

**(2013) 08 P&H CK 0814**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CAPP No. 1 of 2007

Balwinder Kaur Rao

APPELLANT

Vs

M/s. Grow Green Forest (India)  
Limited and Others

RESPONDENT

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**Date of Decision:** Aug. 7, 2013

**Acts Referred:**

- Companies Act, 1956 - Section 446, 456, 468, 537(1)(b), 538

**Hon'ble Judges:** Sanjay Kishan Kaul, C.J; Augustine George Masih, J

**Bench:** Division Bench

**Advocate:** M.S. Kang, for the Appellant; Puneet Kansal for Official Liquidator and Mr. Arjun Partap Atma Ram, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Sanjay Kishan Kaul, C.J.

The appeal is directed against the impugned order of the learned Company Judge passed on an application filed by the Official Liquidator u/s 468 read with Section 446 of the Companies Act, 1956 (hereinafter referred "said Act") to declare sale deeds dated 20.12.2001, 23.1.2002 and 8.5.2002 as illegal, null & void and seeking direction against the appellant and respondent Nos. 2 and 3 herein to hand over possession of the property in question. The factual matrix lies within a limited compass.

2. The property in question being subject matter of these sale deeds was undisputedly owned by respondent No. 1-Company. Respondent No. 2 is the Ex-Managing Director. Respondent No. 1-Company went into liquidation and the Official Liquidator was appointed as the provisional Liquidator. The allegation is that though the Company was directed to be wound up by the order of the learned Company Judge dated 4.10.2001, the sale was made by respondent No. 2 herein fraudulently thereafter. The complete property, as on date, vests with the appellant.

The appellant raised the following issues:-

- i) That the appellant is a bonafide purchaser;
- ii) The appellant was not aware of the appointment of the Official Liquidator and, thus, her rights should not be prejudiced;
- iii) Section 468 of the said Act would have no application to the appellant.

3. On hearing learned counsel for the parties, all the three pleas are liable to be rejected. The fact whether the appellant was bonafide purchaser or acted in collusion with respondent No. 2 cannot be determined in these proceedings. The question only is whether the assets of the respondent No. 1-Company could have been transferred. If the appellant is a bonafide purchaser, who has been duped by respondent No. 2 as Ex-Managing Director, then the remedy of the appellant is against respondent No. 2. The proceedings qua appointment of Official Liquidator were published on 2.11.2001. The sale deeds are post that date. Thus, the appellant cannot claim ignorance of the appointment of the Official Liquidator.

4. Learned counsel for the Official Liquidator has drawn our attention to various provisions of the said Act. u/s 456 of the said Act, on passing of winding up order or appointment of a provisional Official Liquidator, the properties of the Company are liable to be taken over by the Liquidator or the provisional Liquidator and all properties shall be deemed to be in the custody of the Company Court/Tribunal. Section 468 of the said Act requires the delivery of the property to a Liquidator and such a direction can be passed against a contributory, trustee, receiver, banker, agent, officer or other employees of the Company. It is in fact this provision which has been relied upon by learned counsel for the appellant to contend that she does not fall under any of these categories. However, the material aspect is that u/s 537(1)(b) of the said Act, on winding up of a Company, any sale held without leave of the Company Court/Tribunal is void. Thus, the sale deed in favour of the appellant is ipso-facto void and it is only a consequential effect of the requirement of such property being handed over to the Official Liquidator, for which directions have been issued by the learned Single Judge.

5. Learned counsel for the Official Liquidator also points out to Section 538 of the said Act, more specifically Clause (b) of Sub-section 1, to contend that on failure to deliver up to the Liquidator any property, the consequences are penal in nature. However, the same applies to an officer of the Company and in the present case if such proceedings have to be initiated, they can be against respondent No. 2.

6. Before parting with the matter, we consider it appropriate that the learned Company Judge should initiate necessary steps to ensure presence of respondent No. 2 before it to see whether the appellant can be compensated by asking respondent No. 2 to hand over the proceeds from such sales back to the appellant as the proceeds were never credited to the account of the Company. That would do

some justice to the appellant, who will be deprived of the property without refund of sale consideration.

7. Interim order stands vacated. Possession be handed over by the appellant to the Official Liquidator within one month from today. The appeal is accordingly dismissed with aforesaid observations/directions.