

**(1995) 03 SC CK 0064**  
**In the Supreme Court Of India**  
**Case No : SLP (C) No.301 of 1995**

Hollyhock Pharmaceuticals Pvt. Ltd.

APPELLANT

Vs

Murbad Alloy Castings Pvt. Ltd.

RESPONDENT

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**Date of Decision :** 10-03-1995

**Acts Referred:**

**Citation :** AIR 1996 SC 938 : AIR 1995 SC 938 : (1996) 82 CLT 67 : (1995) 9 JT 288 : (1995) 6 SCALE 848 : (1996) 2 SCC 194 : (1995) 6 SCR 212 Supp

**Hon'ble Judges :** A. M. Ahmadii, C.J;G. T. Nanavati, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

1. Special leave granted.

2. Heard counsel on both sides.

3. We are surprised about the manner in which the learned Single Judge passed the order of 5/10/1994 which subsequently led to the making of a winding-up order. The facts reveal that the relationship between the parties was of a landlord and occupant. Under the terms of the lease. Rupees one lakh was given by way of security deposit by the occupant as against an obligation to pay compensation of Rs. 4,000.00 per month from June 1990 and onwards. Admittedly, the possession of the premises was delivered, but there was some dispute in regard to the repayment of the security deposit. This dispute arose as a result of a letter dated 22/2/1992 according to which the compensation for the period from June 1990 to February 1992 was stated to have been permitted to be adjusted against the security deposit. There was some dispute in regard to the question whether or not the author of that letter had in fact written that letter. In other words, it was argued that the letter was a concocted document. Realising this the learned Company Judge observed as under:

"In view of this controversy it is appropriate that the petitioner files a suit to establish his claim."

After so observing, surprisingly the learned Judge proceeded to give a direction to the company to deposit a sum of Rs. 50,000.00 within six weeks, failing which the company petition was ordered to stand admitted with a returnable date of 20/12/1994. To put it differently, the learned Judge without settling the controversy which he felt was not capable of being settled in the company petition and a suit was necessary to have it adjudicated, proceeded to exercise jurisdiction by creating one by directing the deposit of Rs. 50,000.00. This, in our opinion, was not proper at all and hence the foundational order is clearly unsustainable. That being so, all the subsequent consequential orders made on the basis of this foundation must also collapse.

4. We, therefore, set aside the order of 5/10/1994 insofar as it directs the deposit of Rs. 50,000.00 and visits the appellant herein with certain consequences on failure to deposit the same within the prescribed time. It is an admitted fact that the amount was deposited but after the prescribed period and even the appellate court did not condone the delay in the deposit thereof resulting in the order directing winding up of the Company and appointment of an official liquidator. All those actions will stand terminated and quashed hereby. The respondent will, however, be entitled to recover the dues, if any, by filing an appropriate proceeding in the civil court. The appeal will stand allowed accordingly. However, in the circumstances, we do not make any order as to costs.