
(2007) 03 BOM CK 0016

In the Bombay High Court

Case No : C.A. No. 720 of 2006 in C.P. No. 201 of 1994

Erach Boman Khavar

APPELLANT

Vs

Tukaram Sridhar Bhat

RESPONDENT

Date of Decision : 05-03-2007

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 13(2), 28
Companies (Court) Rules, 1959 — Rule 117, 298, 299
Companies Act, 1956 — Section 210, 211, 446, 455, 458
Maharashtra Rent Control Act, 1999 — Section 3(1), 33
Presidency Small Cause Courts Act, 1882 — Section 41
Transfer of Property Act, 1882 — Section 106

Citation : (2008) 1 CompLJ 111 : (2008) 81 SCL 416

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : K.V. Gautam, Kamal Khata and J.A. Shah, for the Appellant; Hiralal Thakkar, U.M. Mahajan and M.K. Nesari, for the Respondent

Judgement

V.C. Daga, J.—The applicant has invoked the jurisdiction of this Court u/s 446 of the Companies Act, 1956 ("the Companies Act" for short), to seek leave to file and proceed with the suit in the Small Causes Court at Mumbai filed u/s 41 of the Presidency Small Causes Court Act, 1882, against the Official Liquidator and one another.

The Facts:

2. The factual matrix giving rise to the present application is as under:

The applicant herein is the owner of flat No. 12-A located in the building New Sagar Darshan, 81 /83, Bhulabhai Desa Road, Mumbai-400 026 ("the said premises" for short).

M/s. Poysha Industrial Co. Ltd. ("the said company" for short), was inducted on leave and licence basis on the terms and conditions set out in the agreement of

leave and licence dated June 17,1975, executed between the applicant's father Mr. B. P. Irani and the said company. The licence although expired by efflux of time the said company continued to occupy the suit premises and tendered licence fee which was accepted by the applicant's father without prejudice to his rights.

The applicant's father had filed an eviction suit being RAE Suit No. 901 2695 of 1990 in the Small Causes Court at Mumbai against the said company under the provisions of Section 13(1)(g), read with Section 13(2) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1937, ("the Bombay Rent Act" for short) on the ground of bona fide requirement of the applicant's father. During the pendency of the said suit, Mr. B.P. Irani, father of the applicant, died. His heirs and legal representatives brought themselves on record of the said suit. The said suit has now been withdrawn on 12-7-2004.

In the meanwhile, M/s. Poysha Industrial Co. Ltd. was ordered to be wound up by order of this Court dated 9-1-1998. Company Application No. 731 of 1999 was made seeking return of the premises to the owner. The said company application was dismissed by the learned Company Judge on 14-2-2000. An appeal came to be filed against the said order, which was dismissed on 22-8-2000.

3. On 20-12-2000, an application was made by the owner of the property u/s 446 of the Companies Act for leave to file eviction suit in the Small Causes Court at Mumbai, against the Official Liquidator and the sub-tenant one Mr. Tukaram Shridhar Bhat.

After hearing the parties, leave was granted by the learned Company Judge on 15-2-2001. Consequently, the owner (landlord) filed suit being RAE Suit No. 228/366 of 2001 before the Small Causes Court; wherein the Official Liquidator of the said company and the sub-tenant were made party defendants. In the said suit the landlord had prayed for a decree against the company and occupant of the premises who failed to handover peaceful and vacant possession of the suit premises.

4. The present applicant made Company Application No. 45 of 2006 before the learned Company Judge u/s 446 of the Companies Act for leave to file eviction suit u/s 41 of the Presidency Small Causes Court Act against the Official Liquidator of the said company in liquidation and the alleged sub-tenant (Mr. Tukaram Shridhar Bhat). The said company application came to be disposed of by the learned Company Judge (Mr. Vazifdar, J.) on 23-2-2006, by the following order:

2. Mr. Thakkar, learned senior counsel appearing on behalf of respondent No. 2, states that in the event of the petitioner making an application for amendment of the plaint in RAE Suit No. 228/366 of 2001 on the basis of the averments made in the present Judges summons, respondent No. 3 will not oppose the same. In view thereof, it is not necessary to grant the present Judges summons.

3. Liberty to the applicants to apply, if necessary. The amendment, if granted, will however, be subject to the rights and contentions of respondent No. 3 on merits.

The applicant did not file amendment application to amend the plaint of RAE Suit No. 228/366 of 2001 which was pending before the Small Causes Court at Mumbai.

5. The present applicant made a fresh application being Company Application No. 720 of 2006 seeking fresh leave of the court u/s 446 of the Companies Act for filing fresh eviction suit against the Official Liquidator of the company in liquidation u/s 41 of the Presidency Small Causes Court Act. At this stage it would be relevant to note that the sub-tenant Mr. Tukaram Bhat was not impleaded as a party respondent to the said application. The learned Company Judge allowed the said Application No. 720 of 2006 by the order dated 27-7-2006.

Pursuant to the leave granted by the learned Company Judge on 27-7-2006, the landlord chose to file eviction suit in respect of the suit premises against the Official Liquidator of the company in liquidation as well as the sub-tenant.

6. Mr. Tukaram Bhat (sub-tenant) after having acquired knowledge of the aforesaid order dated 27-7-2006, took out Company Application No. 863 of 2006 to recall the order dated 27-7-2006. However, the said application came to be rejected by order dated 28-9-2006.

Being aggrieved by the aforesaid orders dated 27-7-2006, and 28-9-2006, an appeal being Appeal No. 779 of 2006 was preferred by the subtenant Mr. Tukaram Bhat, inter alia, on the ground that the prejudicial order granting of leave came to be passed behind his back and in disregard to Rule 117 of the Companies (Court) Rules, 1959.

7. The Division Bench was pleased to hear the above appeal. After hearing the parties to the appeal, the Division Bench was pleased to set aside the orders dated 27-7-2006, and 28-9-2006, and restored the Application No. 720 of 2006 to the file of the Company Judge and directed rehearing and decision on the application afresh in accordance with law after hearing the sub-tenant. All contentions of the parties were kept open for being raised and agitated before the Company Judge in the Company Application No. 720 of 2006. That is how, the above application came to be placed before me for hearing and decision afresh on merits.

Submissions:

8. Mr. Kamal Khata, learned Counsel appearing for the applicant, submits that the Bombay Rent Act was repealed and replaced by the Maharashtra Rent Control Act, 1999 ("the Maharashtra Rent Act", for short). Clause (b) of Sub-section (1) of Section 3 thereof lays down that the Act shall not apply to the premises let or sub-let to banks, or any public sector undertakings or any corporation

established by or under any Central or State Act, or foreign missions, international agencies, multinational companies and private limited companies and public limited companies having a paid up share capital of rupees one crore or more and therefore, submits that a tenant such as the company in liquidation is exempted from the purview of rent legislation by Clause (b) of Section 3(1) of the Maharashtra Rent Act.

The implication of the above provision is that the licence or tenancy of such licensees or tenants are not governed by Rent Act but they are subjected to the provisions of the Indian Contract Act, 1872, and/or the Transfer of Property Act, 1882, or by other laws other than Rent Law.

Learned Counsel further submits that the paid up share capital of M/s. Poysha Industrial Co. Ltd. being more than Rs. 1 crore, the said company is not entitled to protection of the Maharashtra Rent Act by virtue of the provisions of Section 3(1)(b) of the said Act.

9. The applicant, accordingly, claimed to have terminated the tenancy of the said company by notice u/s 106 of the Transfer of Property Act dated 21-9-2005, and as per legal advise had decided to file a suit for eviction u/s 41 of the Presidency Small Causes Court Act and took out Application No. 720 of 2006 which was finally heard and disposed of by the Company Judge (Dharmadhikari, J.) vide order dated 27-7-2006, whereby the applicant herein was granted leave to file suit.

Learned Counsel for the applicant submits that though the relief for possession was claimed in the suit already filed, the cause of action in two suits was entirely different. Hence, under legal advise fresh application was moved being Company Application No. 720 of 2006 seeking leave of the Court u/s 446 of the Companies Act for filing fresh eviction suit against the company in liquidation without joining the alleged subtenant as party respondent. He further submits that pursuant to the leave already granted by the Company Judge vide order dated 27-7-2006, the suit u/s 41 of the Presidency Small Causes Court Act came to be instituted. However, the said order dated 27-7-2006, having been set aside by the Division Bench in appeal, the applicant/plaintiff cannot proceed with the said suit, hence leave to proceed with the suit needs to be granted in view of the subsequent event narrated hereinabove.

Learned Counsel submits that the substantial question in the suit between the plaintiff and the defendants is that whether the premises is exempted from the provisions of the Maharashtra Rent Act with other allied issues as to the status of the sub-tenant who is in occupation of the suit premises cannot be gone into and decided in the winding up proceeding. The suit against the sub-tenant cannot be proceeded with in the absence of the company. The Official Liquidator has already made a statement in reply to the present application that she is not in need of the tenanted premises. He further submits that in this view of the matter since the interest of third party is involved, which cannot be decided by this

Court, as such this is a fit case for grant of leave u/s 446 of the Companies Act with liberty to the applicant herein to proceed with the eviction suit.

Learned Counsel appearing for the applicant relies upon the Apex Court judgment in the case of Smt. Nirmala R. Bafna/Kershi Shivax Cambatta and others Vs. Khandesh Spinning and Weaving Mills Co. Ltd., and another/Official Liquidator and others, , to contend that (a) the tenancy rights the company had, in the flat cannot be regarded as asset for the purpose of liquidation proceedings; and (b) merely because the company goes in liquidation and the Liquidator/Official Liquidator is appointed, the rights of the company vis-a-vis its landlord and/or its tenants do not undergo any change. He further submits that the applicant is well within his right to institute suit u/s 41 of the Presidency Small Causes Court Act and proceed with the same. He also placed reliance on the judgment of the Apex Court in the case of Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel, , to contend that the sub-tenant occupying the premises does not get protection of the rent legislation once the protection or immunity given to the head tenant with respect to the demise premises is taken out by the Legislature. He has also placed reliance on the Division Bench judgments of this Court in the case of Hindusthan Petroleum Corpn. Ltd. v. Dilip Prabhakar Dingorkar (2006) Supp. BCR 592 , and Godrej and Boyce Mfg. Co. Ltd. Vs. Sridhar Jagannath Nerurkar, , to contend that the landlord can file second suit for eviction under the general law that is under the Transfer of Property Act against the tenant who does not have protection of the Maharashtra Rent Act, notwithstanding, the previous suit filed by the landlord for eviction of tenant under the provisions of the Bombay Rent Act is pending since the cause of action for both suits are different.

10. So far as the power of this Court to grant leave u/s 446 of the Companies Act is concerned, reliance is placed on the Division Bench judgment of this Court in the case of Balkrishna Mahadeo Vartak v. Indian Association Chemical Industries Ltd. [1958] 28 Comp. Cas. 179, wherein Chainani, J. (as he then was), stated that leave to file suit should ordinarily be granted where the question at issue is one which cannot be gone into and decided in the winding up proceeding. He also relied upon the judgment of the Madras High Court in the matter of T.V. Purushottam & Co. v. Provisional Liquidators, Subhodaya Publications Ltd. [1955] 25 Comp. Cas. 49 (Mad.), wherein the above principle governing grant of leave to continue proceedings were laid down by the Madras High Court in the following words:

Cases where the company is necessary party to the action but there are other defendants as well, the Courts generally grant leave: and that Court may obtain undertaking of the applicant that he will not enforce against the company any judgment which he may obtain without the leave of the Court.

He also pressed into service the recent judgments of the Apex Court in the case of Harihar Nath v. State Bank of India [2006] 131 Comp. Cas. 119 : 67 SCL 234 and State of Jammu & Kashmir v. UCO Bank [2006] 129 Comp. Cas. 239 : 66

SCL 191 , in support of his submission.

Per contra, Mr. Thakkar, learned senior counsel appearing for the subtenant, urged that no leave, as sought, can be granted as the applicant has failed to comply with the earlier order of the learned Company Judge (Vazifdar, J.) dated 23-2-2006. He further submits that the said order is binding on the applicant as such the present application is hit by the principle analogous to doctrine of res judicata.

Mr. Thakkar further submits that since the subject suit has already been instituted without there being a prior permission of the Company Judge, the said suit itself is not maintainable and no post facto leave can be granted.

Mr. Thakkar further submits that in view of the provisions of Sections 210 and 211 of the Companies Act, read with Rules 298 and 299 of the Companies (Court) Rules, 1959, the concept of share capital is unknown to the company in liquidation and, therefore, the benefit of Section 3(1)(b) of the Maharashtra Rent Act is not available to the applicant. As such the suit as filed by the applicant is not maintainable and, if that be so, this Court is not expected to grant leave to prosecute such suit which is not maintainable in the eye of law.

Mr. Thakkar further submits that the leave of the Court is not to be granted as a matter of course or merely for the asking. On a formal application being made, the Court has to examine the fact and circumstances of each case separately and exercise its discretion judicially and not in a capricious or arbitrary manner. While exercising discretion the Court must examine the tenability of the suit and if satisfied may grant conditional leave or may refuse it absolutely. In support of his submission, he placed reliance on the judgment in the case of T.V. Purushottam & Co. (supra) and that of the Allahabad High Court in the case of Balaji Patekar v. Official Liquidator [1968] 38 Comp. Cas. 16. Reliance is also placed on the judgment of the Kerala High Court in the case of CIT v. Official Liquidator, Palai Central Bank Ltd. [1979] 49 Comp. Cas. 268, to buttress his submissions.

Mr. Thakkar, after laying the aforesaid foundation went a step ahead and urged that this Court has to examine not only the maintainability of the suit but the merits of the contention with regard to the applicability or non-applicability of the provisions of the rent legislation, the jurisdiction of the Small Causes Court to entertain and try the suit, the question of necessity to grant successive leaves when the applicant is indulging in spate of litigation against the company which causes financial strain on the resources of the company in liquidation.

Mr. Thakkar took me through the various provisions of the Maharashtra Rent Act and advanced his submission on the length and width of Section 33 of the said Act to contend that all suits between the landlord and tenant must be filed u/s 33 of the said Act irrespective of the fact whether Act is applicable or not. In his submission suit u/s 41 of the Presidency Small Causes Court Act is not tenable. In other words, submission of Mr. Thakkar is that notwithstanding the fact that

the Maharashtra Rent Act is not applicable to the suit premises, still the suit has to be filed u/s 33 of the said Act to seek possession of the tenanted premises from the tenant and as such it was obligatory on the part of the applicant to amend the existing suit being RAE Suit No. 228 366 of 2001 on the basis of the leave granted by the learned Company Judge (Vazifdar, J.) vide order dated 23-2-2006, and no leave to prosecute fresh suit u/s 41 of the Presidency Small Causes Court Act needs to be granted. He, thus, prayed that the application seeking leave to proceed with the fresh suit should be rejected.

In rejoinder, learned Counsel appearing for the applicant urged that close and careful reading of Section 446 of the Companies Act will make it clear that leave of the Court is not a condition precedent for the commencement of any suit or other proceeding. Leave of the winding up court can be obtained even after commencement of the proceeding. He placed reliance on the judgment of the Apex Court in the case of *Bansidhar Shankarlal v. Mohd. Ibrahim* [1971] 41 Comp. Cas. 21. He also brought to any notice that the principle laid down in the said judgment of *Bansidhar Shankarlal's* case {supra} is reiterated by the Apex Court in the case of *State of Jammu & Kashmir* (supra).

Learned Counsel appearing for the applicant relying on the various provisions of the Companies Act, reference to which is made in the later part of the judgment, urged that the view of the Kerala High Court may be a good view for the purposes of assessment of super profits tax under the provisions of the Super Profits Tax Act, 1963, but the said principle or the ratio of the said judgment cannot be extended while considering the effect of exemption under the provisions of the Maharashtra Rent Act. He further urged that the concept of share as understood under the provisions of the Companies Act is not a sum of money. It represents an interest measured by a sum of money and made up of diverse rights contained in the contract evidenced by the articles of association of the company. Reliance is placed on the judgment of the Apex Court in the case of *The Commissioner of Income Tax (Central), Calcutta Vs. Standard Vacuum Oil Company*, . It is thus urged that Rent Act is not applicable, as such this is a fit case for grant of leave u/s 446 of the Companies Act.

Consideration:

11. Having heard learned Counsel appearing for the parties, the first contention which needs consideration is: whether failure to obtain permission prior to institution of suit debars the court from granting such leave subsequently. This question has already been answered by the Apex Court in the case of *Bansidhar Shankarlal* (supra) and reiterated by the Apex Court in the recent judgment in the case of *State of Jammu & Kashmir* {supra} wherein the Apex Court held that the failure to obtain leave prior to institution of suit would not debar the Court from granting such leave subsequently and that the only consequence of this would be that the proceedings would be regarded as having been instituted on the date on which the leave was obtained from the High Court. In view of this categorical pronouncement of the law, the objection to the maintainability of the

application raised by the learned senior counsel appearing for the sub-tenant is devoid of any substance.

The next objection sought to be raised by Mr. Thakkar is that the order passed by the learned Company Judge (Vazifdar, J.) dated 23-2-2006, would debar the applicant from moving and prosecuting another or fresh application for leave to file fresh suit u/s 41 of the Presidency Small Causes Court Act on the application of the principle analogous to the doctrine of res judicata. This contention is also devoid of any substance in view of the fact that by order dated 23-2-2006, the Company Court did not decide the application praying for leave u/s 446 of the Companies Act on merits. In the order only concession given by counsel appearing for the sub-tenant, came to be recorded, who had said that he would not oppose prayer for amendment of plaint. In this view of the concession given, the Court did not find it necessary to grant Judge's summons. However, liberty was reserved in favour of the applicant to apply afresh, if necessary. It would, thus, be clear that by the impugned order the Company Judge did not decide the question of grant of leave on merits dealing with the contentions of the rival parties. Apart from this, liberty was reserved in favour of the applicant to apply, if necessary. In this view of the matter in the absence of any adjudication of the rights of the parties, neither doctrine of res judicata nor concept of res judicata or the principle analogous thereto could be attracted. Thus, the submission made in this behalf holds no water.

Having dealt with the aforesaid two preliminary contentions, let me now turn to the judicially recognised principle on which the question of grant of leave u/s 446 of the Companies Act is required to be considered. Based on the survey of the various judicial pronouncement, the general principle, on which the leave is to be granted in an action, may be shortly summarised as follows:

The leave of the Court is not granted as a matter of course or merely for the asking. On a formal application being made, the Court will examine the facts and circumstances of each case and exercise its discretion judicially and not in a capricious or arbitrary manner. In the exercise of its discretion, it may grant leave unconditionally or on terms or may refuse it absolutely.

The Court has the power to incorporate any terms while granting leave, and this is explicit by the words "except by leave of the Court and subject to such terms as the Court may impose.

The object of the section appears to be to save the company which is being wound up, from unnecessary litigation and to protect the assets for equitable distribution among its creditors and shareholders. The consequence of the winding up order, therefore, is that no suit can be filed against the company without obtaining leave of the Court. In dealing with the question of grant of leave, the Court has to necessarily consider the interest of the company and to see that the assets are not wasted in unnecessary litigation. Leave to file suit should ordinarily be granted where the question at issue is such which cannot be

gone into and decided in the winding up proceeding.

12. This Court, while considering the prayer for grant of leave has to bear in mind the aforesaid settled principles culled down from the various judgments of the various Courts. Now, let me turn to the question whether the interest of the company would get affected, if the leave to file suit as prayed for by the applicant is granted. While considering this aspect, one has to keep in mind the law laid down by the Apex Court in the case of Smt. Nirmala R. Bafna (supra), wherein the Apex Court ruled that in addition to the factual situation there are two other circumstances which must be taken into consideration, namely, (a) the tenancy rights of the company in the tenanted premises are not an asset for the purpose of liquidation proceedings; and (b) merely because the company moves in liquidation and a Liquidator/Official Liquidator is appointed, the rights of the company vis-a-vis its landlord or tenants do not undergo any change. Keeping in mind these judicially recognised statements of law, if one turns to the reply filed by the Official Liquidator to oppose this application, it is amply made clear that the Official Liquidator does not need premises for its use and therefore the Official Liquidator has no objection for releasing the premises in favour of the landlord. If that be so it would not be necessary for the Official Liquidator to incur expenses to defend the suit because the Official Liquidator does not need the suit premises and on top of it the tenancy rights that the company had in the premises, are not the asset for the purpose of liquidation proceedings. So far as the sub-tenant is concerned, he would be the only contesting party to the suit. Therefore, the question of creating strain on the financial resources of the company in liquidation could not be a factor which should weigh with this Court while considering the application for grant of leave.

Considerable length of arguments were advanced by both the parties with respect to the exemption to the premises in question and maintainability of the suit u/s 41 of the Presidency Small Causes Court Act. One of the limb of the arguments advanced revolved around the question : whether the concept of share capital is known or unknown to the company under liquidation.

Mr. Thakkar, learned senior counsel, urged that the concept of share capital is unknown to such a company. Whereas learned Counsel appearing for the applicant tried to contend that merely because the company is in the process of winding up, that by itself does not result in wiping out the concept of share capital. Both rival counsel pressed into service various provisions of the Companies Act in support of their rival contentions.

In this behalf, it would be useful to note that for a company to have share capital, it is necessary that its memorandum should state the amount and its division. This share capital is different from membership fee, even if the payment is symbolised by the issue of share. The amount stated in the memorandum becomes the authorised capital of the company. The whole or any part of it may be issued. Supposing, only half of it is issued, then that becomes the issued capital of the company. If the offer of issue is made to the public the whole of it

may not be taken up. That part of the issued capital which has been allotted is known as the subscribed capital. The company need not immediately call upon the whole amount. The actual amount received is called the paid up capital. The uncalled capital of a company can be converted into reserve capital. By passing a special resolution, the company may declare that a portion or whole of its uncalled capital which shall not be called except in the event of winding up. Such a capital cannot be converted except with the leave of the court; it cannot be charged by the directors.

13. Section 69 of the Companies Act provides for subscription. The first requisite of valid allotment is that of minimum subscription. When shares are offered to the public, the amount of minimum subscription has to be stated in the prospectus. Minimum subscription means the amount which is, in estimate of directors, enough to meet the following needs, namely, purchase price of any property to be defrayed partly or wholly out of the proceeds of the issue, preliminary expenses and working capital. u/s 69(3) no shares can be allotted unless at least so much amount has been subscribed and the application money, which must not be less than five per cent of the nominal value of the share, has been received in cash. Therefore, it is clear that uncalled capital of the company can be called in the event of winding up.

Under Section 455 of the Companies Act where a winding up order is made the Official Liquidator is required to submit a preliminary report to the Court as to the capital issued, subscribed, and paid up, and estimated amount of assets and liabilities, giving separately, under the heading of assets, as contemplated under the said section.

Under Section 458, the Official Liquidator has to realise uncalled residue of the company's capital. The Liquidator has to call upon the shareholders, who are then called contributory to pay unpaid balance. It is, therefore, clear that the rival submissions made by learned Counsel appearing for the parties about the existence of share capital in the event of winding up of the company is an argument of substance which will have to be considered by the Competent Court in the suit while adjudicating upon the rights of the rival parties. It is not for this Court to decide that question since this Court is considering limited question as to whether or not leave to prosecute suit should be granted.

14. The issues involved in the suit and the reliefs claimed cannot be adjudicated upon or decided by this Court in exercise of company jurisdiction. That jurisdiction shall be with the Court trying the suit. The interest of the company in liquidation is not at all involved in the said suit as already recorded hereinabove for the reasons stated. Therefore, the question of invocation of jurisdiction of the Small Causes Court either u/s 28 of the Bombay Rent Act or u/s 33 of the Maharashtra Rent Act or u/s 41 of the Presidency Small Causes Court Act is not relevant for the purpose of grant of leave because the question of jurisdiction of the Court will have to be decided on the basis of the plaint pleadings.

The Small Causes Court would be well within its right to decide its own jurisdiction. In the event it comes to the conclusion that it has no jurisdiction to try a suit under the Presidency Small Causes Court Act, in that event, it would be open for that Court either to return or reject the plaint or permit the conversion of the suit. All these conflicting questions need not be gone into and adjudicated upon by this Court at the stage of grant of leave. Only this Court has to consider that the suit is not a frivolous suit, that the suit is not such which is bound to fail for the reasons apparent on the face of the record and the same is not going to create strain on the resources of the Official Liquidator. At any stage the question raised in the suit is arguable one.

15. In the aforesaid view of the matter, this is a fit case for grant of leave, however, subject to the condition that in the event of the decree the same shall not be executed against the company in liquidation without the leave of this Court.

In the result, the application is made absolute in terms of this order.

Company Application is disposed of accordingly, with no order as to costs.

16. At this stage, learned Counsel for the respondent prayed for stay of this order. I do not think it is necessary because decision of suit shall take its own time during which this order can conveniently be challenged, if advised.