(2004) 4 BomCR 898 : (2005) 127 CompCas 645 : (2004) 52 SCL 603

Bombay High Court

Case No: Company Application No. 1125 of 2001 and 405 of 2002

Patel Engg. Co. Ltd. — APPELLANT

Vs

Official Liquidator — RESPONDENT

Date of Decision: Feb. 27, 2004

Acts Referred:

- Companies Act, 1956 - Section 460
- Maharashtra Rent Control Act, 1999 - Section 56

Citation: (2004) 4 BomCR 898 : (2005) 127 CompCas 645 : (2004) 52 SCL 603

Hon'ble Judges: A.M. Khanwilkar, J

Bench: Single Bench

Advocate: Janak Dwarkadas and M.S. Doctor, R.M. Nakhwa and V.B. Dhawan, for Bhartiya Kamgar Morcha, for Intervenor, N.M. Ganguli, for Association of Engg. Workers and Workers Directors and J. Mitra, for Dena Bank, for the Appellant; K.V. Gautam, for the Deputy Official Liquidator, for the Respondent

Judgement

A.M. Khanwilkar, J.

This order will dispose of the application preferred by M/s. Patel Engineering Company Limited (hereinafter referred to as the "Applicant") being Company Application No. 405 of 2002 and all reports of the Official Liquidator concerning the issue regarding the steps to be taken in respect of the premises in question, which were originally occupied by the company in liquidation on lease.

2. The above numbered Application has been filed by the applicant praying that the Official Liquidator be directed to hand over quiet, vacant and peaceful possession of the premises described in Exhibits "A" and "C" to the affidavit in support of that application and also for further relief of payment of a sum of Rs. 7,24,03,372 (Rupees Seven Crores Twenty-four lakhs Three thousand Three hundred Seventy-two), together with interest at the rate of 15% per annum on the principal sum of Rs. 59,20,411 (Rupees Fifty-nine lakhs Twenty thousand Four hundred Eleven) from the date of filing of the application till

the payment and/or realisation. In so far as relief (b) of payment of amounts referred to above is concerned, counsel appearing for the applicant has made a statement across the bar, on instructions, that the applicant shall not press this relief, in the event the Official Liquidator was directed to hand over quiet, vacant and peaceful possession of the premises in question. In the circumstances, the only issue that requires to be considered by me is whether the Official Liquidator should be directed to deliver quiet, vacant and peaceful possession of the premises in question to the applicant landlord.

3. The Official Liquidator as well as the ex-director have already placed on record their respective stand that holding on to the premises in question, is not essential any more. It is not in dispute that the company had stopped its activities and business since long and now the company has already been directed to be wound up by order dated 23rd January, 2004. That order is holding the field as of now. In other words, the official liquidator as well as the ex-director have conceded the position that the premises in question are no longer required for the company in liquidation. If it is so, ordinarily, having regard to the legal position enunciated by the Apex Court in the case of Ravindra Ishwardas Sethna and Another Vs. Official Liquidator, High Court, Bombay and Another, , particularly paragraphs 9 and 11 thereof, this Application ought to succeed. Paras 9 and 11 of the said decision read thus :

"9. The company was a tenant or a lessee of the premises of which the appellants are the landlords. The date of the commencement of the lease is not made available to us, but it is also not claimed on behalf of the liquidator that there was lease of long duration. If so, the company was a statutory tenant under the Rent Act. The statutory tenancy confers the right to be in possession but if the tenant does not any more require use of the premises, the provisions of the Rent Act and especially sections 13 and 15 completely prohibit giving the possession of the premises on licence or on sub-lease. The learned company judge, therefore, spelt out a third way of parting with the possession by the liquidator, namely, that he may give the premises to the second respondent under a caretaker"s agreement. This caretaker"s agreement appears to us to be an euphemism for collecting compensation which is nothing else but the charge for use and occupation of the premises exclusively by the second respondent. Whether it is sublease or licence does not call for decision. For the purpose of the present proceedings it is enough for us to say that the company and its liquidator no more need the premises for its own use. The liquidator does not need the use of the premises for carrying on the winding up activities of the company because he sought direction for parting with possession. We are not impressed by the learned Judge saying that there is some third mode of parting with possession of the premises exclusively in favour of the second respondent, namely, caretaker"s agreement which appears to us to be a facade to wriggle out of the provisions of the Rent Act. The Rent Act is no doubt enacted for protecting the tenants, and indisputably its provisions must receive such interpretation as to advance the protection and thwart the action of the landlord in rendering tenants destitutes. But this does not imply that the Court should lend its aid to flout the provisions of the Rent Act so as to earn

money by unfair and impermissible use of the premises. And that is what the Liquidator sought to do and the court extended its help to the liquidator. This, in our opinion, is wholly impermissible. The learned company Judge could not have authorised the liquidator to enter into such an agreement and, therefore, his order is liable to be set aside. 11. The learned company Judge could not have permitted holding on to possession of the premises, not needed for efficiently carrying on winding up proceedings. The only course open to him was to direct the liquidator to surrender possession to landlords and save recurring liability to pay rent. Before we part with this judgment, we must take note of one submission that was made on behalf of the respondent. It was said that the creditors and members of the company in liquidation have suffered huge losses and if the Liquidator would have been permitted to enter into an agreement with the second respondent, it would fetch a steady income which would have gone towards mitigating the hardships of the creditors and members of the company. The accounts of the company in liquidation were not brought to our notice nor can we permit violation of law howsoever laudable the object of such act may be...." (p. 1064)

4. However, the relief as claimed on behalf of the applicant is resisted only by the workers'' union of the erstwhile workers of the company in liquidation. Essentially, only four points have been raised to oppose the relief as prayed in this application. The first contention on behalf of the workers'' union is that admittedly, the applicant has filed suit in the court of Small Causes for eviction against company in liquidation - original tenant, and that suit is pending adjudication. It was argued that since the applicant has already taken recourse to remedy of eviction as permitted by the provisions of the Rent Act, the relief claimed in the present application is unavailable. I find no substance in this argument. Merely because the landlord has instituted suit for eviction against the tenant, who happens to be company in liquidation, that alone cannot be the basis of non-suiting the landlord to invoke the present remedy which is an independent and special remedy available to him by virtue of the provisions of the Companies Act. Whereas, having regard to the purport of the Companies Act and the law enunciated by the Apex Court in Ravindra Ishwardas Sethna''s case (supra), there will be no impediment for the landlord to take recourse to the remedy under the provisions of the Companies Act on the established fact that the premises were no longer required for the business of the Company in liquidation or by the official liquidator.

5. The second objection raised on behalf of the workers'' union is that the present Application is ostensibly filed by the applicant company, but as a matter of fact, there is commonality of directors in the applicant company as well as the company in liquidation. This argument is wholly misplaced and unsubstantiated. The fact that since March 1990, the company in liquidation and the applicant company have no common directors, is a statement of fact, which was made on affidavit before this Court in Writ Petition No. 4858 of 2003. Reliance was placed on the said affidavit even by the Counsel for the workers'' union, however, on fair reading of the said affidavit, the position that emerges is that since

March 1990, the company in liquidation and the applicant company have no common directors. That averment made on affidavit has remained uncontroverted. In fact, this aspect was considered by the Division Bench of this Court and having accepted the same, it was pleased to vacate the ad-interim order granted earlier, as can be discerned from para 3 of the order passed by the Division Bench dated October 9, 2003 in Writ Petition No. 4858 of 2003. Understood thus, there is no substance in the objection as taken, on behalf of the workers" union. Assuming that some of the directors in Company in liquidation and the Applicant Company were common, to my mind, that by itself would have made no difference for deciding the present application because the fact that some directors were common to both, alone cannot be the basis for non-suiting the landlord of the relief claimed in this application when the landlord is a separate juristic person.

6. That takes me to the third objection raised on behalf of the workers" union. It was contended that it was obligatory to give notice to all the creditors before passing any order on this application because it would amount to divesting of the property of the company in liquidation. In support of this submission, reliance was placed on the decision of the Apex Court in the case of Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd., . In my opinion, reliance placed on this decision is wholly misplaced. The dictum in the said decision would be appropriate to proceedings wherein the Court was still to pass the order of winding up. That stage has already passed; and now the landlord of the premises which were occupied by the company in liquidation as lessee has approached this court for the relief as referred to above. In so far as the relief claimed in this application is concerned, the question of giving notice to all the creditors or hearing all the creditors, will not arise. The circumstances in which such relief can be and ought to be granted, is already enunciated in the decision of the Apex Court in Ravindra Ishwardas Sethna"s case (supra). Those circumstances are clearly present in this case. Accordingly, I find no substance even in the third contention canvassed on behalf of the workers" union.

7. The last argument canvassed on behalf of the workers" union was that the lease deed, if properly read, permitted renewal of lease and it will have to be assumed that there was renewal of the lease. It was next contended that since the lease was enuring in favour of the company in liquidation, it was appropriate that the Court would explore the possibility of transferring the lease in favour of the third party, upon receiving consideration, as would be permitted by the provisions of Section 56 of the Maharashtra Rent Control Act, 1999. This submission is countered on behalf of the applicant. In the first place, contends learned counsel for the applicant, that the plea of invoking Section 56 is not taken in the pleading as filed by the Workers" Union for which reason this contention ought not to be permitted as it is being raised only across the bar without any foundation therefor. Moreover, it is argued that the relevant Clauses of the Lease Deed, in particular, clauses "J" "Y" and "BB" plainly mean that company in liquidation being lessee was not competent to assign or transfer the demised premises, without the consent of the landlord. It is also contended that assuming that Section 56 of the Maharashtra Rent

Control Act, could be invoked to consider the claim of the workers'' union, however, in the present case, the tenancy rights of the company in liquidation have already been determined by giving notice and suit has been instituted not only on the ground that the lease period has expired and the occupation of the company in liquidation is, therefore, unauthorised, but also on the ground of default within the meaning of Section 12 of the Bombay Rent Act, as was applicable at the relevant time. It was contended that, besides the stipulation in the Lease Deed, having regard to the fact that the tenancy rights of the company in liquidation have been determined and eviction proceedings have already been resorted to by the landlord in that behalf, the question of invoking Section 56 in that situation, does not arise. It is further contended that in any case, to give benefit to the tenant of the provision of Section 56, it is imperative that the landlord should consent for the proposed transfer in favour of the third party and in absence of express consent by the landlord in that behalf, the provisions such as Section 56 of the Maharashtra Rent Control Act, will not come to aid of the tenant.

8. Having considered the rival submissions, to my mind, it is not necessary for me to examine as to whether the lease stood renewed or not. The fact remains that the company in liquidation was in possession of the premises, even after the expiry of the lease period. Indeed, the tenancy rights of the company in liquidation have been determined by the landlord and Suit for eviction has been instituted on the grounds referred to above. Moreover, the applicant has already approached this court by way of present application, claiming that the possession of the premises in question be made over to the applicant. If that is so, it presupposes that the applicant is unwilling to consent for the transfer or assignment of the premises in favour of third party for consideration. In any case, counsel for the applicant/landlord has stated across the bar, on instructions, that there is no question of applicant consenting for transfer or assignment in favour of third party. As mentioned earlier, consent of the landlord to avail of the benefit of provisions of Section 56 is sine qua non and since that is absent in the present case, the question of examining the matter any further, does not arise. However, to get over this position, Counsel for the workers'' union placed reliance on the contents of several orders passed by the B.I.F.R. In my opinion, as rightly contended by the Counsel for the applicant that the proposals referred to therein were mooted and considered before the B.I.F.R. only to explore the possibility of revival of the company, but since that attempt did not fructify, the proposals which were given at the relevant time, cannot be the basis to non-suit the applicant in the present proceedings. Moreover, those proposals were given without prejudice to the rights and contentions of the respective parties. So understood, the observations of the B.I.F.R. pressed into service on behalf of the workers'' union will be of no avail.

9. Taking overall view of the matter, in my opinion, there is hardly any legitimate ground available to the workers'' union to resist the claim of the landlord for possession of the suit premises, especially when it is established from the record that the premises in question are no longer required for the company in liquidation. Thus, following the dictum of the

Apex Court in Ravindra Ishwardas Sethna''s case (supra), this application is allowed in terms of prayer clause (a). However, the operative order that I propose to pass is incidentally on the same terms as was passed by Justice Deshmukh vide order dated 30th January, 2003 in the present company application, which is as follows :

(1) The Official Liquidator shall take steps to sell the movable articles which are presently lying in the premises within a period of one month from today.

(2) In case the movable articles are sold and possession thereof is given to the successful bidder within a period of one month as stated above, at the end of that period, the Official Liquidator shall handover vacant possession of the premises to the landlord.

(3) In case the sale of movables cannot be completed within a period of one month, that fact shall be communicated by the Official Liquidator to the landlord. On receiving that communication, the landlord shall provide a separate room in the same premises to the Official Liquidator for storing the unsold movables. That room shall remain in the custody and control of the Official Liquidator till the movables are disposed off. On such room being provided and the movables being shifted to that room at the cost of the landlord, the Official Liquidator shall handover possession of the premises to the landlord. The Official Liquidator shall see to it that the movables are disposed of in any case within a period of three months from today.

(4) The learned Counsel appearing for the landlord has stated before me that in view of this order, the landlord shall withdraw the suit that is filed in the Small Causes Court and the landlord shall not claim any amount as rent, charge or compensation from the company and the Official Liquidator, either towards arrears or towards future charges. Statement is accepted.

(5) It is, however, made clear that in so far as security charges are concerned, Dena Bank being the secured creditor in relation to movable assets, will have to share the security charges along with the applicant, being the landlord of the immovable assets of the company in liquidation. Both shall share security charges proportionately. Official Liquidator to take steps in that behalf.

10. As mentioned earlier, this order not only disposes of the Company Application No. 405 of 2002, but also all the Reports of the Official Liquidator in relation to the premises in question.

11. At this stage, request is made for stay of operation of this order for four weeks. Stay granted, as prayed for.