and finalize the sale transaction would never arise, since according to the occupant she had paid the entire agreed sale price to HTPL by 26th September 2007 i.e. much before 12th October 2007. The story now spun by the occupant that the amount paid by her to HTPL between 14th May 2007 and 26th September 2007 constitutes the entire sale price of the said property purchased by her from HTPL therefore cannot be accepted

and is hereby rejected.

18. Even if this Court assumes for the sake of argument that the occupant had in fact paid Rs. 30 lacs to HTPL towards sale consideration of the said property, the next question the Court is required to consider before validating the sale under Section 536 (2) of the Act is whether the transfer has been completed in favour of the occupant, prior to the winding up order. It is settled law that if a transfer has not been completed prior to the winding up order, no application would lie to the Court for a direction to the Official Liquidator to complete the transfer. As pointed out on behalf of the Official Liquidator, the classic statement of the law in this regard is to be found in the Judgment of the House of Lords in *the Governor and Co. of the Bank of Scotland vs. Macleod and others* (supra), where Lord Kinnear observed that while “rights in security which have been effectually completed before the liquidation must still receive the effect which the law gives to them”, the “Company and its Liquidators are just as completely disabled by the winding up from granting new or completing imperfect rights in security as the individual bankrupt is by his bankruptcy”. These observations were cited with approval by the Hon’ble Supreme Court in *M/s. JK (Bombay) Pvt. Ltd. Vs. New Kaiser-I-Hind Spinning and Weaving Company* (supra), where Shelat, J. speaking for the Court went on to observe that after a winding up order is passed, “no new rights can thereafter be created and no uncompleted rights can be completed, for doing so would be contrary to the

creditors' right to have the proceeds of the assets distributed among them *pari passu*". In the present case, the transfer in favour of the occupant has not been completed by registered deed or otherwise. In fact, there is not even a document recording the terms of any alleged agreement that may have been reached between the Company and the occupant for the transfer of the said property in her favour. Even the requisite NOC from MIDC for the transfer of the leasehold rights in the said property in favour of the occupant was not obtained prior to the winding up order. It is therefore clearly established that in the present case there is no completed transfer in favour of the occupant which is capable of validation.

19. Even in a case where the transfer is complete, a further question that arises for consideration is whether for a transfer to be validated under Section 536 (2) of the Act, the Applicant must plead and prove not only that the transfer is bona fide but also that the transfer was in the interest of the Company. Section 536 (2) of the Act provides that any disposition of property made after commencement of winding up shall, unless the Court otherwise orders, be void. Some of the situations in which a transfer may be validated under Section 536 (2) of the Act were enumerated in the judgment of a Division Bench of this Court in *Tulsidas Jasraj Parekh vs. Industrial Bank of Western India (supra)*. While sounding a note of caution that - "the discretion confided to the Court cannot be crystallized in rules of law in view of the varying circumstances of human action"

- the Court held that it would not permit transactions bona fide entered into in the ordinary course of trade and completed before the date of the winding up order to be annulled. In respect of transactions which were not in the ordinary course of trade, the principles that would govern the exercise of discretion under Section 536 (2) were summarized in the judgment of the Calcutta High Court in *J. Sen Gupta (Pvt.)Ltd. (supra)* as follows:

“1. *The Court has an absolute discretion to validate a transaction.*

2. *This discretion is controlled only by the general principles which apply to every kind of judicial discretion.*

3. *The Court must have regard to all the surrounding circumstances, and if from all the surrounding circumstances it comes to the conclusion that the transaction should not be void, it is within the power of the Court under Section 536 (2) to say that the transaction is not void.*

4. *If it is found that the transaction was for the benefit of, and in the interests of, the company or for keeping the company going or keeping things going generally, it ought to be confirmed.”*

The principle that a transfer must be in the best interests of the Company to be validated under Section 536 (2) was also reaffirmed in the judgment of this Court in *Kanchan Kumar Dhar, Official Liquidator vs. Dr. L.M. Visrani and others (supra)*, where Parekh, J. observed:

“The question is not whether Respondent No.1 acted bona fide or he was a victim of a deception or a fraud practiced on him by the Company. The question is whether the transaction in question is in the interest of the business of the Company or in the interest of the Company (now in liquidation) or its

creditors.”

20. The Judgment in *J. Sen Gupta Pvt. Ltd.* (supra) was more recently followed by a single Judge of this Court in *Sarigam Containers Pvt. Ltd. Vs. Magatul Industries Ltd.* (supra), where the Court observed that the fact that a transaction was in the best interest of the Company “is a factual aspect to be pleaded and proved” by the party seeking validation. This principle was also reiterated by a Division Bench of this Court in *Laxman Yeshwant Prabhudesai and Ors. vs. NRC Ltd. and others* (supra), where the Court held:

“Thus, the principles that can be deduced are that the transactions which have been undertaken under compulsion of circumstances in order to save or protect the property of the Company could be saved provided evidence is produced about such compulsion. The assets of the Company cannot be disposed of at the mere pleasure of the Company. If the business is going to be paralyzed, then the Court in appropriate cases can, for the benefit and interest of the Company, save the transaction. It is for enabling the Company to continue as a going concern and to protect the interest of the shareholders and creditors that such a power is conferred and must be exercised.”

The suggestion to the contrary on behalf of the occupant that a transaction need merely be honest or bona fide to deserve sanction is unsupported by authority. The judgments cited on behalf of the occupant do not support this position. The judgment of the Nagpur Bench of the Bombay High Court in *S.P. Khanna* (supra) is a case where the Court was considering a transaction in the ordinary course of

business between two branches of a Bank which subsequently entered liquidation. It is a settled position that where a transaction is in the ordinary course of business, the burden that must be discharged to validate such a transaction is far lower. A bona fide transaction of this nature would be protected by a Court under section 536 (2) of the Act. The judgment in *S.P. Khanna* (supra) was considered by a Division Bench of this Court in *Laxman Prabhudesai* (supra) where sanction under Section 536 (2) was declined despite the fact that the property had changed hands several times over and the Applicant was the eventual transferee who had no links to the Company in liquidation.

21. The other two judgments under Section 536 of the Act, of this Court in *Kamani Metallix Oxides* (supra) and of the Kerala High Court in *Travancore Rayons Ltd.* (supra), cited on behalf of the occupant are equally unhelpful. They deal with the question as to whether an application under Section 536 (2) will lie before a winding up order is passed. While answering the question in the affirmative, both judgments held that such an application ought to be allowed where the proposed transfer is in the interest of the Company. I am in agreement with the submission advanced by the learned Advocate appearing for the Official Liquidator that the occupant has made out no ground in the present case for the Court to direct otherwise. Except for a bare statement in her further Affidavit that the Company has made a business deal “keeping in mind their business need at that time”, the occupant has neither pleaded nor proved that

the said alleged transfer is in the best interest of the Company. She has admittedly not filed an application seeking sanction of the Court to the alleged transfer in her favour of the said property. She has only filed a reply to the report of the Official Liquidator seeking directions from this Court in respect of the said property. She has merely relied on the fact that she has paid a sum of Rs. 30 lakhs to the Company, which she claims was the consideration that was agreed upon and that she was placed in possession of the property by the Company. She has not even made an attempt to demonstrate that the alleged consideration was at par with the prevailing market price. The question of validation in the absence of the occupant establishing that the transfer was in the interest of the Company therefore does not arise.

22. It was also sought to be contended on behalf of the occupant that the Official Liquidator must plead and prove that the transaction was fraudulent before it could be treated as void under Section 536 (2) of the Act. This is clearly contrary to the judgment of this Court in case of *Sarigam Containers* (supra). Section 536 treats as void any transfer after commencement of winding up unless the Court otherwise directs. This Court has held in *Kanchan Kumar Dhar* (supra) that in view of the tenor of the section, the Official Liquidator is not required to file any application seeking a declaration that a transfer is void. As such, the question of any burden resting on the Liquidator cannot possibly arise. Even otherwise, if such a burden were to be cast on the Official Liquidator, he

would find it impossible to discharge in many cases, having limited resources and often even more limited access to the relevant records. The two judgments cited on behalf of the occupant on the issue of burden do not support her case. In *Monark Enterprises* (supra) this Court held Section 536 of the Act to be inapplicable in view of the fact that there was a disposition of the property prior to the commencement of winding up. The observations in the judgment as to burden and as to the ingredients that must be established to set aside a transaction are in the context of Sections 531 and 531 A which are inapplicable in the present case. The judgment of the Hon'ble Supreme Court in *Abdul Shukoor* (supra) is also of little assistance. The said judgment rendered under Section 53 of the Transfer of Property Act rightly holds that the initial burden to establish a fraudulent transfer would lie on the Plaintiff who seeks to impugn the transaction. Fraud is not one of the elements of Section 536 which stipulates that any transfer after the commencement of winding up is void unless the Court otherwise directs.

23. As regards the reliance by the occupant on Section 53A of the Transfer of Property Act, the said Section enables a transferee to resist an attempt made by the owner to recover possession of the property under certain limited circumstances which are not to be found in the present case. As held by the Hon'ble Supreme Court in its decisions in *Shankar Gopinath Apte vs. Gangabai Patwardhan* (supra), and *Rambhau Namdeo Gajre vs. Narayan Bapuji*

Dhotra (supra), the Section applies only where any person contracts to transfer for consideration any immovable property in writing, signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and such person has been placed in possession of the property in pursuance of such a contract. In the present case, it is an admitted position that no written contract was entered into between the Company and the occupant. There is even otherwise no means of ascertaining the terms of the transaction (including the consideration) alleged to have been agreed to. Though the occupant has been found to be in possession of the said property, the circumstances in which she was so placed are unclear. The occupant has relied on the alleged letter dated 14th November, 2007 where there is a reference to the occupant having been placed in possession of the said property by HTPL. The occupant has however not produced any possession receipt that may have been executed between the parties which would indicate the basis on which the possession was handed over. The occupant merely relied on an alleged letter dated 31st December, 2007 addressed by the Company to MIDC seeking their no objection for the transfer of the said property to the occupant as a Chief Promoter of the proposed Society. Apart from the fact that the said letter does not disclose any agreement in favour of the occupant in her personal capacity or the terms and conditions of any such alleged agreement, it is a settled position that such a letter would not constitute an agreement in writing for the purpose of Section 53A. In fact, in *Shravan Jayaram Patil vs.*

Garbad Ukha Nhavi (supra) where an application was made by a Plaintiff to have the Defendant's name entered in the mutation register in respect of certain land on the ground that it had been sold by him to the Defendant orally and setting out the terms of the sale, it was held not to be sufficient to satisfy the requirements of Section 53 A of the Act. In view thereof, the reliance placed by the occupant on Section 53 A of the Transfer of Property Act also lends no assistance to the occupant and the learned Advocate appearing for the Official Liquidator is correct in his submission that Section 53A of the Transfer of Property Act has no application in the present case in the absence of any agreement in writing from which the terms of the alleged transaction is capable of being ascertained with reasonable certainty.

24. In the above circumstances, in my view, the occupant has not made out any case for validating the alleged transfer of the said property in her favour by the Company in liquidation. The Official Liquidator is therefore directed to take physical possession of the said property for the benefit of the creditors and workers of the Company in liquidation. The Official Liquidator's report is accordingly disposed of.

25. At the request of the learned Advocate for the occupant the Official Liquidator is directed not to take physical possession of the said property for a period of two weeks from today. However, pending the Official Liquidator

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taking possession of the said property, the occupant shall not part with possession of the said property or induct any third party therein.

(S.J. KATHAWALLA, J.)