
(1969) 09 DEL CK 0005

In the Delhi High Court

Case No : Company Application No. 183 of 1969

Globe Financiers (P.) Ltd.

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 10-09-1969

Acts Referred:

Citation : (1970) 40 CompCas 1161

Hon'ble Judges : S.K. Kapur, J;M.R.A Ansari, J

Bench : Division Bench

Advocate : Khanna, for Creditor, for the Appellant; Party in person, for the Respondent

Judgement

S.K. Kapur, J.—Messrs. Globe Financiers (P.) Ltd. has been ordered to be wound up by the court. The official liquidator claiming that the company was a tenant in possession of a part of building No. 4/9, Asaf AH Road, New Delhi, applied for permission to auction the tenancy rights of the company. A question arose as to whether or not a company in liquidation could, in view of the provisions of Delhi Rent Control Act, 1958, sell or otherwise transfer its tenancy rights. Since this question has been arising in a number of cases the matter was referred for decision to a larger Bench and that is how it has come before us for disposal.

2. For answering this question a few provisions of the Delhi Rent Control Act, 1958 (hereafter referred to as the " Rent Act "), must be noticed. Sub-sections (1) to (3) of Section 5 read :

" 5. Unlawful charges not to be claimed or received.-

(1) Subject to the provisions of this Act, no person shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary.

(2) No person shall, in consideration of the grant, renewal or continuance of a tenancy or Sub-tenancy of any premises,--

(a) claim or receive the payment of any sum as premium or pugree or claim or

receive any consideration whatsoever, in cash or in kind, in addition to the rent;
or

(b) except with the previous permission of the Controller claim or receive the payment of any sum exceeding the month's rent of such premises as rent in advance.

(3) It shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant or a Sub-tenant to claim or receive any payment in consideration of the relinquishment, transfer or assignment of his tenancy or Sub-tenancy, as the case may be, of any premises....."

3. There are, however, some exceptions provided in Sub-section (4) of Section 5 which it is not necessary to read as they have no bearing on the point which we have to decide. Section 14 controls the eviction of tenants. Under that section one of the grounds, on which a decree for eviction can be passed is that a tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord. Subsection (3) of Section 16 provides that:

" After the commencement of this Act, no tenant shall, without the previous consent in writing of the landlord;.....

(b) transfer or assign his rights in the tenancy or any part thereof."

4. Contravention of Sub-section (3) of Section 5 is punishable by Section 48.

5. The question at issue is whether in view of these provisions of the Rent Act the official liquidator can (a) transfer the tenancy rights of the company without the-consent of the landlord, and (b) claim or receive any payment in consideration of the transfer or assignment of the tenancy. No arguments were addressed to us regarding the rights of a statutory tenant to assign his interest. I will, Therefore, express no opinion thereon. I may, however, indicate that a mere statutory tenant has no interest in the property and may not be competent to assign the tenancy rights. The matter requiring closer consideration arises in the case of subsisting contractual tenancy. The answer to this question must, to a large extent, depend on the status of the company after it has been ordered to be wound up. Till a company is dissolved it retains its corporate existence though administration of its affairs passes to the liquidator. Mere passing of a winding up order cannot operate as an extinction of the company's entity. Sub-section (2) of Section 456 of the Companies Act provides that:

" All the property and effects of the company shall be deemed to be in the custody of the court as from the date of the order for the winding up of the company."

6. By virtue of Section 456 the official liquidator becomes merely a custodian of the company's property. The property does not vest in him but continues to vest in the company. In assigning leasehold rights the liquidator acts on behalf of the

company. That is so because the liquidator is not vested with the estate to the exclusion of the company. The liquidator is merely an administrator of the company for the purposes prescribed by the statute. u/s 457 of the Companies Act:

" The liquidator in a winding up by the court shall have power, with the sanction of the court,--...

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels."

7. This section groups under separate heads powers which the liquidator may exercise with or without the sanction of the court. This section was the sheet-anchor of the learned counsel for the official liquidator. According to him, since the power to sanction sale vests in the court, such a sale must be treated as a sale by the court, or by operation of law, rendering the provisions of the Rent Act restrictive of assignments inapplicable.

8. On behalf of the official liquidator reliance was also placed on Section 467 of the Companies Act. It was said that under the said provision, the court is bound to " cause the assets of the company to be collected and applied in discharge of its liabilities " and this provision lent further support to the proposition that a sale made through the court is in discharge of law. In the matter of the West Hopetown Tea Company Ltd. [1890] ILR 12 All. 192, 197., the liquidator applied u/s 144 of the Companies Act, 1882, to sell the movable and immovable properties of the company. The application was opposed on the ground that a covenant in a lease in favor of the company prohibited assignment without the previous consent of the Lesser. It was held :

"The covenant is not a covenant against assignments by operation of law, or against assignments authorised by statute. The group of sections among which Sections 10 and 12 come relate to transfer of property by act of parties. That group of sections is headed by a portion of the Act which indicates that the sections relate to transfers by act of parties. u/s 144(c) of the Indian Companies Act the court has power to give sanction to a liquidator to sell, and that power overrides a private contract against assignment by the parties. Mr. Alston's objection, in my opinion, consequently fails."

9. In *Shanti Pershad Narinder Kumar v. Paras Ram Har Nand Rai*, S.A.O. No. 2 of 1969., decided by S. Rangarajan J. on 17th March, 1969, the Bombay High Court ordered Lakshmi Bank to be wound up and directed the official liquidator to sell the tenancy rights of the said bank in the premises in question there. The official liquidator sold the tenancy rights to Shanti Pershad Narinder Kumar who took possession of the premises. The landlord applied u/s 14 of the Rent Control Act against Reikchand Gopaldas (tenant) for eviction on the ground that the latter had sublet, assigned or otherwise parted with possession of the premises without the consent in writing of the landlords. The purchaser of the tenancy rights

applied to the Rent Controller u/s 25 of the Rent Act praying for re-call of the warrants of possession. The application was resisted by the landlord, inter alia, on the ground that the purchaser could not get any valid right under the sale made by the official liquidator since the same was without the written consent of the landlord. Rangarajan J. held, following the decision of the Calcutta High Court in Krishna Das Nandy Vs. Bidhan Chandra Roy, . :

" It seems to me that the language adopted by the Delhi Rent Control Act does not lend any support to the view that there is an absolute prohibition of transfer of the tenant's interest even by operation of law ; what has been interdicted is only a transfer by the tenant without the consent in writing of the landlords. The penalty imposed by Section 48, Clause (2), pertains to such a violation by the tenant of the said provision, namely, the tenant himself making the transfer without the consent in writing of the landlord. There is no warrant whatever for extending the prohibition against transfers by the tenant to a situation as in the present case, where there was an involuntary transfer of the tenancy rights by a court-auction."

10. In Krishna Das Nandy Vs. Bidhan Chandra Roy, ., Great Indian Motor Works Ltd. held the suit premises as monthly tenant. The said company was ordered to be wound up and the court directed sale of the property and assets of the company including tenancy rights. The question arose whether it was a transfer by the tenant thereby depriving the tenant of the protection of Section 12 against eviction. It was held :

" In a compulsory winding up, the company is put into liquidation against its will by force of law and the order of the court and the sale is made by the liquidator, acting under the control of the court and with its sanction. That is the dictate of law. The sale, Therefore, is really by the court, acting through the liquidator and the company has no hand in the matter. It is thus a sale against the company's will or a sale in invitum. This is particularly so under the Indian law where the Companies Act differs in an important particular in this respect from its English counterpart (vide Section 179(c) of the Indian Act) under which the liquidator can sell only with the sanction of the court, thus contemplating prior sanction, while in the English Act (Companies (Consolidation) Act, 1908, which was considered in In re Farrow's Bank Ltd. [1921] 2 Ch. 164(C.A.)., the corresponding Section 151(2), even when read with Section 151(3), does not seem to require at least prior sanction of court in case of the liquidator's sale). The court directs the winding up and, as soon as the order is made, the assets of the company are placed by law in the custody and control of the court (vide Section 178) which eventually orders and sanctions the sale, acting under the imperative provisions of the statute (vide Section 179(c)). In essence, Therefore, it is a transfer by the court or by operation of law, and, looking to the substance of the matter, we do not find any difference in the character of this sale (which, as we have said above, is really a sale in invitum) from a sale in execution or any other compulsory sale, to which, it is not disputed, the provisos will not apply."

11. Yet another decision relied on by Mr. Khanna, the learned counsel for the creditors, was *E. Rangarajulu Naidu and Others Vs. Madura Srinivasa Mills Ltd. and Others*, . In that case the properties of the company in liquidation were sold. Shareholders of the company challenged the sale on various grounds and prayed for distribution of the property in specie amongst the shareholders. This prayer was sought to be sustained on the basis of certain articles in the articles of association which provided for distribution of the surplus assets amongst its members. It was held that once the court sanctions sale, the liquidator will not be bound by the limitations imposed by the articles of association and the power of sale vested in the liquidator was a statutory power, not derived by virtue of any right as an agent of either the court or the directors,

12. A contrary view however appears in *In re Farrow's Bank Ltd.* [1921] 2 Ch. 164 (C.A.) In that case the premises in question were demised to Farrow's Bank Ltd., and the lease contained a covenant on the part of the bank, its successors and assigns, that they would not " assign the said demised premises or any part thereof without the previous consent in writing of the Lesser first obtained." The company was ordered to be wound up and the liquidator proceeded to make necessary arrangements for the sale of the lease. He took out a summons in the winding up for a declaration, inter alia, notwithstanding the covenant restrictive of assignment by the company, the liquidator was entitled to assign the premises without the consent of the landlord. P. O. Lawrence J. held that the liquidator in selling the property was acting in invitum for the benefit of creditors, that a voluntary assignment and not an assignment in invitum was contemplated by the restrictive covenant in question, and that the liquidator was at liberty to sell and assign the term granted by the lease. The Court of Appeal, however, held that the covenant in the lease was binding on the liquidator in winding up. Lord Sterndale observed:

" But here, as I say, the act would be the act of the company acting through its liquidator who is carrying on its business for the purpose of the winding up, and who in doing the act would be doing it strictly on behalf of the company. It seems to me, Therefore, that the proposed assignment would be distinctly within the actual words of the covenant, and that the declaration should be altered by simply saying that the applicant as such liquidator is not entitled to sell and assign the said premises without written consent of the said respondent."

13. The decision in *Farrow's Bank* case [1921] 2 Ch. 164 (C. A.). was distinguished by their Lordships of the Calcutta High Court for the reason that appears in the passage from the said judgment extracted hereinbefore.

14. The decision in *Farrow's Bank* case was applied in *In re Wright: Ex parte Landau v. Trustee* [1949] Ch. 729; [1949] 2 All E.R. 605 (Ch, D.). , even in the case of a transfer by the trustee in bankruptcy on the interpretation of the covenant in the lease. Danckwerts J. observed: " Applying that to the present case, it seems to me that all that cases like *Doe d. Goodebehere v. Bevan* [1815] 3 M. &S 353. have decided is that the trustee in bankruptcy is not an assign

within the covenants in those cases that the lessee or his assigns should not dispose of the property. In the present case the words are different. The covenant, reading it with the final clause at the beginning of the lease, is a covenant by the tenant and his successors in title not to assign, and so forth, without the landlord's consent. I am unable to see why the trustee in bankruptcy, even though he obtains the property by operation of law, is not a successor in title of the debtor, that is to say, the tenant. Therefore, in my view, the trustee in bankruptcy is bound by the terms of the covenant, and I am prepared to make a declaration accordingly. "

15. In my opinion, Farrow's Bank case, applies equally in India. The distinction sought to be made on the basis of Section 457 of Companies Act on behalf of the official liquidator seems to be artificial. When the liquidator assigns the tenancy, his act is that of the company and, Therefore, the liquidator acts on behalf of the tenant. If the act of the liquidator is that of the company, it makes no difference to my mind whether the tenant company acts through its directors or the liquidator in assigning the tenancy rights. True, that u/s 457, the liquidator can sell property with the sanction of the court. That however is only the manner prescribed for the exercise of that power. But it does not have the effect of making it as the act of the court or a sale by operation of law. In my opinion, whether the power is to be exercised with or without the sanction of the court makes no difference for the purpose of deciding whether or not the sale is by the company. In that situation, the interdict against receiving money in consideration of the assignment of tenancy rights placed by Section 5 will operate fully even when the liquidator assigns it with the sanction of the court. There is no provision in the Companies Act that the liquidator shall sell properties of the company free of all restrictive covenants or legal disability and if law places a restriction on assignment by every tenant including a company, I see no reason why it should not apply to assignment when the company has to act through its liquidator. It was strenuously argued on behalf of the liquidator that Sub-section (3) of Section 16 of the Rent Act applies only to a voluntary act of the tenant and not to a sale by the liquidator which the learned counsel for the liquidator described as a forced sale. I regret I am unable to agree. There is no element of force in a sale by the liquidator. As have already pointed out there is no compulsion under the Companies Act that the tenancy rights must be sold free of all restrictions. I have come to this conclusion with an element of hesitation and that is so because of my respect for the view of their Lordships of the Calcutta High Court. But for the reasons given by me, I, with all respect, feel bound to come to a different conclusion.

16. The whole policy of the Rent Act is to forbid assignment of tenancies without the consent of the landlords and the passing of premium in consideration of such assignments. To permit a liquidator to receive such premium would be totally destructive of the policy formulated by the Legislature in this behalf. It should be remembered that a company may be wound up by the court if it resolves by special resolution that the company be wound up. In that situation if such

assignments were permitted it would be very easy for the landlords and/or the tenants to circumvent the provisions of the Rent Act. I am thinking of a case where two persons including landlord from a company, let the premises to the company, have it wound up and receive huge premium for assignment of tenancy thereby completely circumventing the provisions of the Rent Act.

17. It is unnecessary to make any comment on E. Rangarajulu Naidu and Others Vs. Madura Srinivasa Mills Ltd. and Others, , as there the point was quite different.

18. My conclusion Therefore is that in the case of a company ordered to be wound up the estate administered is that of a person still living. The liquidator assumes or functions on behalf of the directors in accordance with the prescription of the statute. His acts are acts of the company and when he assigns the tenancy or other assets, it is assignment by the company. The restriction imposed by Sub-section (3) of Section 16 Therefore binds the official liquidator as much as it bound the company and he cannot receive any price for assignment of tenancy in violation of Section 5 of the Rent Act, I will return the question accordingly with no order as to costs.