
Ram Lal Rajaram Vs G.D. Mehrotra and Co. and Others

Special Appeal No. 68 of 1957

Court: Allahabad High Court

Date of Decision: Oct. 28, 1957

Acts Referred:

Companies (Amendment) Act, 1956 " Section 457#Companies Act, 1913 " Section 179#Constitution of India, 1950 " Article 226

Citation: AIR 1958 All 447

Hon'ble Judges: O.H. Mootham, C.J; A.P. Srivastava, J

Bench: Division Bench

Advocate: R.S. Pathak and Tej Narain Sapru, for the Appellant; Gopi Nath Kunzru, Kamta Nath Seth and Amar Nath Kaul, for the Respondent

Final Decision: Allowed

Judgement

A.P. Srivastava, J.

This is a respondent's appeal against an order of a learned Single Judge of this Court by which he quashed two orders

of the Dist. Judge, Varanasi, dated the 1st of October, 1956 and directed that the respondent to the petition must give effect to two previous

orders of the District Judge dated the 3rd of September 1956 and the 6th of September 1956.

2. The facts of the case so far as they are material for this appeal may be briefly stated. There was a limited company known as the Banaras

Cotton & Silk Mills Ltd. Banaras. In the 1st week of May 1955 it was ordered by this Court to be compulsorily wound up. The case was then

transferred u/s 164 of the Indian Companies Act (Act VII of 1913) to the Dist. Judge of Banaras. He appointed three persons--Sri C.D. Parikh,

Advocate, Sri Raghav Ram Varma, Advocate, and Sri B.L. Tandon, Chartered Accountant (impleaded in this appeal as respondents Nos. 3 to 5

and in the petition as respondents Nos. 2 to 4 and hereinafter referred to as the liquidators)--as official liquidators of the company that had been

ordered to be wound up.

In February 1956 under the directions of the District Judge an advertisement was published in the papers inviting tenders for taking the mills on

lease. Tenders were submitted but none was found to be acceptably. A fresh advertisement inviting further tenders was then published and in

response to it four tenders were received including one by Messrs. G.D. Mehrotra and Co., the petitioner (who is now respondent no. 5 and will

hereinafter be referred to as the respondent) and one by Ramlal Raja Ram, the appellant (who was impleaded as respondent no. 5 in the original

petition and will hereinafter be referred to as the appellant).

The respondent offered to pay a monthly rental of Rs. 22,500/- but later on submitted by way of clarification that in addition he would be prepared

to pay some amount for the depreciation of the mills as and when determined by the Income Tax Officer. The appellant offered to pay Rs.

28,000/- per month as rent in respect of the weaving section of the mills only. On the 2nd of June 1956, the appellant's tender was accepted

under the directions of the District Judge and he further directed the liquidators to execute a lease in favour of the appellant within fifteen days. He

however provided that liability to pay the rent was to begin two months after the date of the execution of the lease, or two months after obtaining

the Tex Mark licence whichever date was later.

The obtaining of the Tex Mark licence was necessary before the working of the weaving section of the mills could be started. For certain reasons,

including differences about some of the terms of the lease, the lease in favour of the appellant could not be executed though the period of 15 days

which was originally granted for the purpose was extended several times, and the liquidators started negotiations with the respondent so that he

may, if he liked, revise the terms of his offer and make them more favourable to the mills. The respondent did this on the 18th August, 1956. On

the 3rd of September, 1956, the District Judge finally ordered that if the appellant did not get the lease executed in his favour within two days, the

lease would be given to the respondent on the terms and conditions entered in the order of that date.

He further ordered that in case the lease in favour of the respondent did not materialise steps were to be taken for the sale of the mills. The

respondent was required to deposit two months' rent in cash by way of security. On the 6th of September, 1956, the respondent pointed out to

the District Judge that the two days period granted to the appellant for getting the lease executed in his favour had expired and that he was no

longer entitled to have the lease made in his favour. The respondent prayed that the lease be granted in his favour as ordered on the 3rd of

September, 1956 and that the liquidators be directed to hand over possession to him. This request of the respondent was accepted by the District

Judge on the 6th of September, 1956 and he ordered the liquidators to lease out the mills to the respondent and to put him in possession.

On the same date the liquidators wrote to the respondent requiring him to get the lease executed and to take possession over the mills. Possession

over five godowns and a part of the office of the mills was handed over to the respondent on the same date. According to the liquidators, this was

done because the respondent insisted that it being a very auspicious day the delivery of possession must be started on that date. The respondent,

on the other hand, contends that as possession had been directed to be delivered to him the delivery of possession was started in ordinary course

on that very date.

Thereafter disputes arose between the respondent and the liquidators on several points including the preparation and verification of the lists of

properties over which possession was to be delivered, the settlement of the terms of the lease and the final approval of the draft lease. The

respondent had however, in compliance with the orders of the District Judge, deposited a sum, of Rs. 57,000, on account of two months' rent,

with the liquidators. On the 38th September, 1956 the respondent applied to the District Judge pointing out that he had complied with the

conditions imposed in the order of the 3rd of September, 1956 and had even purchased the requisite general stamp for the execution of the lease.

He prayed that the liquidators be directed to execute the lease in his favour.

In reply the liquidators pointed out that they had not until then been able to ascertain either the financial condition, or the business reputation of the

respondent, nor had they been able to ascertain to their satisfaction whether "G.D. Mehrotra & Co." was a one-man concern or whether it was a

firm, registered or unregistered, or a private limited company. They prayed that the respondent be directed to give proper safeguards regarding the

properties that were to be put in his possession and provide a sufficient guarantee for the payment of the rent. The District Judge then ordered that

the respondent should "satisfy the liquidators about his financial position before the lease is to be executed and the mills are handed over to them.

He directed the liquidators to set in touch with the respondent for this purpose and to submit a report to him. He extended the 15 days time

previously granted to the respondent for the execution of the lease by ten days more. Attempts were then made by the liquidators to ascertain the

financial position, and the extent of the business experience of the respondent and also to find out his status i.e. whether G- D. Mehrotra & Co.

was a single man concern or whether it was a registered or unregistered firm or a private limited company. In this connection the liquidators

referred to the banks named by the respondent and wrote to the respondent himself.

According to the liquidators, the attitude of the respondent was unresponsive and the plea he took was that the liquidators had no right to raise the

question of his financial status at that stage and that without making any further fuss they should execute the lease in favour of the respondent as

directed by the District Judge. Ultimately, on the 1st of October, 1956, the liquidators submitted a report to the District Judge in which they

pointed out that in spite of the attempts they had made they had not been able to ascertain the financial status of the respondent or facts relating to

his business experience. In that report they said that they had learnt that Messrs. G.D. Mehrotra & Co. was a partnership firm which had no

banking account and that in the circumstances they were unable to recommend that the lease should be executed in favour of the respondent and

that in their opinion it would be highly detrimental to the interests of; the creditors, share-holders and workers if the properties and assets of the

company were handed over to the respondent or a lease was executed in his favour.

They recommended that the orders dated the 3rd of September, 1956 and the 6th of September, 1956 be modified and that they be permitted to

return the security money deposited by the respondent to him. They pointed out that in the order of the 3rd of September, 1956 they had been

directed to take steps for the sale of the mills in case the lease did not materialise and sought directions in the matter. A copy of this report of the

liquidators was given to the counsel for the respondent and when the report came up before the District Judge for consideration on the 1st of

October, 1956, the liquidators as well as the counsel for the respondent were present.

The counsel addressed some arguments to the Court but then prayed that time be given to him, for contacting his client for instructions. This

request was not granted and the learned District Judge proceeded to make the first of the two orders passed on the 1st October, 1956 the validity

of which was challenged by the appellant in the writ petition out of which this appeal has arisen. In that order after referring to the report of the

liquidators and the events that had preceded it, the learned District Judge said that he was not satisfied

that the respondent was a party of substantial means who may be entrusted with the mills which is valued in the neighbourhood of several lacs. It is

also doubtful if Messrs G.D. Mehrotra & Company has any experience of the running of the textile mills""

He felt that any further delay in the disposal of the question of lease would be highly detrimental to the interest of liquidation. He, therefore,

amended his orders dated the 3rd of September, 1956 and the 6th of September, 1956 and directed the liquidators not to lease out the mills to the

respondent. The sum of Rs. 57,000 which the respondent had deposited in the account of the liquidators was ordered to be returned to him. The

District Judge also directed that if the respondent had been put in possession of any portion of the mills, the possession should be taken back from

him. The second impugned order of the 1st of October, 1956 was then made. By it the District Judge directed the liquidators that mills be leased

out to the appellant who should execute the lease forthwith after getting the terms approved by the Court.

He directed the liquidators to hand over possession to the appellant in accordance with the terms approved by the Court. On the same date a draft

lease in favour of the appellant was submitted by the Official Liquidators to the District Judge for approval and was duly approved. At the request

of the liquidators the appellant deposited a sum of Rs. one lac in the account of the liquidators. This amount included Rs. 57,000/- as security for

two months rent and Rs. 43,000/- in lieu of a bank guarantee. The lease was thereafter duly executed. The lessee and two of the liquidators signed

it on the 1st of October and the 3rd liquidator signed it on the 2nd. Possession over the various parts of the mills was also handed over to the

appellant on the 2nd of October, 1956 with the exception of the five godowns that were already in the possession of the respondent.

3. The 3rd and the 4th of October were holidays. On the 5th of October, 1956, the respondent filed his writ petition in which he claimed the

following reliefs:

(1) Issue of any suitable order, direction Or writ including a writ in the nature of a certiorari and quash the orders of the District Judge, Banaras

dated the 18th September, 1956 and the 1st of October, 1956 and the lease alleged to have been executed on the 1st of October, 1956 in favour

of Ramlal Raja Ram.

(2) Issue a suitable direction, order of writ including a writ in the nature of mandamus directing the District Judge of Banaras to execute a lease on

the terms and conditions contained in his order dated the 3rd September, 1956 in favour of the petitioner and to deliver possession of the entire

mills to the petitioner.

(3) Issue a suitable direction order or writ including a writ of mandamus directing the District Judge of Banaras to take back possession of any

portion of the mills that may have been delivered to Ramlal Raja Ram.

(4) Issue a suitable direction, order or writ in the nature of mandamus directing the District Judge not to disturb the possession of the petitioner

over that portion of the mills in respect of which possession had been delivered to the petitioner.

(5) Issue any suitable interim order, direction or writ including a writ in the nature of mandamus for the pendency of this petition not to give effect to

the lease alleged to have been executed in favour of Ramlal Raja Ram and to maintain the status quo.

(6) Grant any other or further relief which may be considered just and convenient in the circumstances of the case.

(7) Award costs of this petition to the petitioner.

4. The petition was admitted and an interim order was passed that the status quo be maintained. Thereafter an application was made on behalf of

the appellant pointing out that the lease in his favour had been executed before the petition was filed and praying that its registration may be

permitted. Permission, was granted and the lease was duly registered.

5. When the petition came up for disposal the main contentions urged on behalf of the respondent were:

(1) That the order of the 1st of October, 1956 by which the learned District Judge had practically cancelled his previous orders dated the 3rd of

September and the 6th of September, 1956 in favour of the respondent really amounted to a review of the previous order and had been made

without jurisdiction as the District Judge had no power of review either under the provisions of the Indian Companies Act or otherwise.

(2) That a "completed contract" for the execution of the lease in favour of the respondent had come into existence between the liquidators and the

respondent and in part performance of the same the respondent had deposited two months rent in advance, purchased stamps for the execution of

the lease deed and had even been put in possession of a part of the property to be leased out. All this had been done on the basis of the sanction

granted by the District Judge for the lease being executed in favour of the respondent. The District Judge had therefore no power to recall the

sanction and to sanction the lease in favour of the appellant.

(3) That in any case the principles of natural justice had been violated as the respondent had not been given the hearing that was due to him before

the impugned orders of the 1st of October, 1956 were passed.

(4) That the liquidators had really acted mala fide. They had misrepresented facts to the District Judge and had even suppressed material facts in

order to obtain an order cancelling the execution of the lease in favour of the respondent and sanctioning the lease in favour of the appellant. The

order of cancellation was therefore liable to be quashed.

6. Three preliminary objections were raised against the petition on behalf of the appellant. They were

(1) That the orders of the District Judge dated the 1st of October, 1956 were really administrative or executive orders. They were not judicial or

quasi-judicial orders. They could not therefore be interfered with under Article 226 of the Constitution.

(2) That alternatively the respondent had other adequate remedies equally speedy and efficacious. If the orders of the 1st of October were really

judicial or quasi-judicial orders he would have gone up in appeal against them. If the respondent's contention was correct and there was a

completed contract" in his favour which could be specifically enforced it was open to the respondent to approach the regular civil Court for the

enforcement of the contract. These alternative remedies being available it was not open to the respondent to invoke the jurisdiction of the High

Court under Article 226 of the Constitution.

(3) The writ jurisdiction of the High Court was not meant for enforcing contractual rights. Before the petition had been filed rights of the appellant

had come into existence. A lease had actually been executed in his favour and he had been put in possession of the property. The lease could not

be quashed in writ proceedings, nor was it possible in these proceedings to dispossess the appellant and to put the respondent in possession of the

lands. None of the reliefs claimed by the respondent in the petition could in the circumstances be granted by the Court.

7. So far as the case of the respondent on merits was concerned, the objections taken were

(1) The order of the 1st of October was not in fact an order reviewing the previous orders of the 3rd and the 6th of September. A Court has

inherent power to correct its own mistakes and of recalling the orders which had been passed by it in ignorance of the full facts. The District Judge

felt that he had passed the previous order of the 3rd and the 6th of September, without having all the necessary facts before him. When these facts

were brought to his notice he thought that the sanction previously granted by him in respect of the lease in respondent's favour should not have

been granted. He, therefore, withdrew the sanction and granted a sanction in favour of the appellant.

(2) There was in fact no ""completed contract"" in favour of the respondent. The liquidators and the respondent had never agreed either about the

terms that were to be entered in the lease deed or about the identity of the person in whose favour the lease was to be made. The sanction granted

by the District Judge could not in law create any such right in favour of the respondent as would entitle him to maintain a petition under Article 226

of the Constitution.

(3) The liquidators as well as the District Judge were bound to safeguard the interests of the shareholders and creditors of the mills. The lease in

favour of the respondent could therefore not be sanctioned without the respondent satisfying the liquidators about his financial position and his

ability to run the mills properly. The liquidators as well as the District Judge had also to be satisfied about the actual person who was taking the

lease on behalf of the respondent. When the liquidators failed on account of the attitude taken up by the respondent in obtaining the requisite

information about the respondent's capability, financial standing or status they in good faith brought all the facts to the notice of the District Judge

and sought instructions. Taking all the facts into consideration, the District Judge modified his previous order and sanctioned the lease in favour of

the appellant. There was no question of the liquidators acting mala fide or of the orders of the 1st of October being improper or without

jurisdiction.

(4) That everything which the liquidators had said in their report of the 1st of October; 1956 was fully known to the respondent before the orders

of that date were passed by the District Judge. The counsel for the respondent was called and heard. There was therefore no question of any

principles of natural justice being violated or of the orders being passed without affording the respondent an opportunity of having his say.

8. The learned Judge repelled the first two preliminary objections raised by the appellant by saying that the impugned orders were really judicial or

quasi-judicial orders, that they were not appealable u/s 202 of the Companies Act and that a regular suit would not have afforded an equally

efficacious and adequate remedy against the grievances of the respondent. He held that the existence of an alternative remedy was not on absolute

bar to the maintainability of a petition under Article 226 of the Constitution. He did not deal in his judgment with the third preliminary objection.

9. On merits, he accepted the respondent's contention that the first order of the 1st October, 1956 really amounted to a review of the earlier

orders of the 3rd and the 6th of September, 1956 and was without jurisdiction as the District Judge had no powers of review under the law. He

was also of opinion that the contract between the liquidators and the respondent for the execution, of the lease in favour of the latter had really

become complete after the sanction had been granted by the Court, and as the sanction, had been withdrawn it had affected the rights of the

respondent so as to entitle him to seek relief under Article 226 of the Constitution.

The respondent having performed his part of the contract and having been put in possession of a part of the property could, according to the

learned Judge, take advantage of the doctrine of part performance and had been wrongly deprived of his rights by the cancellation of the order

sanctioning the lease in his favour. The learned Judge further went on to hold that the liquidators had no right to raise questions of the financial

stability, status or capability of the respondent at the stage at which they sought to raise them, that the financial position of the respondent was in

no way unsatisfactory and the company would not have suffered in any way had the lease been; granted in favour of the respondent that the

sanction in favour of the respondent was cancelled on inadequate grounds without giving the respondent an opportunity to be heard.

He did not consider it necessary to go into the allegation of mala fides made against the liquidators as in his opinion even if the liquidators had

acted in good faith, the District Judge was in no way justified either in withdrawing the order in favour of the respondent or in sanctioning the lease

in favour of the appellant. He, therefore, set aside the impugned orders and directed the District Judge, the liquidators as well as the appellant to

give effect to the earlier orders of the District Judge dated the 3rd and the 6th of September, 1956.

10. The appellant has now come up in appeal, and though no less than 41 grounds are set forth in the memorandum of appeal, the pleas which his

learned counsel has urged before us are substantially those which had been pressed before the learned Single Judge, but had not found favour with

him.

11. It was stressed on behalf of the appellant that the third preliminary objection raised against the petition was really fatal to it and deserved more

serious consideration. That objection alone was enough for the rejection of the petition even if the decision of all the other questions raised was

assumed to be in favour of the respondent.

12-13. Briefly put the argument in connection with the aforementioned objection is this. It is established beyond doubt that before the petition was

filed a proper lease in respect of the mills had been executed by the liquidators and the appellant. The appellant had also been put in possession of

almost the entire property leased out. After the petition was filed an order was obtained that the status quo be maintained. That order could not

however affect either the lease which had already been made or the possession which had been handed over to the appellant. Subsequently the

lease was allowed by the Court to be registered and the registration related back to the date of its execution.

The appellant could therefore claim to be in actual possession of practically the entire property on the basis of a valid lease properly executed and

registered. The utmost which the respondent could claim was that before the lease had been made in favour of the appellant, the liquidators with

the sanction of the Court had entered into a "completed contract" with the respondent for the grant of a lease in his favour and some of the terms of

the contract had been complied with by the parties to it. The only right which respondent could claim in that connection was the specific

enforcement of the contract. The extraordinary remedies contemplated by Article 226 of the Constitution were however not meant for the

enforcement of contractual obligations.

It was not open to the respondent under that article of the Constitution either to have the lease in favour of the appellant quashed or to have a lease

executed in his own favour by the liquidators. The respondent could also not claim a proceeding under that article that the appellant should be

dispossessed, or that the respondent himself should be put in possession. These were however the principal reliefs claimed by the respondent in the

petition. The only other relief which was claimed was a writ of certiorari quashing the orders of the District Judge of Banaras dated the 18th

September, and the 1st October, 1956.

By the former order, the District Judge directed the respondent to satisfy the liquidators about his financial position before the lease could be

executed in his favour and the mills handed over to him. By the latter order he revoked the sanction he had granted for the lease being executed in

his favour and had directed that the lease be granted in favour of the appellant. Both these orders related to matters which were in the absolute

discretion of the District Judge. It was the responsibility of the court under whose supervision the liquidation proceedings were being conducted to

see that the company, its shareholders or creditors did not suffer in any way by the properties of the mills being put in the possession of any

improper person.

It was in his absolute discretion to accord sanction to any proposal of lease of the properties of the company, or to refuse to sanction it. He had to

exercise that discretion after taking into consideration the entire material that was put before him. He had no duty to act in any particular way and

could not be compelled to grant or refuse the sanction in respect of any proposal. The respondent could not therefore invoke the powers of the

Court under Article 226 of the Constitution to quash either the order directing the respondent to satisfy the liquidators, about his suitability or the

order revoking the sanction of the proposal of the respondent's lease. Nor can this Court under that article direct the District Judge to resanction

the lease in the respondent's favour. In the circumstances none of the reliefs claimed by the respondent could be granted and the petition was really

a futile one. It should have been dismissed leaving the respondent to pursue any other remedy which he may have been advised to pursue for the

redress of his real or apparent grievances.

14. In his reply to this contention of the appellant, the learned counsel for the respondent urged four points.

(1) The District Judge was in charge of the liquidation proceedings. He had appointed the liquidators. The liquidators were therefore his agents.

For all practical purposes there was virtual identity between the liquidators and the court. Every act of the liquidators could therefore be deemed to

be an act of the court. If the liquidators had entered into a contract to make a lease in favour of the respondent the contract must be held to have

been made by them on behalf of the court. If they had purported to execute a lease in favour of the appellant that too must be held to have been

done on behalf of the court. It was therefore an official act of the court and if it was invalid or improper on any account it could be quashed by a

writ of certiorari. A writ of mandamus could also be issued directing the court or the liquidators to execute the lease in favour of the respondent.

(2) If the appellant had somehow succeeded in obtaining possession of the mills on the basis of a lease which should not have been executed and

had been executed in complete disregard of the respondent's rights, it is open to the court under Article 226 of the Constitution to order the

dispossession of the appellant and to direct that the respondent be put in possession. This can be done either on the ground that the appellant had

been acting in collusion with the liquidators and had taken possession with full knowledge about the respondent's rights, or on the ground that

something had been done which ought not to have been done and it was necessary in the interest of justice to restore the property to the person

who was legally entitled to it.

(3) Even if it be conceded for the sake of argument that what the respondent claimed in his petition was the enforcement of a contractual

obligation, there is nothing in Article 226 of the Constitution to prevent the Court in proper cases from enforcing such obligations.

(4) Article 226 is not intended to be exhaustive and besides those writs which find particular mention in the Article it is open to the Court to issue

writs of other kinds, or even directions and orders which it may find necessary to issue in the particular circumstances of the case. The manner in

which the respondent framed the reliefs of his petition is also immaterial. If the reliefs claimed by him cannot be granted in the way in which they

had been claimed it is open to the Court to grant them in any other manner which it may find suitable in the circumstances.

15. The lease in favour of the appellant is now an accomplished fact. It was executed before the respondent's petition was filed and though it was

registered subsequently the registration was 300 by the permission of the Court and related back to the date of execution"" It also appears to be

beyond question that the appellant has been put in possession of the property and is working the mills in accordance with the terms of the lease.

Before the lease can be cancelled or quashed on any ground, difficult and complicated questions of fact and law will have to be gone into. It

appears not to be possible to decide these questions without further evidence, and in our opinion a proceeding under Article 226 is not appropriate

for this purpose.

16. The contention that the lease in favour of the appellant can be quashed under Article 226 of the Constitution because it is an act of the Court,

the liquidators being its agents, appears to us to be entirely unacceptable. It is true that when a company is ordered to be wound up the liquidation

proceedings have to be conducted under the supervision of the Court. The liquidators can be appointed and removed by the Court and have to act

under its control. The liquidators however possess a status recognized by statute which defines their powers and functions. Those powers and

functions are not identical with the powers and functions of the Court. The mere fact that some of their powers can be exercised by the liquidators

with the sanction of the Court is not enough to establish an identity between them and the Court.

There appears to be nothing in the Indian Companies Act, 1913 (which admittedly governs the relationship between the parties to this case) to

support the contention of the respondent that the liquidators are the agents of the Court and that their acts can on that account be considered to be

acts of the Court. Liquidators may be officers of the Court as they act under its directions, but strictly speaking they represent not the Court but the

company which is being wound up. Everything which they have to do has to be done in the name of the company for the safeguarding of its

interests and those of its creditors and share-holders. They have to act in the name of the company and not in their own names. Provisions in the

Companies Act like Sub-section (5), Section 183 show clearly the untenability of the contention that the liquidators and the Court are identical in

any respect.

17. Reliance was placed by the learned counsel for the respondent on a sentence in *Lyallpur Bank Ltd. v. Manohar Lal* AIR 1936 Lah 152 (A),

where it was observed that

The official liquidator is merely the agent of the Court for purposes of liquidation of the bank.

What the learned Judge obviously meant when he made the observation was that the official liquidator was an officer of the Court. The question in

that case was whether as a result of an order of winding up of a company decrees held by the company could be considered to have been

transferred to the liquidators by assignment or by operation of law. The question as to what was the true, relationship between the Court and the

official liquidators who had been appointed by it neither arose in the case nor was decided in it.

18. We are therefore unable to accept the contention that the liquidators and the Court were one, or that the former were the agent of the latter.

The very basis of the plea that that lease in favour of the appellant could be quashed or cancelled because it was an act of the Court is therefore

gone. It is also difficult to understand how the lease can be considered to be a judicial or quasi-judicial order or decision of the Court so as to be

the subject of a writ of certiorari. The lease is really a transfer of interest in the property made by the liquidators in favour of the appellant. It is not

an order or decision of any kind. The argument that it cannot be quashed under Article 226 of the Constitution therefore appears to be well

founded.

19. u/s 179 of the Indian Companies Act, 1913, official liquidators have the power to carry on the business of the company so far as it may be

necessary for the beneficial winding up of the same and also to do such other things as may be necessary for the winding up of the affair of the

company and distributing the assets. The exercise of the power is certainly subject to its sanction of the court. The power, however, vests in the

liquidators and has to be exercised by them. The court has only to accord its sanction or to refuse the same. Even if the court sanctions a proposal

made by the liquidators under the provision the liquidators are not bound to carry it out.

It is to be open to them to drop the proposal so sanctioned and to put up other proposal before the court for sanction. They cannot be compelled

to act upon any proposal against their wishes if they consider it to be contrary to the interests of the company. For instance, it is not open to the

court to compel them to consent to a compromise or arrangement with a creditor or contributory (Pearson's case, East of England Banking Co. In

re (1872) 7 Ch A 309 (B)). Even if the liquidators do something in exercise of their powers u/s 179 without the sanction of the Court e.g. institute

a suit, or start a prosecution, the suit or the prosecution does not become non-maintainable on that account (vide Dr. Sailendra Nath Sinha and

Another Vs. State and Another, and Dublin City Distillery v. Doherty, 1914 AC 823 (D)). The omission to obtain the sanction of the Court is a

matter between the Court and the liquidators, and the person against whom the suit is filed or the prosecution is launched cannot take advantage of

that omission.

So far as the sanction is concerned, it is in the discretion of the Court either to refuse or to grant it. If the matter rests entirely on the discretion of

the Court it obviously cannot be compelled by a writ to exercise that discretion in a particular manner. A writ of certiorari is meant only to curb

excess of jurisdiction, and to keep inferior Courts and tribunals within their bounds. It cannot be used for the purpose of compelling a tribunal to

exercise its jurisdiction in a particular manner. That is so also in the case of a writ of mandamus, and this is well stated by Merrill in his Law of

Mandamus, at page 33, where the learned author says

Where a subordinate body is vested with power to determine a question of fact, the duty is judicial. Though it can be compelled by mandamus to

determine the fact it cannot be directed to decide in a particular way, however clearly it may be made to appear what that decision ought to be. A

Court will be ordered to proceed to judgment but it will not be instructed to render a particular judgment. It is said there is not a case where the

King's Bench has ordered an inferior Court to render a particular judgment. When a decision has been reached in a matter involving discretion a

writ of mandamus will not lie to review or correct it, no matter how erroneous it may be.

20. In the present case the District Judge had in the exercise of his discretion decided that before the lease in favour of the respondent was

executed the latter should satisfy the liquidators about his suitability. Not being satisfied on the point the learned Judge cancelled the sanction which

he had given to the proposal in favour of the respondent and sanctioned the one in favour of the appellant. What the respondent wanted by the

petition under appeal was that this Court should quash the orders of the District Judge and direct him to exercise his discretion in a particular

manner, viz. to allow the lease to be given to the respondent without any satisfaction about his suitability and to re-sanction the lease that was

proposed to be executed in his favour. He also wanted the Court to compel the liquidators to execute the lease in his favour even though they felt

that it would not be in the interest of the company to do so. It is difficult to see how all this could be done either by a writ of certiorari or by a writ

of mandamus.

21. The lease in favour of the appellant being there, and he having secured possession of the leased property in pursuance, of it, he can claim to be

entitled to continue in possession as long as the lease lasts. The respondent however wants that the mills should be leased out to him and that he

should be put in possession of them. Realising that what the respondent wanted could not be obtained by a writ of certiorari his learned counsel

has urged that a writ of mandamus should be issued requiring the appellant to give up possession and requiring the Court and the liquidators to take

back possession from the appellant and to hand it over to the respondent.

A writ of mandamus is not however in our opinion meant for such purposes. In a recent case decided by the Supreme Court, *Sohanlal Vs. The*

Union of India (UOI), a displaced person had been evicted from a certain property by the Union of India in contravention of the express

provisions of Section 3 of the Public Premises (Eviction) Act. After evicting him the Union of India had put the property in the possession of

another person. The person who was wrongly evicted filed a writ petition praying that the order of his eviction be quashed.

He also claimed a writ or order in the nature of mandamus directing the Union of India who had dispossessed him to restore possession of the

property to him. He also claimed a similar writ against the person who was in possession directing him, to give up possession and to put him (the

evicted person) in possession. The order evicting him was quashed and the learned Judges were also of opinion that the Union of India could be

directed by a writ of mandamus to put the evicted person back in possession. They however expressed their inability to issue any such writ against

the person who was in actual possession for the purpose of dispossessing him. They laid down :

Normally a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is

made against a person directing him to do some particular thing specified in the order which appertains to his office and is in the nature of a public

duty".

They went on to observe that a writ of mandamus or an order in the nature of mandamus could have been issued against the person in actual

possession only if it was established that he had colluded with the Union of India and the transaction between them was merely colourable, entered

into with a view to deprive the evicted person of his right. They drew an analogy from election disputes and said :

It would appear that so far as election to an office is concerned, a mandamus to restore admit or elect to an office will not be granted unless the

office ""is vacant. If the office is in fact full, proceedings must be taken by way of injunction or election petition to oust the party in possession and

that a mandamus will go only on the supposition that there is nobody holding the office in question..... A mandamus will not lie unless the election

can be shown to be merely colourable.

They therefore found themselves unable to

see why in principle there should be a distinction made between such a case and the case of a person, who has, apparently, entered into bona fide

possession of a property without knowledge that any person had been illegally evicted therefrom.

They therefore declined to issue a writ of mandamus directing the party in possession to leave it and hand it over to the evicted person. In view of

what was laid down in this case it appears to us that it is not open to this Court to issue a writ of mandamus or an order or direction in the nature of

mandamus for the purpose of dispossessing the appellant or putting the respondent in possession unless it is established by the respondent that the

appellant has been guilty of collusion or that his lease or possession in pursuance of it are colourable transactions.

In this case, however, though it was alleged in the petition that the liquidators had acted mala fide, the petition and the affidavit filed in support of it

do not contain even a suggestion that the appellant has acted in collusion with anyone or that the lease in his favour is a colourable transaction. The

allegation of the collusion of the appellant is also conspicuous by its absence in the grounds enumerated in the petition in -support of the reliefs

claimed. V/hen collusion or the colourable nature of the lease in favour of the appellant were not even alleged there can be no question of their

being established and relief being granted to the respondent on that basis.

22. It was urged alternatively that even otherwise this Court can order that the appellant be dispossessed and the respondent be put in possession.

Support for this proposition was sought to be drawn from cases like Mahabir Prasad Vs. District Magistrate, Kanpur and Others, , Bahori Lal

Paliwal Vs. District Magistrate, Bulandshahr and Another, and Central Provinces Manganese Ore Co, Ltd. v. State of Madhya Pradesh AIR

1956 Nag 34 (H). These, cases are however clearly distinguishable and are of no real help to the respondent on this point. The first mentioned

case was decided with reference to the U. P. Temporary Control of Rent and Eviction Act.

The allotment order made by the District Magistrate under the provisions of that Act was quashed as illegal and the person put in possession on the

basis of that allotment order was directed to be evicted. The Act itself contains provisions under which the District Magistrate can take steps to

evict a person who takes possession without a proper allotment order. The District Judge in the present case appears to have no such powers of

cancelling the lease in favour of the appellant or requiring him to give up possession of the leased property.

In the second case, the resignation of the Chairman of the Town Area Committee had been accepted though it had been withdrawn and a Mew

Chairman had been elected during the office being vacant. It was held that the resignation could have been withdrawn, and no vacancy had really

occurred as it had been wrongly accepted. When there was no vacancy the new Chairman could not be elected to fill it. His election was,

therefore, treated as null and void. There is no similarity between that case and the present one. In the third case, the petitioner had been granted

by the State Government a right of dumping the spoil of his mines on some land adjoining them.

Subsequently the Government had granted a prospective licence and a lease of that land in favour of the respondent who wanted to interfere with

the petitioner's right. The Government as well as the respondent were therefore directed by a writ of mandamus not to interfere with the

petitioner's occupation of the land. The land in that case was in the possession of the petitioner and there was therefore no question of another

person being dispossessed by a writ of mandamus. It does not therefore appear to be possible, in proceedings under Article 226 of the

Constitution, either to order dispossession of the appellant or to direct that the respondent be put in possession of the mills.

23. Nor can the liquidators be directed under Article 226 of the Constitution to execute a lease in favour of the plaintiff even if it be assumed that

there was a valid and binding contract between them and the respondent for the making of the lease. It has not been suggested that such a direction

to execute the lease can be made by a writ of certiorari or prohibition For this purpose also it is said that a writ of mandamus is the proper remedy.

It is however well settled that a writ of mandamus cannot be issued to enforce a contractual obligation. The law is in our opinion correctly stated by

Ferris in their "Extraordinary Legal Remedies" paragraph 195 at page 229 :

The duties enforceable by mandamus, although not necessarily public duties, are those imposed by law. Mandamus will not lie therefore to

enforce a right founded purely on private contract however clear that right may be." The same is the view of Marrill who in his Law of Mandamus,

paragraph 16 page 9 observes:

Since the object of this writ (mandamus) is to enforce duties created by law, it will not lie to enforce private contracts, unless it is extended to

such cases by statutory enactment.

24. Before the coming into force of the Constitution a mandamus could be issued by the High Courts in the Presidency Towns u/s 45 of the

Specific Relief Act. It was held in P.K. Banerjee Vs. L.J. Simonds and Another, , that a mandamus could not be claimed under that section for

enforcing a contractual obligation. After the coming into force of the Constitution a writ of mandamus issuable under Article 223 of the Constitution

was refused for the purpose of enforcing a contract in Budh Mal Vs. Gulab Singh and Others, Chattar Singh Vs. State of Punjab and Another, and

Indian Tobacco Corporation and Others Vs. The State of Madras, .

25. The learned counsel for the respondent however referred to the observations of Ferris in their "Extraordinary Legal Remedies" on pages 353-

354 and also to the case of R. v. Bristol Rail Coy., (1845) 3 Can. Cas. 777 (M), referred to in Halsbury's Laws of England, 3rd Edn. Vol. 11 in

footnote (s) to paragraph 161 at page 88 and urged that contractual obligations could be enforced by means of writs. The view of Ferris on the

point has already been quoted. In the passage on pages 353-354 of the book to which the learned counsel refers the authors, who are dealing with

Public Service Corporations, say

Where the duty is imposed on a Corporation by statute or charter it may be possible to compel it by a mandamus to perform that duty. Such

Corporations enter into contracts in pursuance of the statute or the charter and some authorities have held that in certain cases they may be

compelled to fulfil such contracts by mandamus because, a contract may also in certain circumstances impose rights and duties enforceable by

mandamus.

The observations obviously do not apply to the present case because the liquidators cannot be held to have entered into any contract with the

respondent in pursuance of any statute nor can it be said that the contract imposes upon them a public duty which can be enforced by a writ.

26. The case of R. v. Bristol Rail Coy. (M), is not available to us but from the note about it on page 86 of Halsbury's Laws of England it appears

that in that case a railway company had agreed to pay a certain amount in settlement of a claim for damages as the agreement had been made

under seal which could not be enforced by action. A writ was therefore issued to compel the railway company to make the payment. We do not

see how the case can be of any help to the respondent.

27. Reference was also made to two other cases, Nuruddin Ahmad v. State of Assam, (S) AIR 1956 Assam 48 (N) and The State of Orissa Vs.

Madan Gopal Rungta, . These cases, too, appear to be of no assistance to the respondent. In the Orissa case an interim direction had been issued

directing the State of Orissa to refrain from disturbing the petitioner's possession for three months, and it was held by the Supreme Court that such

a direction could not be issued under Article 226 of the Constitution. The Assam case too does not appear to be a case in which contractual

obligations were enforced by the issue of any writ. It was a case in which a fishery had been settled by the State although against the rules framed

for the purpose under the Assam Land Revenue Act. The learned counsel for the respondent has, therefore, not been able to satisfy us that he

could have recourse to a writ of mandamus in order to compel the liquidators to execute a lease in favour of his client. That relief too cannot,

therefore, be granted in this petition.

28. The last contention of the learned counsel for the respondent is that, as his client had suffered an injury and had been deprived of a right, he

was entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution for relief. The terms of the Article are, it is argued, wide

enough to empower the Court to give relief to the respondent even if what he claims does not fall strictly within any of the recognised writs. The

Court, it is said, should not reject the respondent's petition simply because he has not prayed for the proper relief but some other suitable order or

direction should be issued.

29. It is true that, as observed by the Supreme Court in T.C. Basappa Vs. T. Nagappa and Another,

The language used in Arts. 32 and 226 of the Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in

India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto. prohibition and

certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well.

In view of the express provisions in our Constitution the Court need not now look back to the early history or the procedural technicalities of these

writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges.

Their Lordships however proceeded to emphasize that the Court

can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as it keeps to the broad

and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.

The powers of the Court under Article 226 are wide but they are not untrammelled. These powers have to be exercised subject to a sound judicial

discretion, and it is not possible for the Court to ignore the practice that obtains and the rules that are followed in the country where writs had their

origin. It is not necessary for the Court to pin down the respondent to the reliefs which he claims and if it is found that relief can be given in any

other form the Court will not hesitate to grant it.

In deciding what relief can be granted to a petitioner under Article 226 of the Constitution in the circumstances of a particular case the Court has

however to be guided by the ""broad and fundamental principles"" which regulate the grant of writs in English Law. Now the main reliefs claimed by

the respondent in this case are (1) the quashing of the orders dated the 28th September and the 1st October, 1956 and the lease in favour of the

appellant; (ii) a direction that the liquidators should execute a lease in favour of the respondent; and (iii) dispossession of the appellant and putting

the respondent in possession.

No writ in any recognised form can be issued for any of these purposes. The broad principle on which an order or direction can be issued being

the same, we are of opinion, on the basis of such facts as are not in dispute in this case, that it is not open to the respondent to say that if a writ

cannot be granted a direction or order should be made. We think it is not possible for this Court in summary proceedings under Article 226 to

grant any order or direction such as is sought by the respondent.

30. In our opinion, therefore, the third preliminary objection raised against the petition on behalf of the appellant is well founded and the petition

should have been dismissed on the ground that no effective relief under it could be granted to the respondent. The petition could not therefore

succeed.

31. In the view indicated above it is not necessary to consider the other contentions raised on behalf of the appellant. The appeal, in our opinion,

must succeed. It is consequently allowed and the petition dismissed with costs throughout.