

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2934 OF 2009
(Arising out of SLP(C) No.28177 of 2008)

INDIAN BANK

...APPELLANT (S)

VERSUS

M/S V.G.P. FINANCE LTD. & ANR.

...RESPONDENT(S)

ORDER

Leave granted.

The Company in liquidation approached respondent No. 1 – M/s V.G.P. Finance Ltd. on 10th November, 1995 for a loan of Rs.1,00,00,000/- (Rupees one crore) for business purposes. Pursuant to the correspondence a loan agreement came to be executed on 1st December, 1995 between the Company in liquidation and respondent No. 1 herein. Following the loan agreement the parties entered into further agreements under which amounts were advanced from time to time. According to respondent No. 1 herein, in terms of the loan agreement, the Company in liquidation had mortgaged the property in question in favour of respondent No. 1 herein.

According to respondent No. 1, as the Company in liquidation did not repay the amounts in terms of the mortgage deed, vide two sale deeds dated 11.2.1999 and 16.2.1999, the subject lands stood sold in its favour with possession.

In the meantime, it appears that petition for winding up was moved on 14th October, 1996 and the Company was ordered to be wound up on 10th March, 1999. Following the order of winding up, the Official Liquidator issued a notice on 1st June, 1999 for handing over the assets and effects of the Company in liquidation.

Under the above circumstances, on 13th September, 2004, respondent No. 1 herein moved the Company Court for validation of the disposition of property in question (see page 79). At this stage it may be noted that there was earlier an application made by respondent No. 1 herein for possession. That was on 14th September, 1999. It was not for validation whereas the application for validation was moved only on 13th September, 2004.

The first Application dated 14th September, 1999 was numbered as Company Application No. 1275 of 1999. By judgment and order dated 9th August, 2005 the learned Single Judge disposed of Company Application No. 1275 of 1999 in favour of respondent No. 1 herein which was not for validation. The High Court directed the Official Liquidator to deliver possession of the property in question to respondent No. 1 herein. This order stood confirmed by the impugned judgment of the Division Bench. Hence, the Indian Bank which claims to be a secured creditor has come by way of SLP to this Court.

On going through the entire record we find that both, the Company Court as well as the Division Bench, have not taken into account some of the vital aspects which a Company Court is statutorily required to take into account. Firstly, in the impugned judgments there is no reference to the interest of other secured and unsecured creditors of the Company. Generally, while granting validation the Company Court is required to take into account the list of assets held by the Company in liquidation. It appears that in this case apart from the subject lands there are no other assets except goodwill. This aspect is very important. If a Company does not possess any other assets then the interest of the creditors, both secured and unsecured, would be jeopardized if the transfer is validated. In this case it appears that Indian Bank was not heard. It was not even made a party. The Court has not examined the list of creditors both secured and unsecured whose security/claims would stand defeated on validation of the sale deed. Moreover, it is important to note that there was no prayer for validation in Company Application No. 1275 of 1999 and even without said prayer the Court has allowed validation which was

erroneous. The High Court has also not considered the question regarding commencement of the winding up proceedings and whether the conveyances stood executed after such commencement?

However, to put an end to the controversy, we are restoring to the file of the Company Judge the application dated 13th September, 2004 moved by respondent No. 1 herein for validation. We direct the Company Registrar to give a proper registration to the Company Application for validation dated 13th September, 2004. On giving the registration number we give liberty to respondent No. 1 herein, if so advised, to move an application for amendment giving better particulars in support of his claim. We also direct the Company Registrar to inform the Indian Bank regarding the application being numbered as directed hereinabove. On completion of all these preliminaries we direct the Company Court to dispose of the Application for validation dated 13th September, 2004 after considering the claims of secured and unsecured creditors as well as after taking into consideration assets held by the Company in liquidation as on the date of order of winding dated 10th March, 1999, and thereafter. We also give permission to Indian Bank to make an application for impleadment in such application.

Basically the point raised by the Indian Bank before us in this case is that the Company Court ought not to have granted validation of the sale deeds without taking into account the interest of the creditors without considering the list of assets and according to Indian Bank the entire transaction allegedly has taken place after the commencement of the winding up process.

We direct the High Court to de novo decide this matter uninfluenced by any of its earlier observations made in the impugned judgment. We express no opinion on the merits of the case. We grant liberty to both sides to make submissions in support of their case.

Before concluding, we may state that the possession of the lands is with

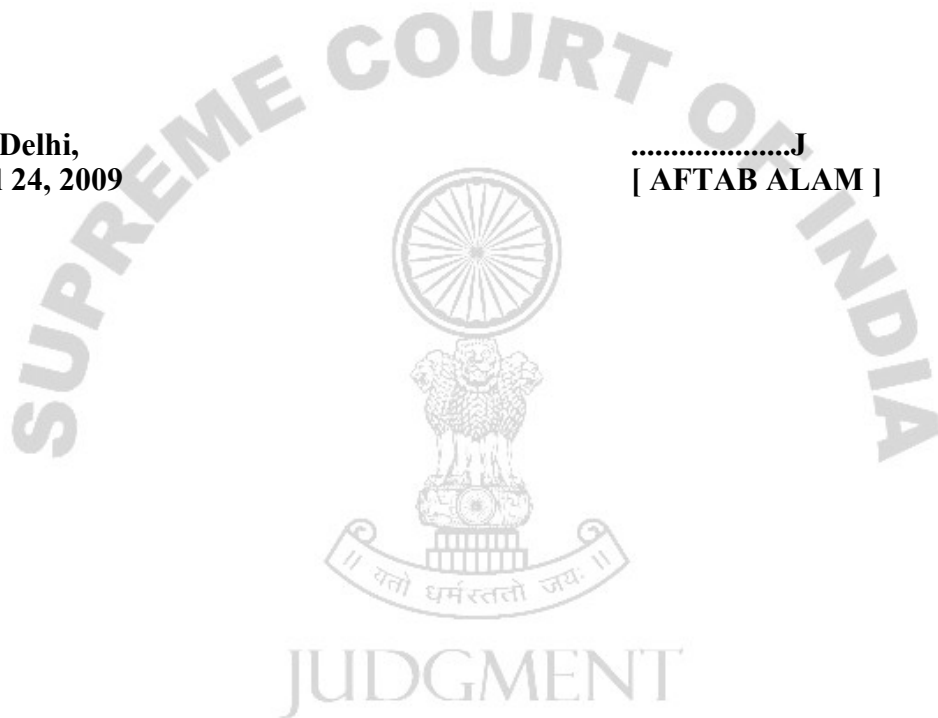
respondent No. 1 herein. Status quo as regard to possession is to be maintained till the Company Court decides the Application for validation dated 13th September, 2004. However, respondent No. 1 will not encumber the property. Respondent No. 1 will neither alienate the property nor create any third party rights in respect of the said property.

The appeal is disposed of accordingly with no order as to costs.

.....J.
[S.H. KAPADIA]

New Delhi,
April 24, 2009

.....J
[AFTAB ALAM]



ITEM NO.1

COURT NO.4

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).28177/2008

**(From the judgment and order dated 09/09/2008 in OSA No.201/2005
of the HIGH COURT OF MADRAS)**

INDIAN BANK**Petitioner(s)****VERSUS****M/S.V.G.P.FINANCE LTD.& ANR.****Respondent(s)****(With prayer for interim relief and office report)(For orders)**

Date: 24/04/2009 This Petition was called on for hearing today.

CORAM :**HON'BLE MR. JUSTICE S.H. KAPADIA****HON'BLE MR. JUSTICE AFTAB ALAM**

**For Petitioner(s) Mr. R. Venkataramani, Sr.Adv.
Mr. Alto K. Joseph, Adv.
Mr. Shiv Ram Sharma,Adv.**

**For Respondent(s) Mr. Harish N. Salve, Sr.Adv.
Mr. K.K. Mani,Adv.
Mr. Mayur R. Shah, Adv.
Mr. S. Srinivasan, Adv.
Ms. Madhusmita Bora, Adv.**

**UPON hearing counsel the Court made the following
O R D E R**

Leave granted.

Appeal is disposed of with no order as to costs.

**(S. Thapar)
PS to Registrar**

**(Madhu Saxena)
Court Master**

The signed order is placed on the file.

