

(1993) 07 BOM CK 0039

In the Bombay High Court

Case No : Appeal No. 198 of 1989 in Company Application No. 284 of 1988 in
Company Petition No. 301 of 1986

Maharashtra State Financial Corporation and another

APPELLANT

Vs

Official Liquidator, High Court, Bombay

RESPONDENT

Date of Decision : 16-07-1993

Acts Referred:

Companies Act, 1956 — Section 125, 446, 456, 457(1), 529
State Financial Corporations Act, 1951 — Section 29

Citation : (1995) 82 CompCas 342

Hon'ble Judges : Sujata V. Manohar, J; N.D. Vyas, J

Bench : Division Bench

Advocate : Virag Tulzapurkar and Mrs. Mankar, for the Appellant; T.N. Subramaniam, Ms. Anita Shekhar and N.B. Amin, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—The appellants are the Maharashtra State Financial Corporation. The appellants lent and advanced to Atrois Chemicals Private Limited (hereinafter referred to as "the company") a sum of Rs. 6 lakhs which was secured by an indenture of mortgage dated January 28, 1980, executed by the company whereby the company mortgaged its land, building, plant and machinery, etc., situate at Tarapur, in favour of the appellants. This deed of mortgage has been lodged for registration with the sub-registrar of assurances at Bombay, on January 28, 1980. The charge in favour of the appellants is also registered with the Registrar of Companies on November 3, 1980, u/s 125 of the Companies Act, 1956.

2. The company was also sanctioned another loan of Rs. 2 lakhs by the appellants. This loan was secured by a deed of further charge dated June 16, 1981, executed by the company. The charge is also registered with the sub-registrar of assurances at Bombay, on June 16, 1981. The charge is also registered with the Registrar of Companies on September 16, 1983, u/s 125 of the Companies Act, 1956.

3. Under an order of this court dated July 31, 1987, the company has been ordered to be wound up. The official liquidator has been appointed liquidator of the company.

4. Under the terms of the mortgage deeds, the appellants have a right to take possession of and sell the mortgaged properties of the company without the intervention of the court. Moreover, u/s 29 of the State Financial Corporations Act, 1951, also, the appellants have a statutory right, inter alia, to take possession of and realise the mortgaged property in case the industrial concern to whom the loan is advanced makes a default in repayment of the loan or any instalment thereof or otherwise fails to comply with the terms of its agreement with the financial corporation. As the company had made persistent defaults in paying the instalments of principal amount and interest as and when they became due to the appellants, the appellants recalled the loan on May 17, 1988. According to the appellants, as on June 30, 1988, an amount of Rs. 13,07,067.53 was due and payable to them by the company.

5. In view of the terms of the indenture of mortgage and further charge referred to above and the provisions of the State Financial Corporations Act, 1951, the appellants took out a judges' summons before the company judge dated August 16, 1988, seeking leave u/s 537 of the Companies Act, 1956, to proceed with the sale of the land, building, plant and machinery of the company situate at Tarapur. The learned judge, by his order dated September 21, 1988, dismissed the judges' summons. Hence, the present appeal has been filed by the appellants.

6. The first contention of the appellants is to the effect that although they have applied for leave u/s 537 of the Companies Act, in fact, no leave is necessary. The appellants contend that as secured creditors they are outside the winding up proceedings. They are entitled to exercise their rights under the mortgage and/or the statutory rights given to them by the State Financial Corporations Act without the intervention of the court. They can, therefore, sell the mortgaged property directly without leave of the court. In this connection, the appellants placed reliance on a judgment of the Supreme Court in the case of M.K. Ranganathan and Another Vs. Government of Madras and Others, . In the case before the Supreme Court, the mortgagees who were the trustees of the debenture holders' trust had appointed a receiver of the mortgaged properties under the powers vested in them under the debenture trust deed. The receiver had taken charge and possession of all the assets of the company some time prior to the winding up order. Thereafter, the company was ordered to be wound up and the official receiver was appointed as official liquidator of the company. No assets, however, came into the possession of the liquidator because these assets were already taken charge of by the receiver appointed by the trustees for the debenture holders. The receiver of the debenture holders sold the properties taken charge of by him without obtaining any leave of the court. The official liquidator made an application to set aside the sale so effected on the ground that no leave was obtained from the court for the sale. The Supreme Court held

that a secured creditor is outside the winding up and he can realise the security without the intervention of the court by effecting a sale of the mortgaged properties by private treaty or by public auction. It is only when intervention of the court is sought either by putting in force any attachment, distress or execution within the meaning of section 232(1) of the Indian Companies Act, 1913, or proceeding with or commencing a suit or other legal proceedings against the company that leave of the court is necessary. The Supreme Court considered the words "any sale held without leave of the court of any of the properties" in section 232 of the Indian Companies Act, 1913, which provisions are equivalent to the provisions of the present section 537 of the Companies Act, 1956. The court held that these words refer only to sales held through the intervention of the court and not to sales effected by the secured creditors outside the winding up and without the intervention of the court. The Supreme Court upheld the decision of the Madras High Court before it which is reported in *M.K. Ranganathan and Another Vs. Govt. of Madras and Others*, .

7. The decision of the Supreme Court undoubtedly supports the appellants. The Supreme Court, however, has dealt with the question at a time when the Indian Companies Act, 1913, was in force. The Indian Companies Act, 1913, did not have any provision equivalent to the amended section 529 or section 529A of the Companies Act, 1956. Hence, the impact of these provisions on section 537 of the Companies Act, 1956, which is similar to section 232 of the Indian Companies Act, 1913, could not have been considered by the Supreme Court.

8. We have to consider whether these provisions, viz., the proviso to section 529(1) and section 529A, which are inserted in the Companies Act, 1956, by reason of the Companies (Amendment) Act, 1985", make any difference to the position of a secured creditor with a right to sell the property directly without the intervention of the court.

9. Section 529(1) of the Companies Act, 1956, provides that in the winding up of an insolvent company, the same rules shall prevail and be observed with regard to, inter alia, the respective rights of secured and unsecured creditors, as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent. The proviso to sub-section (1) is added by the Companies (Amendment) Act, 1985. It reads as under :

"Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security, -

(a) the liquidator shall be entitled to represent the workmen and enforce such charge;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank *pari passu* with the workmen's dues for the purposes of section 529A."

10. As a result, where any property of the company is given to a creditor as a security for loans/debts of the company, a charge is deemed to be created in favour of the workmen for the recovery of their dues which charge runs *pari passu* with the charge in favour of the secured creditor. Now, under the Insolvency Act, a secured creditor may rely on his security and enforce it in the ordinary course by a suit and execution and he need not go in insolvency to prove his claim. If the security is sufficient to pay his claim in full, a secured creditor will hardly come under insolvency. It is only when the security is insufficient that he comes in under the insolvency to prove in respect of the balance. In such a case, he has the following three courses open to him :

- (i) he may realise the security and then prove for the balance;
- (ii) he may surrender his security and prove for the whole debt;
- (iii) he may state in his proof the value at which he assessed the security and prove for the balance after deducting the assessed value.

(see Mulla's Law of Insolvency in India, Third edition, at page 347).

11. Bearing in mind these rights of a secured creditor, the proviso to section 529 of the Companies Act lays down that where a secured creditor, instead of relinquishing his security and proving for his debt, opts to realise his security (i.e., adopts course (i) above), the liquidator shall be entitled to represent the workmen and enforce the statutory charge in their favour which runs *pari passu* with the mortgage in favour of the secured creditor. The proviso further says that any amount which the liquidator may realise by enforcing such a charge shall be applied rateably for the discharge of workmen's dues. Therefore, what the liquidator is entitled to realise by enforcing the charge is the workmen's dues. He is not given the power to sell the security to realise the claim of the secured creditor. However, since he has a *pari passu* charge, it has to be realised simultaneously with the charge in favour of a secured creditor.

12. The third part of the proviso gives certain preferential rights to a secured creditor who has to forgo a portion of the security by reason of the *pari passu* statutory charge created under the proviso to section 529 in favour of workmen. It says that so much of the debt due to such secured creditor as could not be realised by the secured creditor because of the rights created in favour of the workmen or the amount of the workmen's portion in his security, whichever is less, shall rank *pari passu* with the workmen's dues for the purpose of section 529A. Section 529A provides for certain overriding preferential payments. Section 530 of the Companies Act deals with other preferential payments. The workmen's dues and the debt due to a secured creditor to the extent such a

debt could not be realised by such a secured creditor because of the pari passu charge in favour of the workmen, or the workmen's portion in his security which he has lost because of the proviso to section 529, will run pari passu with workmen's dues u/s 529A. In other words, the extent of his claim which a secured creditor could not realise out of his security because of the rights created in favour of the workmen because of their pari passu charge on the security, would get an overriding preference for payment in winding up along with workmen's dues.

13. Therefore, because of the proviso to section 529, the secured creditor is not the only mortgagee entitled to sell the security. He has a co-mortgage (in the form of the workmen) with an equivalent charge on the same security. These workmen are to be represented by the official liquidator. Therefore, when a secured creditor seeks to realise his security, he has also to contend with the official liquidator. The official liquidator is an interested party in the sale of the security in two capacities in such a situation - (1) as a representative of the pari passu charge holders; and (2) as an officer of the court in the custody of the company's properties, who is responsible for the sale and distribution of the assets of the company in winding up. In both these capacities, he has an interest in the sale of the mortgaged security by the secured creditor.

14. What are the rights of a pari passu chargeholder? Can a mortgagee exercise his power of sale without the consent of a pari passu charge-holder?

15. The meaning of the word "pari passu" is defined in Jowitt's Dictionary of English Law, Volume II, 1959 Edition, page 1294 as : "With equal step, equally, without preference". The term is similarly defined in Black's Law Dictionary, Sixth Edition, page 1115 as : "By an equal progress. . . . Used especially of creditors who, in marshalling assets, are entitled to receive out of the same fund without any precedence over each other". Prem's Judicial Dictionary, Volume III, 1964 Edition, page 1217, also defines pari passu as : "With equal steps, that is to say, proceeding side by side at the same place". Therefore, the rights of an official liquidator representing the workmen run equally with the rights of the secured creditors.

16. In the case of co-mortgages, the courts have held that one co-mortgage cannot sell or institute any proceeding for the sale of the mortgaged property without joining the other co-mortgages. If the other co-mortgages are not willing to join as plaintiffs, they should be joined as defendants. This is because the mortgaged security is one and it must be realised as a whole by a common sale. Thus, in the case of Mohammed Ismail Maracair v. Doraisami Mudaliar, AIR 1958 Mad 621, the court considered the case of co-mortgages and held as a proposition of law that a mortgage is one and indivisible in regard to the amount and security. The court said that no suit can, therefore, be filed to enforce a mortgage which entails the disintegration of either the amount or the security. That, therefore, normally all the mortgagees should join. But if some of them refuse to join, they should be included as defendants. Such mortgages-

defendants are not pro forma parties but are necessary parties in that the mortgage right vests in them along with the plaintiff-mortgagees.

17. The Privy Council, in the case of *Sunitibala Debi v. Dhara Sundari Debi* AIR 1919 PC 24, said in the case of two mortgagees holding as tenants-in-common that the right of either mortgagee who desires to realise the mortgaged property and obtain payment of the debt, if the consent of the co-mortgage cannot be obtained, is to add the co-mortgage as a defendant to the suit and to ask for the proper mortgage decree. It is, therefore, necessary that when a sale of a mortgaged property takes place, both the charge holders should join in the sale.

18. The same ratio, in our view, would substantially apply to two charge holders who have a *pari passu* charge for the recovery of their dues. It may be that unlike a co-mortgage, a *pari passu* chargeholder can receive payment of his mortgage debt from the mortgagor and release his charge independently. But when it comes to realising the security, both the *pari passu* charge holders must join or realise the security simultaneously. The sale proceeds are required to be divided proportionately between them in the same proportion as their dues. Hence, when a sale takes place, it is for the simultaneous recovery of claims of all *pari passu* charge holders.

19. Mr. Tulzapurkar, learned counsel for the appellants, however, contends that the appellants have a right to sell without the intervention of the court. They also have a right to stand outside the winding up proceedings and these rights are not taken away in any manner by the provisions of section 529 or section 529A of the Companies Act. He relies, in this connection, on a decision of the Bombay High Court in the case of *Govindram Bros. Ltd. Vs. Official Assignee*, . In that case, the court was required to construe the provisions of the *Dekkan Agriculturists' Relief Act, 1879*, as affecting the power of sale without the intervention of the court conferred on the mortgagee by the mortgage deed. After considering the provisions of section 15D of the *Dekkan Agriculturists' Relief Act, 1879*, the court said that once the rights of the mortgagor and the protection given to him u/s 15D had been secured, if no further steps were taken by the mortgagor, the mortgagee did not lose his right to sell the property under the mortgage deed and he could exercise that right.

20. This judgment has only a limited application in the present case. If the appellants were the only first mortgagees of the secured property, there can be no doubt that they would be entitled to stand outside the winding up and exercise their power of sale without the intervention of the court. It is also true that sections 529 and 529A do not take away this right. But by creating a *pari passu* charge, these sections do affect the right of a mortgagee to sell the security directly by himself. The mortgagee is required to join the *pari passu* chargeholder in the sale. He cannot sell the property ignoring the *pari passu* chargeholder. Therefore, in the present case the appellants as well as the official liquidator as the representative of the workmen must join in the sale.

21. The official liquidator, who represents both the charge holders as well as the mortgagor, has the option to consent to the appellants' selling the mortgaged property for the benefit of both the mortgagees as also on behalf of the company in winding up-the latter being interested in any excess sale proceeds accruing to it as a mortgagor. The official liquidator, however, being an officer of the court and holding a fiduciary position qua the workmen as well as the unsecured creditors, cannot give such consent without obtaining permission from the company court. u/s 446 of the Companies Act, the company court has jurisdiction to entertain and dispose of such an application by virtue of the provisions of sub-section (2)(b) as well as sub-section (2)(d) of this section which provide that the court which is winding up the company shall have jurisdiction to entertain or dispose of any claim made by or against the company as also any question of priorities or any other questions, whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of the company. Hence, it is open to the official liquidator to obtain sanction of the court for consenting to the sale by the mortgagee. A notice of such application should be given to the mortgagee; so that while granting such a sanction, the court may direct the official liquidator to ascertain the exact dues of the workmen if he has not done so; it may give appropriate directions relating to the manner of holding the sale; fix a reserve bid and give directions regarding distribution of the sale proceeds.

22. By virtue of section 457(1) of the Companies Act, the official liquidator has the power to sell the property of the company in winding up. Of course, this cannot affect the mortgagee's interest in such property. The official liquidator, as a *pari passu* chargeholder u/s 529, also has a power to sell the said properties with the sanction of the court to realise the charge after notice to the secured creditor or with the consent of the secured creditor. Since the official liquidator represents both the chargeholder and the mortgagor, he need not file a suit against the mortgagor company through himself, to enforce the charge. But, like the secured creditor, the official liquidator as a *pari passu* chargeholder also cannot sell the security ignoring the secured creditor. He must, therefore, either obtain the concurrence of the secured creditor for the sale and take the court's sanction, or he can apply for sanction of the court after notice to the secured creditor. The court, while granting such sanction, may give appropriate directions regarding the conduct of the sale, the fixing of the reserve bid and distribution of sale proceeds. In fact, it will exercise similar powers and give similar directions as when it sanctions a sale by the secured creditor.

23. Hence, both the creditors, viz., the secured creditor as also the official liquidator as a representative of the workmen, are entitled to exercise their power of sale to realise their claims by mutual consent and after obtaining sanction of the court or by court's sanction obtained after notice to the other party. In the case of a dispute between the two in this regard, the company court has the power to decide who should be in charge of conducting the sale bearing in mind the nature of interest of both the claimants, the extent of their share in

the security, their ability to obtain a proper valuation, their ability to attract good offers, as also bearing in mind the interest of unsecured creditors of the company in winding up who would be entitled to any excess sale proceeds in case such excess sale proceeds are likely to arise.

24. It was submitted on behalf of the official liquidator that by virtue of the provisions of section 529, and in particular clause (a) of the proviso, the official liquidator alone is entitled to sell the mortgaged property and the secured creditor does not have any right to sell the security. This submission cannot be accepted. There is nothing in the proviso which takes away the right of a secured creditor to realise his security. On the contrary, the proviso refers expressly to a situation where the secured creditor opts to realise the security. In such a situation the statutory obligation is cast on the liquidator to enforce the charge in favour of the workmen. The words used are - "the liquidator shall. . . enforce such charge". In other words, when a secured creditor opts to realise his security. the official liquidator is also required to join in the sale for the purpose of enforcing his charge. If he feels that the sale, for example, cannot be conducted properly by the secured creditor, he may apply to the company court for permission to conduct the sale on behalf of both the mortgagees after giving notice to the secured creditor, when the company court, after hearing all concerned parties, will give appropriate directions. The statutory duty cast upon the official liquidator to enforce his charge when a secured creditor opts to realise his security cannot be construed as taking away a right of a secured creditor to realise his security. Both the pari passu charge holders are required to co-operate in the conduct of the sale, and if such cooperation is not possible, both have to abide by the directions which the company court may give in this behalf.

25. It is in this context that we have to consider the provisions of section 537 of the Companies Act under which leave was asked for by the appellants for conducting the sale. The decision of the Supreme Court in the case of Ranganathan (M. K) v. Government of Madras [1955] 25 Comp Cas 344 dealt with a situation where there was no pari passu charge and the secured creditor had obtained possession of the property of the company before the company went into liquidation. In such a situation, the Supreme Court upheld the right of the secured creditor to sell the security without the intervention of the court and, hence, the leave of the company court was held not necessary u/s 537. In a situation where the official liquidator, as a representative of the workmen, has a pari passu charge on the property of the company over which a security is created in favour of a creditor, it is difficult to see how the secured creditor can sell the property outright ignoring the official liquidator of the court. u/s 537(1) (b), any sale held without leave of the court of any of the properties or effects of the company after the commencement of winding up shall be void. Since the court is directly concerned with property which is in its custody and over which its officer, the official liquidator, has a charge, the sale cannot take place without the court's sanction and the provisions of section 537(1)(b) of the Companies

Act are attracted. The observations of the Supreme Court refer to a sale which can be effected by a secured creditor without the intervention of the court when there is no pari passu charge in favour of the official liquidator. If there is such a charge in favour of the official liquidator, intervention of the court is necessary. Although a secured creditor may not have to file a suit for this purpose in view of his power to sell, leave is necessary u/s 537 of the Companies Act in such a situation.

26. Our attention is drawn to two decisions of the Karnataka High Court. In the case of *Karnataka. State Financial Corporation v. Patil Dyes and Chemicals (P) Ltd.* [1991] 70 Comp Cas 38, the court considered a case where a state financial corporation, as a secured creditor, sought leave of the court u/s 537 of the Companies Act for permission to sell the mortgaged property of the respondent-company in liquidation for the recovery of its dues in exercise of its powers u/s 29 of the State Financial Corporations Act, 1951. The court held that this right is available to a financial corporation only when the company is not in winding up. Once the company is in winding up and "its property vests in the court", the state financial corporation cannot exercise its power u/s 29 and in such a situation only the official liquidator can sell the properties of the company in winding up. With respect to the learned judge, he is not right in proceeding on the footing that the property of a company in winding up vests in the official liquidator. He has only the custody of the property of the company. u/s 456 of the Companies Act, the official liquidator is required to take into his custody and control all the properties of the company in winding up. The property of the company does not vest in him as in the case of insolvency. The property remains the property of the company (vide Ramaiya's Guide to the Companies Act, Twelfth Edition, page 1011). Therefore, the official liquidator cannot demand possession of the property from a mortgagee lawfully in possession of it. Also, the rights conferred on a financial corporation as a mortgagee u/s 29 of the State Financial Corporations Act are not obliterated when the company is in winding up. It may have to exercise its right to take possession with the permission of the court. Also, the statutory right which is given to a financial corporation u/s 29 to sell the property has to be exercised consistently with the rights of a pari passu chargeholder in whose favour a statutory charge is created by the proviso to section 529 of the Companies Act when the company is in liquidation. Therefore, such a power can be exercised only with the concurrence of the official liquidator and the official liquidator is required to take the permission of the court before giving such concurrence since he is an officer of the court and is required to act under the directions of the court while exercising his powers on behalf of the workers. However, we entirely agree with the learned judge when he says in the above judgment that for the implementation of the priorities u/s 529A of the Companies Act, the official liquidator must take necessary steps to file the claim of the workmen before the court as set out in the judgment and that this is not dependent on the statement of affairs being filed by the directors of the company. This, however, is not a question which requires determination in

the present case and, hence we do not propose to go into this question. We respectfully differ from this judgment in so far as it lays down that if there are workmen's dues, only the official liquidator can sell the properties which are secured to a state financial corporation if the company is wound up.

27. The next case which requires to be considered is that of *Mysore Surgical Cotton (P) Ltd. v. Karnataka State Financial Corporation* [1988] 1 Comp LJ 63 (Kar). In that case, the official liquidator sought a direction that the financial corporation should hand over possession of the assets and effects of the company to him, while the financial corporation asked for leave of the court u/s 537(1) of the Companies Act to sell the assets of the company. The learned judge of the Karnataka High Court distinguished the decision of the Supreme Court in *Ranganathan (M. K.) v. Government of Madras* [1955] 25 Comp Cas 344 and held that section 29 of the State Financial Corporations Act would not apply when the debtor was a company in winding up. It said that section 29 cannot take away from the custody of the court, properties which had lawfully vested in the court by virtue of the company being wound up. The facts of the case are not clear. But, it seems that the financial corporation had taken possession of the properties secured to it before the official liquidator came on the scene. The court directed the financial corporation to hand over the property to the official liquidator and declined to grant permission to the financial corporation to sell the properties. We respectfully differ from the learned judge in so far as he has held that a mortgagee in possession of the property of a company must hand over the property to the official liquidator when the company is wound up. This judgment also seems to proceed on the basis that on winding up, the properties of the company vest in the court. As stated earlier, this is not so. The decision does not deal with the rights of a mortgagee in possession with power to sell without the intervention of the court and the impact of the proviso to section 529 on this power. It is, therefore, in any case, not of much assistance to us.

28. Our attention is also drawn to a decision of this court in the case of *State Industrial and Investment Corporation of Maharashtra Limited v. Maharashtra State Financial Corporation* [1988] 64 Comp Cas 102. The Division Bench, in that case, has held that the Maharashtra State Financial Corporation, a duly secured creditor, was outside the winding up and it was entitled to sell the mortgaged property without obtaining leave of the company court u/s 537 of the Companies Act. The Division Bench has relied upon the decision of the Supreme Court in the case of *Ranganathan (M. K.) v. Government of Madras* [1955] 25 Comp Cas 344 in this behalf. It is not clear from the judgment whether in respect of the case before the court, the amendment to section 529 of the Companies Act had come into force or was applicable. The Division Bench has not considered the amended provisions of section 529 at all and any contention in that connection does not appear to have been raised before the Division Bench. Hence, this judgment does not carry the matter any further.

29. It was also urged by Mr. Tulzapurkar, learned counsel for the appellants, that

u/s 46B of the State Financial Corporations Act, the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force; but save as aforesaid, the provisions of that Act shall be in addition to and not in derogation of any other law for the time being applicable to an industrial concern. He submitted that because of section 46B, the provisions of section 29 of the said Act would prevail over the provisions of section 529 of the Companies Act. We, however, do not see any inconsistency between the provisions of section 29 of the State Financial Corporations Act and section 529 of the Companies Act. Section 29 of the State Financial Corporations Act merely confers certain powers on the mortgagee. It does not cover a situation where there is a pari passu chargeholder. Therefore, the power to sell which is given to a financial corporation u/s 29 has to be exercised consistently with the right of a pari passu chargeholder. Such a right can be exercised with the consent of the pari passu chargeholder or on orders of the court after making him a party to the proceedings to enforce the security. Since the chargeholder is the official liquidator, his power to consent is subject to the sanction of the court.

30. In the premises, whenever there is a pari passu charge over any property of a company in winding up by virtue of the proviso to section 529, leave of the court is necessary for the sale of the property as the chargeholder is the official liquidator.

31. In the premises, the appeal is allowed and the order of the learned single judge refusing to grant permission to the appellants to sell the security is set aside.

32. In the present case, the claim of the workmen for their dues is likely to be very small. According to the official liquidator, the claim of the workmen for their dues is likely to be to the tune of Rs. 30,000 to Rs. 40,000 only since the company was a private limited company with only about 22 workmen. The official liquidator has no funds to advertise the sale or conduct it. In these circumstances, leave is granted to the appellants u/s 537 of the Companies Act, 1956, to sell the said properties, viz., land and building, plant and machinery situate at Tarapur and secured by the indenture of mortgage dated January 28, 1980, and deed of further charge dated June 16, 1981, on the following conditions :

(i) The property shall be valued by a valuer on the panel of valuers of the appellants to be approved by the appellants as well as the official liquidator.

(ii) The valuation report shall be submitted by the official liquidator and the appellants jointly before the company judge and the learned company judge shall fix a reserve bid in respect of the said property and shall give appropriate directions regarding the manner of conducting the sale and in connection therewith.

(iii) The sale proceeds shall be deposited in court.

(iv) The appellants, thereafter, shall apply to the company judge for withdrawal of the proportionate amount coming to their share after notice to the official liquidator and any other concerned parties.

(v) The official liquidator shall, in the meanwhile, invite claims from the workmen and shall ascertain the extent of the claim of the workmen u/s 529 of the Companies Act which is charged pari passu on these securities.

33. Appeal is allowed as above with no order as to costs.

34. Certified copy expedited.

35. Official liquidator to act on a certified copy of the minutes of the order.