

(1998) 09 GUJ CK 0028
In the Gujarat High Court

Case No : Company Application No. 228 of 1998 in Company Petition No. 295 of 1996

GSL (India) Limited

APPELLANT

Vs

Bayer ABS Limited

RESPONDENT

Date of Decision : 28-09-1998

Acts Referred:

Companies Act, 1956 — Section 391, 391(6), 407, 442, 446

Citation : (2000) 1 GLR 651

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Judgement

R. Balia, J.—This application is by GSL (India) Limited.

2. This Judges summons has been taken out by GSL (India) Limited in Company Petition No. 295 of 1996 to make an order u/s 442 of the Companies Act and to stay further proceedings pending in the various Metropolitan Magistrate Courts, on complaints lodged by its creditor u/s 138 of the Negotiable Instruments Act because the cheques drawn by the company for paying its outstanding have been returned by the bank unpaid either because of the amount standing to the credit of its account was insufficient to honour the cheque or that it exceeded the amount arranged to be paid from the account by an agreement made with the bank. The application has been made because Company Petition No. 295 of 1996 as well as various other company petitions for the winding up of the applicant company have been presented before this court and are pending for final decision. The list of other winding up petitions pending in this court have been annexed to the Judges summons as Annexure "C".

3. The application for stay of the proceedings u/s 138 of the Negotiable Instruments Act pending decision of the winding up petitions have been made on the ground that the Government of Gujarat in exercise of power conferred on it u/s 3 of the Bombay Relief Undertaking (Special Provisions) Act, 1956, has declared the applicant company with effect from 27 March, 1997, as a "relief

undertaking" and certain directions have been issued in exercise of power conferred u/s 4(i)(c)(iv) of the said Act in relation to the applicant company. The declaration of the company as a relief undertaking also included direction that all rights, privileges, obligations or liabilities other than liabilities, arising from law in relation to workers of the "relief undertaking," accrued or incurred before the said undertaking was declared a relief undertaking and any remedy for the enforcement thereof, are suspended and all proceedings relating thereto pending before any Court, Tribunal, Officer or Authority shall be stayed during the period for which this undertaking continues as a relief undertaking.

4. The two-fold contention in that behalf has been made by the learned counsel for the company. Firstly, that by operation of notification, the proceedings of winding up petitions as well as the proceedings pending before the Metropolitan Magistrate u/s 138 of the Negotiable Instruments Act stand suspended and, secondly, even if the same is not covered by the notification as the company has been declared a relief undertaking in order to achieve that objective, it is necessary that (the) company is allowed to operate free from the pressure and apprehension of pending criminal prosecutions to enable it to pass through difficult phase of financial difficulty without apprehension of new liabilities fastened on it during the pendency of the winding up petitions and until the notification declaring the company as a relief undertaking remains operative.

5. When it was pointed out by the learned counsel for the company that if the proceedings sought to be stayed stand automatically suspended by the operation of the notification, there is no need for taking out this judge's summons for such declaration and same is to be pointed out to the court concerned that the proceedings have remained suspended and it was further pointed out that only proceedings relating to enforcement of rights, privileges, obligations or liabilities remain suspended; criminal prosecution cannot legitimately fall within the remedy for enforcement of rights, privileges or liabilities of the company, learned counsel for the applicant company did not press the first point for determination and made his submission on the presumption that the criminal proceedings are not suspended automatically by operation of the notification.

6. Learned counsel for the respondent, Mr. R. Mehta, has raised preliminary objections as to the jurisdiction of this court and maintainability of the application on twofold ground. Firstly, it was contended that as the proceedings of winding up petition itself has been suspended or has been stayed by the orders of the court, the court has no jurisdiction to entertain the application u/s 442 and to make any order thereon. No ancillary proceedings in the nature of making interim order can be entertained because it does not have in praesenti any jurisdiction to proceed with the winding up petition or to make the final winding up order.

7. This contention of the learned counsel for the respondent, in my opinion, is not well founded. Section 442 of the Companies Act vests in Company Court jurisdiction to stay or restrain proceedings against company at any time after the

presentation of a winding up petition and before a winding up order has been made. It is the power to be exercised during the pendency of winding up petition before it, with effect from the date of its presentation until winding up order is made. The suspension of proceedings of winding up only results in stay of final disposal of winding up petition. That is to say, the court would not proceed to pass a final order of winding up and any proceedings for that purpose shall remain stayed. The proceedings remain pending before court awaiting final order. The fact that the court would not be able to make a final order does not take out the proceedings out of the season of the court. The court remains in the control of the proceedings. The court also continues to have necessary power to make ancillary orders to protect the pending litigation before it from other embellishment and to see that the object of those proceedings are not defeated. Assuming that the notification declared as the relief undertaking results by its own force in staying the proceedings, it brings the case in circumstances similar to one, under which the proceedings of the trial of the subsequent suit raising an issue which is directly and substantially an issue in the previously instituted suit u/s 10 the Code of Civil Procedure. The fact that the proceedings of a subsequent suit are stayed does not denude the court in which such subsequent suit is pending, of its jurisdiction to make orders on ancillary matters like application for issuing injunction or for issuing an order of attachment before judgment or appointment of a receiver.

8. In the case of *Senaji Kapurchand Vs. Pannaji Devichand*, , a Division Bench of the Bombay High Court has opined that -

"the first point taken was that as an order has been made u/s 10 of the CPC staying the suit owing to the pendency of another suit between the same parties in the court, no interlocutory order could be made in this suit. But u/s 10, it is provided that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. That does not prevent the court from making interlocutory orders, such as orders for a receiver, or an injunction, or, as in this case, an order for attachment before judgment."

9. The same view has been expressed by Mysore High Court in the case of *Baburao Vithalrao Sulumke v. Kadarappa Prasappa Dabbannavar* reported in AIR 1974 Mys 63.

"The court which is seized of a suit which has been stayed pursuant to the provisions of section 10 C.P.C. had nevertheless jurisdiction to make interlocutory orders, if relief in that behalf, is claimed by any of the parties."

10. Like contention as in *Baburao Vithalrao Sulumke*, supra, was overruled by Patna High Court in *Smt. Lakshmi Devi Vs. Rajendra Prasad Sao and Others*, . Application for appointment of receiver has been rejected by the trial court on the ground that proceedings of the suit has already been stayed u/s 10 of the CPC. The court observed :

"the court had ample jurisdiction to appoint a receiver as contemplated under order 40(1) of the CPC and the refusal to entertain the petition on the ground mentioned in the impugned order is patently illegal,"

11. Bombay High Court in *Sujanbai Haribhau Kakde and Others Vs. Motiram Gopal Saraf and Another*, in the context of staying suit under different provision applied the same principle. Determination of tenancy rights under the Bombay Tenancy and Agricultural Lands Act could only be under that Act by revenue authorities. If in a civil suit, such question arises, which is exclusively triable by authorities under revenue law u/s 125 of the said Act, the suit was required to be stayed before the trial court pending determination of such issue by competent authority to whom it is to be referred. Temporary injunction granted during pendency of such suit was challenged on the ground of want of jurisdiction of court to proceed with the hearing of the application and pass order thereon. The same was rejected by the Bombay High Court. The court said :

"suffice it to say that the phrase "stay the suit" could not have been used with the intention to deprive the civil court from making any order whatsoever in a suit the moment any contention involving the issue which is to be referred to the competent authority is taken in it. If this is not the construction to be put on the word "stay", serious implications are likely to arise, as for example, the civil court would not be in a position to amend the pleadings or to bring the legal representative of the deceased parties on record during the time when the suit is stayed under the provisions of this subsection. That certainly could not have been the intention of the legislature when it enacted that the civil court shall stay the suit and refer the issue to the competent authority. In my opinion, the stay would operate so far as the final decision of the suit is concerned. It cannot deprive the civil court from passing orders on interim applications and granting interlocutory reliefs such as interim injunction or attachment before the judgment, if passing such orders do not involve the determination of any issue which is required to be determined by the competent authority under the Act."

12. The contention must be deemed to be concluded by following observations made by the Supreme Court in the case of *Indian Bank v. Maharashtra State Co-operative Marketing Federation Limited*, reported in 1998 (2) GLH 48. The court held that :

"The object of the prohibition contained in section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue It has been construed by the courts as not a bar to the passing of interlocutory orders such as an order for consideration of the later suit with the earlier suit, or appointment of a receiver an injunction or attachment before judgment. The course of action which the court has to follow according to section 10 is not to proceed with the "trial" of the suit but that does not mean that it cannot deal with the subsequent suit any more of for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory

orders, it has to be stated that the word "trial" in section 10 is not used in its wide sense."

13. It is to be seen that apex court emphasised on construing the field of operative area of stay to have nexus with the object with which stay of suit or proceedings is countenanced and has not accepted the extended meaning so as to denude the court of its authority to deal with proceedings pending before it altogether.

14. Learned counsel for the respondent further urges that in this case, the order winding up proceedings are not stayed under the notification, but has been stayed by the orders of the court itself and, therefore, the aforesaid principle would not apply. I am unable to accept this contention too. If the contention is to be accepted that the court ceases to have jurisdiction of dealing with any ancillary proceedings, once proceedings of suit is stayed, result would be that it cannot hear and make an order or application for vacating the order passed by itself or even if the creditor wants to withdraw the proceedings altogether, his application cannot entertained.

15. Constitution [Construction ?] which has such startling consequence and contrary to the well settled position of law, cannot be accepted. This preliminary objection, therefore, is rejected.

16. Another objection raised by the learned counsel for the respondent is that the phrase "any proceedings" u/s 442 of the Companies Act or for that matter "other proceedings" section 446 of the Companies Act does not take within its ambit the criminal proceedings. The contention of the learned counsel for the respondent is that section 442 envisages stay of any suit or proceedings pending against the company in any other court during the pendency of the winding up petition. The word proceedings, looking to the object of the provision, must be construed to take its colour from the preceding word "any suit". Word "suit" is one of the form of civil proceedings and does not denote criminal proceedings. The word "proceedings" must be construed as any proceedings of civil nature only. As the criminal proceedings do not have any relation to the object for which section 442 or section 446 has been enacted, it was urged, that criminal prosecution is not a remedy by way of enforcing the right of the complainant for recovery, whereas winding up petitions are instituted where the company is unable to pay its debts. Therefore, the proceedings wide have no connection with recovery of debt cannot fall within the ambit of word "proceedings" which are intended to be stayed u/s 442.

17. Learned counsel for the petitioner urged that this court has taken the view about the word "proceedings" u/s 391(6) of the Companies Act couched in the like manner has been interpreted to include the criminal proceedings as well Attention was invited to Harish C. Raskapoor and Others Vs. Jaferbhai Mohmedbhai Chhatpar, Divya Vasundhara Financiers P. Ltd., wherein it was held that Company Court in appropriate case has jurisdiction to stay the criminal

proceedings against the directors of the company when scheme and prayers have been moved.

18. Contention raises an inquiry into the issue whether in the context of sections 442 and 446, word "proceedings" used in section 442 or words "other proceedings" in section 446(1) or phrase "the legal proceedings" u/s 446(2) has a different meaning than one assigned to it by this court in the aforesaid decision in *Harish C. Raskapoor and others v. Jaferbhai Mohamedhai Chhatpar* : *Harish C. Raskapoor and Others Vs. Jaferbhai Mohmedbhai Chhatpar, Divya Vasundhara Financiers P. Ltd., . Ordinarily, rule is that word used by the legislature must be given its normal literal meaning if there is no ambiguity. If that rule is applied, undoubtedly, the word "proceedings" unless context otherwise warrants is of a wide amplitude. Word "proceedings" has many shades of meaning. In its widest sense, it may mean action of going onward or a particular action or course of action in furtherance of any transaction or business, of whatever nature, be it by administrative authority, legislature or any other authority including courts. We are obviously not concerned with this wide expansive meaning of proceedings. In its popular sense, it refers to a legal action or process. In its sphere of legal activity, it may embrace entire process from instituting or carrying or action at law beginning with the institution of an action to an action to its culmination in judgment. Such legal action may constitute enforcement of private right, imposition of taxes, or for punishing a person for illegal commission of offences, as defined under various laws. It may be an action before ordinary courts administering justice by determining private rights as well as enforcing laws, or may be before administrative tribunals, or may be by way of invoking extraordinary jurisdiction of superior courts under Constitution for issue of writs and directions. Looking to context in which expression has been used, it may mean all process in its entirety or relate to every step in an action as a separate proceedings. We are concerned with the expression "proceedings" in the context of legal proceedings that are taken in courts.*

19. The word proceedings in the context of the legal terminology as shown in New Shorter Oxford English Dictionary means "instituting or carrying on of an action at law, a legal action or process; any act done by authority of a court at law; any step taken in a cause by either party".

20. The term "proceeding" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one ambit of whose meaning will be governed by the statute. It does not confine by itself departmentalising to civil, criminal or other administrative or miscellaneous proceedings.

21. Meaning assigned to the word "proceedings" in Black's Law Dictionary : "proceedings" "in a general sense, the form and manner of conducting juridical business before a court or judicial office. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the

execution of judgment. Term also refers to administrative proceedings before agencies, bureaus, or the like."

22. It is further said "the word may be used synonymously with action or suit to describe the entire course of an action at law or suit in enquiry from the issuance of the writ or filing of the complaint until the entry of a final judgment, or may be used to describe any act done by authority of a court of law and every step required to be taken in any cause by either party. The proceedings of a suit embrace all matters that occur in its progress judicially."

23. In the same dictionary "proceedings" have also been defined to mean any action, hearing, investigation, inquest or inquiry, whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorised by law, in which, pursuant to law, testimony can be compelled to be given.

24. It will be seen that the word "proceedings" by itself does not reflect any colour. The word "proceedings" by itself does not make any distinction between the civil proceedings and criminal proceedings pending in the court. It embraces all actions at law whether relating to ventilation of civil or private rights, or determination of tax liability or enforcement of law by imposition of punishments. Further classification depends upon nature of action which is advancing or moves onwards. If it relates to determination of private right, and commences at the instance of an affected person as remedy for enforcement of his right, it may be termed as civil proceedings or proceedings of civil nature. If it relates to assessment and imposition of tax liability, it may be termed as revenue proceedings and if the action is initiated to enforce law for prosecuting a person for alleged commission of an offence, it may be termed as criminal proceedings.

25. As stated in *Bradlaugh v. Clarke* 52 LJ AB 505, civil proceeding is a process for the recovery of an individual right or redress of individual wrong, inclusive of suits by the crown. It is opposed to criminal proceedings.

26. In this context, reference may also be made to ILR 16 Cal 267 wherein a Full Bench of Calcutta High Court opined.

"The word "proceedings" is a very general one; it is not limited to proceedings other than the civil proceedings and civil proceedings other than suits. When applied to suits, it may be used to mean suit as a whole or it may be used, and often is used, to express the separate steps taken in the course of suit the aggregate of which makes up the suit."

27. This decision shows that without prefix in its ordinary sense proceedings is not confined to one or other form of proceedings. It is the prefix (subject to context of the statute) used with words "proceedings" that limits its ambit of expression. In this connection, reference may usefully be made to following statement of law in *Kehar Singh Nihal Singh Vs. Custodian General, Evacuee Property and Others*, .

"The word "civil" when prefixed before proceedings - action, suit, remedy or other cognate expression relates to private rights and remedies given for individuals or corporations as members of community in contradistinction to those which are public and relate to Government".

28. Somewhat similar view was expressed by Allahabad High Court in Brij Lal Suri Vs. The State of Uttar Pradesh and Others, when it said :

"Civil proceedings may be defined as judicial process to enforce a civil right and includes any remedy employed to vindicate that right."

29. Likewise, criminal proceedings, in Government Legal Glossary, has been defined to mean a proceeding instituted and conducted for the purpose either of prevention of a crime or for fixing the guilt of a crime already committed and punishing the offender, as distinguished from civil proceeding which is for the redress of a private injury.

30. As section 442 reads "proceedings in any court", the reference is limited to judicial proceeding in a court of law and not the proceedings before other tribunals which are not courts or other authorities. However, expression "proceedings" has not been prefixed with word "civil" or "criminal" to confine its meaning to one or other type of judicial proceedings in any court by itself. Therefore, no inference can be drawn in a literal sense for confining the meaning of the expression "proceedings" in section 442, to "civil proceedings" and not to include the criminal proceedings within its scope. Thus, contention of respondents cannot be accepted if rule of literal construction is applied.

31. Next question that arise for consideration is whether principle of ejusdem generis as a specie of maxim noscitur a sociis can be invoked to restrict the meaning of "proceeding" to civil proceedings only with reference to preceding use of word "suit" in the provision. Maxim of noscitur a sociis is a well-known rule of construction limiting the ambit of a word of wider import used in the statute by interpreting it in the light of other words in the company of which it occurs.

32. The principle rule of ejusdem generis is one of the specie of wider rule noscitur a sociis and is an application of the maxim. According to Maxwell, this rule means that when two or more words which are susceptible of analogous meaning are coupled together; they are understood to be used in the cognate sense. They take as it were their colour from each other; that is the more general is restricted to a sense analogous to a less general.

33. In Words and Phrases, the maxim has been thus explained :

"Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim ejusdem generis."

34. Above rule was explained in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , Gajendragadkar, J., speaking for the court with a word of caution said :

"In fact, latter maxim (*ejusdem generis*) is only an illustration or specific application of the broader maxim *noscitur a sociis*. It must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined, word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful or otherwise not clear, that the present rule of construction can be usefully applied."

35. In order to apply rule for restricting the broad meaning which the word used by the Legislature otherwise conveys in general, there must be a distinct genus. It must accompany more than one specie of same genus for application of the rule. The enumerated things before the general words must constitute a category or a genus or a family of which there must be a number of species or members.

36. The principle that mentioning of one single specie cannot give rise to application of maxim of *ejusdem generis* has been well accepted.

37. In *United Towns Electric Co. Limited v. Attorney General for Newfoundland*, reported in (1939) 2 All ER 423, the one expression used was for "water rates" and other expression was taxation. Lord Thankerton opined negating applicability of *ejusdem generis* rule.

"There is no room for the application of the principle of *ejusdem generis* in the absence of any mention of a genus, since the mention of a single species - for example, water rates - does not constitute a genus".

38. It was said in the case of *The State of Bombay Vs. Ali Gulshan*, that where the word used by the legislature does not form a genus to which number of species fall but uses the word as a specie, then mention of a single specie cannot constitute a genus so as to invoke the application of *ejusdem generis*.

39. The principle stems from the reason that if a single word has been used as a specie without enumeration of other kinds of specie falling in the same genus, the question of applying rule of *ejusdem generis* to the general expression used by the legislature would not arise so as to control and confine it as belonging to the same family. One member of a family by itself does not make the family. If two words used, with reference to which the rule of construction *noscitur a sociis* is to be considered, are of general character, the principle would still not apply. If one expression is exhaustive of the meaning falling in its broader sense, there will not be any requirement of any further expression to widen or limit the scope of one expression and latter expression would be mere surplusage. A construction which renders any expression of legislature as mere surplusage has to be avoided.

40. In *Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd.*, , construing provision of section 69(3) of the Partnership Act, the Supreme Court held that interpretation *eiusdem generis* or *noscitur a sociis* need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted, there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted.

40.1 In the case of *Babu Lal Vs. Hazari Lal Kishori Lal and Others*, , while construing the [word] "proceedings" which was defined in the Act, the apex court said :

"the term "proceeding" is a very comprehensive term and generally speaking, means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted."

41. In *Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India (UOI) and Another*, , it was held that the preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words, must represent a genus or a family which admits of a number of species or members. If there is only one specie, it cannot supply the idea of genus.

42. Thus, it can be said to be well settled that where a word is used as a single specie of a genus, then the word following with expression of general character cannot be restricted in their meaning with reference to the nature of such single preceding expression.

43. If in the aforesaid light, we are to search for the meaning of word "proceedings" in the setting of statute "any suit or proceedings". The urge is to consider the meaning of suit as proceeding of civil nature and lend it to word proceedings so as to read suit or any other civil proceedings, it will be seen whether the expression "suit" is construed in its narrower meaning or in its broader meaning, it cannot evoke the application of *maxim noscitur a sociis* or *eiusdem generis*. "Suit" in its narrower sense by itself would constitute only one of the specie of a genus "civil proceedings" or "proceedings" but not a genus by itself and the suit in its wider sense would include proceedings of all civil nature and that would render the use of the word "proceedings" mere surplusage.

44. "Suit" is a term ordinarily used with reference to a civil proceedings which is initiated by a plaintiff in the court. In its narrower sense, a suit means a civil proceedings which is initiated by presenting a plaint in the court. In its wider sense, it may include any legal proceedings commenced by one person against another in order to enforce a civil right. Word "suit" has different shades of meaning. To determine the ambit of such expression, the court has to consider the context of provision and object which the provision was intended to achieve.

45. Under the Code of Civil Procedure, a suit is any proceeding which is instituted by presentation of a plaint, as per opinion expressed in *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 . This goes to show that in the sense in which the term is ordinarily used, word "suit" is but one of the species of wider connotation "proceedings". In other words, suit is a proceeding, but all proceedings are not suit.

46. In Black's Law Dictionary, the expression "suit" in its generic sense has been stated to mean :

"A generic term of comprehensive signification referring to any proceeding by one person or persons against another or others in a court of justice in which the plaintiff pursues, in such court, the remedy which the law affords him for redress of an injury or the enforcement of a right, whether at law or in equity. It is, however, seldom applied to a criminal prosecution".

47. In *Hayatkhan and Others Vs. Mangilal and Others*, , a Division Bench of M.P. High Court in the context of controversy before it opined :

"The word "suit" is capable of having a very wide connotation and may include any legal proceedings concerned by one person against another in order to enforce a civil right."

48. The expression "suit" in this wider sense embraces within it exhaustively all proceedings of civil nature, which as noticed above, means in all its cognate expressions proceedings that relate to private rights and remedies given to individuals or corporations as members of community in contradistinction to those which are public and relate to Government in its sphere to enforce law by instituting and conducting proceedings for the purpose either of preventing the commission of crime or for fixing the guilt of a crime already committed and punishing the offender, properly discussed as criminal proceedings.

49. Therefore, if the suit under sections 442 and 446 is taken to be used in narrower sense, viz., institution of proceeding by filing a plaint in court to be conducted as per procedure prescribed in Code of Civil Procedure, then it is only used as a specie of genus, and not as genus, then in the absence of enumeration by two or more of species falling under same genus, it cannot be used as a basis to provide its colour to the words "proceedings" that follows it. As discussed, above principle has long been accepted that mention of a single specie cannot be enumeration of various things falling in the same category. It is enumeration of things falling in same category followed with words of general meaning gives rise to question for invoking rule of *ejusdem generis* to find out whether all the enumerated words or things fall in the same class or relate to the same genus so as to constitute belonging to same family capable of controlling the general expression associated with such enumeration of things limiting its confine to members of the same family and include only those which may have escaped enumeration so as to make the statute applicable to a class of things or field comprehensively. But there is no room for invoking the rule in the absence of

enumeration of member of the same family of "like proceedings" in two or more numbers so as to limit the meaning of the expression "proceedings" to one class of proceedings only.

50. If, on the other hand, the word "suit" is used in its wider sense, it will embrace all contentious proceedings of any civil kind, whether they arise in a suit under code or any such proceedings under other statutes. In that event, words "any suit" will exhaustively include within its ambit all proceedings of civil nature so as to limit the meaning of expression "proceedings". So construed, the expression "or proceedings" appearing after "any suit" will be mere surplusage, if the expression is confined to "civil proceedings" only.

51. Law is well settled that any rule of interpretation which renders use of any word or words by legislature as surplus ought not to be accepted. In this connection it will be apt to refer to the decision of the Supreme Court in *The State of Bombay Vs. Ali Gulshan*, . The court was considering expression "any other public purpose" in section 6(4)(a) of the Bombay Act 23 of 1948. The word [expression ?] "any other public purpose" was preceded by expression "for the purpose of a State, the purpose of the Union and any other public purpose". The High Court has restricted the meaning of "any other public purpose" to mean that such public purpose must be for the purpose of Union or for the purpose of the State, by applying the principle of *eiusdem generis*. The court disagreeing with the application of the maxim was of the opinion that :

"it is requisite that there must be a distinct genus, which must comprise more than one species before the rule can be applied.

If the words "any other public purpose" in the statute in question have been used only to mean a State purpose, they would become mere surplusage. Courts should lean against such a construction as far as possible."

52. The principle would apply equally to the present case, if the word "suit" is used in generic sense to mean proceedings of civil nature for litigating the rights of the parties, the use of word "proceedings" would be surplus. All civil proceedings of civil nature for litigating private right in court would fall within the generic meaning of the terms suit.

53. If, on the other hand, the word "suit" is used in its narrower sense confined to regular civil suit which means, proceedings initiated by presentation of a plaint in the court to be tried under Code of Civil Procedure, it would be a case where only a single specie has been mentioned and there is no enumeration of species which could be considered member of same family of a genus, so as to control the meaning of general words following it.

54. In view of the aforesaid discussion, the contention of the learned counsel for the petitioner that the word "proceedings" should be given a narrower meaning confining it to civil proceedings and exclude criminal proceedings, by invoking maxim *noscitur a sociis* and *eiusdem generis* cannot be accepted and the same is

overruled.

55. The next question that arise for consideration is whether the expression "proceedings" u/s 442 of the Act be given restricted meaning keeping in view the object with which section 442 has been enacted.

56. Learned counsel for the respondent has urged that section 442 enables the court to stay the pending suit or proceedings before any court relates to pending winding up petition. The scope and ambit of the word "proceeding" in section 442 must have nexus to the object with which provisions of winding up have been enacted. Proceedings having no relation to such object cannot be brought within the scope of expression "proceedings". For this purpose, reliance has been placed on a decision of the Supreme Court in S.V. Kondaskar, Official Liquidator and Liquidator of the Colaba Land and Mills Co. Ltd. Vs. V.M. Deshpande, Income Tax Officer, Companies Circle I(8), Bombay and Another, , wherein the word "other proceedings" or "other legal proceedings" requiring the permission of the court before the same are initiated or proceeded further have been given restricted meaning.

57. The case related to the assessment proceedings by authorities under the Income Tax Act. The question had arisen whether assessment proceedings before the Income Tax Officer falls within the purview of other legal proceedings u/s 446(2) so as to require permission before issuing notice u/s 446(2). The court stated :

"looking into the legislative history and the scheme of the Indian Companies Act, particularly, language of section 446 read as a whole, it appears to have the expression "other proceedings" in sub-section (2) of section 446 of the Companies Act convey the same sense and the proceedings in both the sub-sections must be such as can appropriately be dealt with by the winding up court."

58. Thus, the expression "other proceedings" or "legal proceedings" are found to relate to such cases, which could be dealt with appropriately by the Companies Court and not to all pervasive general meaning of proceedings to include proceedings of every nature.

59. I am not persuaded to accept the contention of the learned counsel for the respondents for reading the aforesaid observation of the Supreme court in S.V. Kondaskar, Official Liquidator and Liquidator of the Colaba Land and Mills Co. Ltd. Vs. V.M. Deshpande, Income Tax Officer, Companies Circle I(8), Bombay and Another, , to control the meaning of the word "proceedings" u/s 442, or for that matter, u/s 446 to exclude criminal proceedings as such from its purview. The ratio in S.V. Kondaskar, Official Liquidator and Liquidator of the Colaba Land and Mills Co. Ltd. Vs. V.M. Deshpande, Income Tax Officer, Companies Circle I(8), Bombay and Another, , is that permission to proceed with any case u/s 446(2) is required only in such cases which can appropriately be dealt with by winding up court on withdrawal of the same before it. Only such proceedings are affected by

the provisions of section 446 and not otherwise. It cannot be said that the criminal proceedings which are pending in the court subordinate to the High Court and which the High court can transfer to itself u/s 407, Cr.P.C., and conduct the same are such proceedings which cannot be dealt with by the court and fall beyond the purview of the winding up court.

60. Here it must be cleared that on a plain reading of two sections, viz., 442 and 446, they cannot be put at par while considering their respective construction. Section 442 operates in much smaller field and is applicable only in respect of any suit or proceedings pending against the company in the Supreme Court or in any High Court or any other courts. It does not apply to any other proceedings pending elsewhere except before a court. In clear contrast, on making of a winding up order or appointment of provisional official liquidator section 446(1) applies to all such and other proceedings against the company wherever pending and operates as stay against commencement of new proceedings or progress in pending proceedings except with the leave of the court. u/s 446(2), the Company Court by a non obstante clause gets jurisdiction to entertain or dispose of any suit or proceedings, or claim made by or against the company, any application u/s 391 proposing a scheme in respect of the company or any question of priorities or any other question whatsoever whether of law or of fact which may relate to or arise in course of the winding up of the company, whether such suit, proceedings, claim, application or question has arisen before or after the order of winding up has been made. Sub-section (3) envisages again by a non obstante clause that apart from and in spite of any other provision in any other law for the time being in force, any suit or proceeding! pending in other courts can be transferred to itself and disposed of by it. Sub-section (3) confines itself to transfer of pending proceedings in a court only. Thus, it is clear that field of operation of section 446 is much wider and though sub-section (3) is confined to pending proceedings in a court, other provisions are not confined to proceedings before a court only, but extend to proceedings before any other authorities as well. In sub-section (2) there is some enumeration of proceedings covered by it. Thus, the scope of interpretation in construing two provisions cannot be identical, nor by use of expression, "any suit or other proceedings" in two provisions by itself place one as synonym for the other. Yet reading of sections 442 and 446(3) makes it clear that if as per ratio of Kondaskar's case test of a case appropriately by Company Court is applied, the test supports the view that term "proceedings" in both provision embraces within it both civil and criminal proceedings pending in court, because all pending cases by or against company irrespective of its class are liable to be transferred and disposed of by the Company Court, in contrast if compared with proceedings which are not pending or instituted in a court.

61. Law in England also appears to be same. Considering section 226(b) of the Companies Act, 1948, corresponding to section 442 of the Indian Companies Act, 1956, in *J. Burrows (Leeds) Ltd., Re* (1984) 1 Comp LJ 10 (Ch D) : (1982) 2 All ER 882, proceedings in Magistrate's court as distinguished from proceedings in

civil court were held to fall within the provision and subject to power of court to grant stay.

62. In the circumstances, I am of the opinion that the word "proceedings" u/s 442 cannot be interpreted in a manner to exclude criminal proceedings pending in a court from its purview. This court in the case of Harish C. Raskapoor and Others Vs. Jaferbhai Mohmedbhai Chhatpar, Divya Vasundhara Financiers P. Ltd., has also expressed that expression "proceedings" u/s 391(6) which also enables the court, as u/s 442, to stay commencement or continuation of any suit or proceeding until the application is finally disposed of, includes criminal proceedings. The court said :

"It is, therefore, obvious that legislature while enacting the Companies Act referred to "proceedings" in various sections, but did not thereby confine them to only one type of "proceedings"."

63. Apart from giving wide interpretation, the court with reference to rule 10 of Companies (Court) Rules had opined that High Court as a Company Court has inherent power to pass appropriate orders in the interest of justice and requirement of case.

64. I find no reason to construe like expression in section 442 differently, notwithstanding object of section 391 and object of section 442 which is coextensive with winding up proceedings, are different.

65. The question whether in a particular case, the proceedings are to be stayed or not to be stayed is to be viewed on merit of each case. Objections to maintainability of application and jurisdiction of the court are, therefore, overruled.

66. It has been urged and reference has been made to certain decided cases that where any director of company is subjected to criminal proceedings, no relief can be granted with reference to this provision. Learned counsel for the petitioner has fairly stated that proceedings against the directors do not come u/s 442 or section 446 and that the applicant company has not claimed any relief in these proceedings for stay of proceedings against the directors or any officers of the company in the criminal proceedings referred to in the scheme. This application is confined to relief for staying proceedings against debtor company only.

67. Coming to merits of the case, it must be cleared that having come to conclusion that word "proceedings" include criminal proceeding also within the meaning of term u/s 442, it does not follow that court would grant stay of proceedings mechanically so soon an application is made before Company Court where a petition for winding up shown to be pending final order. Stay of proceeding pending winding up petition is not a matter of course but in case of exercise of discretion on the part of court. If that were so, section 442 would have been cast in the way section 446(1) has been couched.

68. Ordinarily, law does not favour staying proceedings, and to allow the

litigation to become stale. It leans in favour of expeditious termination of proceedings. Grant of stay of proceedings is directly related to object which is to be achieved or purpose which the stay of proceedings is to serve. This requires consideration of facts in several aspects. Position of law has been thus stated in *The Official Liquidator Vs. Dharti Dhan (P) Ltd.*,

"In section 442 of the Act, the power to stay a proceeding is not annexed with obligation to necessarily stay on proof of certain conditions although there are conditions prescribed for the making of the application for stay and the period during which the power to stay can be exercised. The question whether it should on facts of a particular case be exercised or not - will have to be examined and then decided by the court to which application is made."

The court also opined :

"Sections 442 and 446 of the Act have to be read together. It is only where the object of two sections when read together is served by a stay order that they stay order could be justified."

69. About the object of the two provisions which are part of the total scheme of winding up process, the court observed :

"Object is to expeditiously decide and dispose of pending claims in the course of winding up proceedings."

70. The object of provisions like 442 and 446 of the Companies Act, 1956, or section 171 of the Companies Act, 1913, providing for stay of proceeding before other courts during winding up proceedings, and empowering the court to entertain and dispose of all matters by itself or to transfer to itself pending cases before other courts have been thus stated in *S.V. Kondaskar, Official Liquidator and Liquidator of the Colaba Land and Mills Co. Ltd. Vs. V.M. Deshpande, Income Tax Officer, Companies Circle I(8), Bombay and Another*,

"The object of this sub-section appears to be to empower the court as in exercise of insolvency jurisdiction to decide all claims made by or against any company and other questions whatever so that winding up proceeding might be expedited."

71. Conferment of such power was considered to be on balance an advantage to all concerned including the parties which have a claim against the companies to institute suits relating to its affairs in the court where the winding up proceedings are pending as per report of Company Law Committee as quoted in *Kondaskar's* case, *supra*.

72. As section 442 operates during the interregnum period between presentation of petition and making of order of winding up and thereafter, provisions of section 446, much wider in their scope, take over undoubtedly leads to conclusion that the object of section 442 is subservient to main object of winding up proceedings, viz., to facilitate protection and realisation of company's assets for equitable distribution amongst its creditors *pari passu*, in order of priorities

fixed under law. Expeditious disposal of pending proceeding too is in aid of this paramount object. The prayer has to be examined in that light.

73. The criminal proceedings are the proceedings instituted and conducted for the purpose either of preventing the commission of a crime or for fixing the guilt of a crime already committed and punishing the offender, as distinguished from a civil proceedings which is for the redress of a private injury for the ventilation of a private right and determining the other persons' liability on their right. If that principle is applied, ordinarily, a criminal proceeding is not one which has a bearing on the company's civil liability having reference to the object of winding up.

74. In H. C. Raskapoor's case [(1995) 4 Comp LJ 391 (Guj)], supra, the court looking to the facts and circumstances of the case, found it necessary to stay the proceedings against the company and its directors as well where they were accused of such offences not in their individual capacity but for their acts as officers for the purpose of achieving the object of implementation of the scheme approved by the court u/s 391 of the Companies Act. The stay of proceedings u/s 391(6) thus was directly related to object of section 391 and to serve the purpose of orders made thereunder. The case cannot be considered as a precedent to be mechanically applied as a matter of rule u/s 442 as well. The object of section 442 is ancillary to winding up proceedings while section 391 operates in the field of sanctioning the scheme or compromise by the company with its members or creditors and its implementation. Section 442 operates in the field of winding up process. Staying the pending proceeding unless it hampers winding up proceedings or are likely to affect availability of company's assets for realisation to be distributed amongst claimants against the company cannot be said to be serving the object of the provision, when such stay is likely to seriously cause delay in expeditious disposal of pending proceedings by or against company.

75. The Supreme Court in M.S. Sheriff Vs. The State of Madras and Others, , opined against staying the criminal prosecution. It has been observed that it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure that, the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial, though no hard and fast rule was laid down. But the opinion of the court was ordinarily against staying criminal proceedings unless very special circumstances are made out for that purpose.

76. The fact that multiple criminal proceedings would continue to be defended by the company while it is declared as relief undertaking and would be contrary to the object of declaration as relief undertaking now needs to be considered.

77. Reliance was placed in Re J. Burrows (Leeds) Ltd. reported in (1984) 1 Comp LJ 10 (Ch D) : (1982) 2 All ER 882, it was held that the proceedings in the

Magistrate's court were a proceeding within the meaning of section 226(b) of the Companies Act, 1948, of England which is corresponding to section 442 of our Act. Thus, the criminal proceeding against a company were held to be within the ambit of section enabling the court to grant stay. However, when the proceedings in that case were directly held to be for the purpose of recovering the dues from the company, it was held that proceedings in the magistrate's court within the meaning of section 226(b) was directly related to, not merely for bringing the offender to book, but the proceedings were directly related to enforcement of dues against the company. The court was of the opinion that where continuing proceedings and allowing recovery will result in undue preference to creditor, court would grant stay though, in the facts of the case, court did not grant such stay. Obviously, if where any proceedings are likely to result in grant of undue preference contrary to priorities, staying such proceedings will be serving the object of winding up proceedings and is justified.

78. The same cannot be said with respect to proceedings u/s 138 of the Negotiable Instruments Act as prosecution under the Negotiable Instruments Act has not been provided for recovery of the sum in respect of which the cheque has been returned unpaid. That can only be enforced by pursuing proceeding in civil court or any other civil proceedings. Thus, the prosecution under Negotiable Instruments Act is not for enforcement of liability against the company but is to fulfil the object of statute to lend impetus and credibility to banking system by enhancing acceptability of cheques as payments which is in general interest of trade and industry. Imposing punishment for an offence u/s 138 is not so much for failure to pay the debt as is for affecting faith in general accessibility of cheques as mode of transacting payment through bank. In ordinary course, such proceedings cannot be said to have the bearing on the determination of the liabilities of the company or affect protection or realisation of company's assets in the event of winding up order if it is ultimately passed.

79. If viewed in the light of object of Bombay Relief Undertaking (Special Provisions) Act, 1958, the result will not be different. The object of the Act of 1958 may be discerned from its preamble. The object is to enable State Government to conduct or to provide loan guarantee of financial assistance for the conduct of industrial undertakings as a measure of preventing unemployment or unemployment relief. The Act is clearly a beneficial piece of legislation to enable State Government in extending temporarily financial assistance to the undertaking for the benefit of industrial workmen, who are likely to face unemployment in case the undertaking is closed, rather than as a measure of revival schemes, as is the case under Sick Industrial Companies (Special Provisions) Act, 1976. The object is clearly to provide financial assistance to prevent closure of the undertaking and keep the employment going on.

80. In the context of suspension of all rights, privileges, obligations and liabilities u/s 4(1)(iv) can have relation to financial obligations and liabilities and not to liability of company to be prosecuted which have nothing to do with continuing

with the conduct of business by the undertaking. Keeping in view the objective, direction too has been issued to suspend all rights, privileges, obligations and liabilities and remedies for enforcement thereof, excluding liabilities arising in relation to workers of the undertaking. A continued winding up proceeding which may culminate in closure of the undertaking may rightly come under embargo to continue with the pending proceedings or institution of new proceedings, as it directly affects the continued existence of undertaking and an order of winding up being made may cause unemployment. However, the same cannot be said about continuing with criminal proceedings under Negotiable Instruments Act in general. Continuance of such proceedings against the company or its officers neither affects the continued existence of the undertaking nor the interest of workers against unemployment. Moreover, the notification is only a temporary measure, the obligation and liabilities and remedies are only envisaged to be suspended for a while and not effaced.

81. Therefore, criminal proceedings, which do not have nexus with the object with which an undertaking is declared as "relief undertaking" under the Act of 1958, ordinarily are not required to be stayed in aid of such declaration; if the same are not specifically directed to be stayed by the State Government and otherwise do not affect the purpose for which undertaking is declared as "relief undertaking".

82. It may be noticed that even in the case of *Harish C. Raskapoor and others v. Jaferbhai Mohamedbhai Chhatpar* (1995) 4 Comp LJ 391 (Guj), supra, on which reliance has been placed by the applicant, the court took in consideration the object of scheme, the indefinite time likely to take in implementing the same, the effect of continued criminal proceedings against directors on smooth implementation of scheme and possible chances of waning of evidence, allowed the proceedings to continue until recording of evidence and stayed proceedings thereafter only. The limited relief was considered necessary keeping in view the paramount object of implementation of a scheme sanctioned by the court for a limited period. In the present case, as noticed above, declaration of undertaking as a relief undertaking is a temporary measure and operates for a limited period. Extension to such declaration is also envisaged only to a limited extent. The uncertainty of continued status of the undertaking as relief undertaking is not in the realm of indefiniteness. While enforceability of civil liability is kept in abeyance during such period, the conduct of business in regular manner is not suspended. Thus continuing of proceedings in question which arose in ordinary course of conduct of business due to financial stringency, but are absolute in term and not liable to abate on payment, is not likely to affect the conduct of affairs of the company, more particularly, when on their own plea, no relief is sought to stay such proceedings against directors and proceedings against them are otherwise likely to continue.

83. The learned counsel for the petitioner has failed to show how and in what manner the conduct of prosecution u/s 138 before the respective courts is likely

to affect adversely the undertaking or are likely to affect the winding up proceedings or conduct of affairs of the company in general as relief undertaking so as to warrant the discretion to be exercised in favour of the petitioner for staying the criminal proceedings which are required to be promptly decided to fulfil the purpose of statute and not to gather dust of time.

84. I, therefore, do not consider it appropriate to stay the criminal proceedings u/s 138 of Negotiable Instruments Act pending before the various courts referred to in the schedule annexed to the affidavit.

85. The application is, therefore, rejected. No order as to costs.