
(2013) 07 BOM CK 0099

In the Bombay High Court

Case No : Company Application No. 96 of 2013 in Company Application No. 653 of 2013 in Company Petition No. 20 of 1984

M/s. Nagindas Kasturchand and Others and Mr. Shashikant Pasari **APPELLANT**

Vs

The Official Liquidator and Another **RESPONDENT**

Date of Decision : 30-07-2013

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 27, 88(1)(b)
Companies Act, 1956 — Section 19, 442, 446, 446(1), 529
Industrial Finance Corporation Act, 1948 — Section 27, 28
Life Insurance Corporation Act, 1956 — Section 15, 41
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 19(19), 19(22)
State Financial Corporations Act, 1951 — Section 29
Transfer of Property Act, 1882 — Section 60

Citation : (2013) 5 ABR 421 : (2013) 6 ALLMR 561 : (2014) 3 BC 34 : (2013) 181 CompCas 78 : (2013) 4 CompLJ 332 : (2014) 1 MhLj 797

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Cherag Balsara and Luann Crasto instructed by M/s. K. Ashar and Co, for the Appellant; A.Y. Sakhare instructed by y R.K. Bobade, V.K. Nair for Respondent No. 2, Mr. Cyrus Ardeshir instructed by y O.L. and Mrs. R. Sutar, A.O.L., for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By this application filed by Mr. Shashikant Pasari who is a ex-Director of Rajan (Textile) Mills Pvt. Ltd. (in liquidation), Barshi, Taluka Barshi, District Sholapur, and a guarantor to the secured creditor and who is major shareholder and claims to be a creditor of the Company (in liquidation), seeks recall/review of the order dated 12th February, 2013 passed by this Court in Company Application No. 653 of 2012. By the said order dated 12th February, 2013 passed by this Court in Company Application No. 653 of 2012 filed by the Central Bank of India one of the secured creditor, this Court allowed the Central

Bank of India to release all claims on the leasehold rights in favour of the owners of the properties which were mortgaged with the Central Bank of India, being Block Nos. 400, 401, 402, 403, 405 and 427 situate at village Barshi, Taluka Barshi, District Sholapur (hereinafter referred to as "the said properties") by accepting the sum of Rs. 1.40 Crores from the owners of the said properties and also directed the Official Liquidator to release and relinquish the leasehold rights held by M/s. Rajan (Textile) Mills Pvt. Ltd. (in liquidation) in favour of the owners of the said properties and to execute necessary deeds and the documents as required. Some of the relevant facts for the purpose of deciding this application are as under:

(a) The said Company in liquidation M/s. Rajan Textiles Pvt. Ltd. (hereinafter referred to as "the said Company") had mortgaged leasehold rights in respect of land bearing Block No. 399, admeasuring 7 H. 92 R, Block No. 400, 6 H. 38 R, Block No. 401, 5 H. 71 R, Block No. 402, 1.26 R, Block No. 403 admeasuring 7 H. 93 R, Block No. 405 admeasuring 7 H and 34 R and block No. 427, 5 H. 81 R situated at village Barshi, Taluka Barshi, District Sholapur in favour of the Central Bank of India by depositing title deeds. The said properties were acquired by the said Company (in liquidation) from the Official Liquidator of M/s. Barshi Spinning and Weaving Mills Ltd. (in liquidation).

(b) The Central Bank of India are one of the secured creditor filed a suit bearing No. 99/1986 in this Court against the said Company for recovery of its dues. By judgment and order of this Court dated 30th November, 1996 the said suit came to be decreed.

(c) Vide sale deed dated 11th August, 2000 executed by Mr. Ramchandra Renukdas Deshpande and others, as the owners of the land bearing Block No. 427, comprising 5 Hectares and 81 ares situated at Barshi for consideration of Rs. 10,25,000/- and by another sale deed dated 11th June, 2003 executed by Mr. Bhalchandra Vishnu Pendse and others as owners of land bearing Block Nos. 400, 401, 402, 403 and 405 sold those lands in favour of Vishwas Arjunrao Barbole, and others for a total consideration of Rs. 33,73,750/-. It is the case of the applicant herein as well as the Official Liquidator that the said Company had lease hold rights in respect of the land bearing Block No. 400, admeasuring 6 H. 38 R, Block No. 401, admeasuring 5 Hectares 71 ares, Block No. 402 admeasuring 1 Hectare 26 ares, Block No. 403 admeasuring 7 Hectares, 93 ares and Block No. 405 admeasuring 7 Hectares 34 ares situated within the revenue village of Barshi, Taluka Barshi, District Sholapur. The said leasehold rights were mortgaged by the said Company in favour of the Central Bank of India by depositing title deeds.

(d) On 1st August, 2003, the Official Liquidator submitted a report in Company Petition No. 20 of 1984 seeking sanction of sale of the properties of the said Company. By an order dated 16th December, 2004 passed by this Court, it was held that no orders were necessary on the report of the Official Liquidator dated 1st August, 2003 and the said report was disposed of. It has been held in the

said order that the recovery proceedings were pending against the said Company before the Debt Recovery Tribunal (for short DRT) instituted by the various parties and in view of pendency of such recovery proceedings which were instituted by the Secured Creditors, it was not possible to sanction the sale of the properties at the instance of the Official Liquidator in Winding-up proceedings in this Court. This Court held that since the properties which were subject-matter of security of the banks and financial institutions, such properties will have to be sold and disposed of by the recovery officer in pursuance of the recovery certificate issued by the DRT under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. By the said order, this Court directed the Official Liquidator to sale the properties, subject to the orders passed by the DRT in the said recovery proceedings which are pending before it. It was also made clear that the Official Liquidator shall hand over the possession of the premises as per the direction of the DRT subject to recovery of necessary security charges and other expenses incurred by the Official Liquidator for protecting the said property. It was recorded that the Central Bank of India had paid security charges in respect of various properties to the Official Liquidator as per the directions of this Court.

(e) In the year 2004 Mr. Prabhakar Barbole and others filed Company Application No. 12 of 2004 in Company Petition No. 20 of 1984. By an order dated 23rd June, 2005, this Court disposed of the said Company Application in the light of judgment of this Court dated 14th January, 2005 in the case of M/s. Divya Chemicals Ltd. that the remedy of the applicant would lie before the Tribunal as Official Liquidator was directed to hold the properties subject to orders passed by the Debt Recovery Tribunal in terms of order dated 16th December, 2004. By the said order, Mr. Prabhakar Barbole was granted liberty to take recourse to such remedies as may be permissible in law with clarification that same may be decided on its own merits in accordance with law.

(f) In the year 2005, Mr. Prabhakar Barbole filed CA No. 453 of 2005 in this Court for seeking leave u/s 446 of the Companies Act, 1956 to file appropriate proceedings under the Rent Act against the Official Liquidator before the appropriate Court for obtaining possession of the land by impleading the Central Bank of India, secured creditors of the Company (in liquidation) and ex-Director as the respondents. By an order dated 26th August, 2005 this Court allowed the said application subject to the condition that if any decree is passed by the trial Court, it would not be executed without prior approval of this Court.

(g) Mr. Prabhakar Barbole and others filed CA No. 687/2005 seeking leave to file proceedings under the Bombay Tenancy and Agricultural Lands Act against the Official Liquidator of the said Company before the appropriate authority for obtaining vacant and peaceful possession of the land bearing lands Block Nos. 427, 400, 401, 402, 403, 405 and 427 situated at Barshi, Taluka Barshi, District Sholapur. In the said application, the Central Bank of India and Mr. Shashikant Pasari, ex-Director were also made party-respondents. By an order dated 2nd

December, 2005, this Court allowed the said application on the same conditions contained in the order of this Court dated 26th August, 2005 in CA No. 453 of 2005.

(h) In the year 2006, Mr. Vishwas Barbole filed Tenancy Case No. 1 of 2006, 2 of 2006 and 3 of 2006 before the Tahsildar and Agricultural Tribunal, Barshi against the Official Liquidator for obtaining possession of various lands. By orders dated 24th June, 2006 and 26th June, 2006 the said Authorities have held that there exist relationship of tenant and landlord between the parties and that the said Company has not made payment of rent and accordingly directed the Official Liquidator to hand over possession of the property after appeal period is over. The Central Bank of India preferred tenancy appeal (No. 9 of 2006) in the Court of the Sub-Divisional Officer, Sholapur Division, challenging the order in Tenancy Case No. 1 of 2006 which were in respect of Block No. 427. The Central Bank of India filed a separate tenancy appeal (No. 10 of 2006) in respect of Block Nos. 402, 403 and 405 and Appeal No. 8 of 2006 in respect of Block No. 400 and 401.

(i) By a separate order dated 24th April, 2007, the Sub-Divisional Officer, Sholapur Division dismissed all the three appeals filed by the Central Bank of India. The Central Bank of India thereafter filed Revision Application No. 108 of 2007 and 109 of 2007 before the Divisional Commissioner, Pune Division. By an order passed by the Maharashtra Revenue Tribunal at Mumbai, all the three Revision Applications filed by the Central Bank of India were allowed and the orders passed by the Sub-Divisional Officer as well as the order passed by the Tahsildar were quashed and set aside and application preferred by Mr. Prabhakar Barbole and others for possession of the said properties came to be rejected. Mr. Prabhakar Barbole and others filed three writ petitions in this Court challenging the said order passed by the Tribunal, which writ petitions were admitted by this Court and are pending.

(j) The Central Bank of India appears to have entered into Memorandum of Understanding (MoU) with Mr. Prabhakar Barbole and others by which Mr. Prabhakar Barbole offered to pay amount of estimated under annual income of the lease rent for unexpired lease to the Central Bank of India and in lieu thereof the Central Bank of India offered to release mortgaged leasehold rights in the said lands in favour of the said Prabhakar Barbole for consideration of Rs. 1.40 Crores. On the basis of such proposed MoU, the Central Bank of India filed an application on 26th February, 2012 before the DRT, Pune seeking permission to settle the part of the claim with Mr. Prabhakar and others by accepting Rs. 1.40 Crores and to release all the claims on the leasehold rights of mortgage only. It has been stated in the said application that the said Bank would proceed for claiming recovery certificate against the said Company and three others for its remaining claim. The said application was served upon Mr. Shashikant Pasari, ex-Director of the said Company also. The DRT passed order on that application on 10th August, 2012 after hearing the learned counsel appearing on behalf of the parties and allowed the said application and permitted the Central Bank of India

to settle the dues as per agreement between the said Bank and Mr. Prabhakar Barbole and others. It is the case of Mr. Shashikant Pasari that against the said order passed by the DRT, he has already preferred an appeal (Misc. Appeal No. 499 of 2012) before the DRT Mumbai and the said appeal is stated to be pending. It is the case of the Central Bank of India that papers and proceedings in the said appeal has not been served on the Bank.

(k) By letter dated 20th October, 2012 addressed by Mr. Shashikant Pasari to the Central Bank of India, proposal for one time settlement of outstanding of the said Company came to be submitted. In the said letter, the said Mr. Shashikant Pasari offered to pay Rs. 1.75 lakhs as and by way of full and final settlement, subject to the Central Bank of India assigning all their rights, title and interest against all their claims against the said Company, its ex-Director, guarantors and/or his assignees and/or nominees without foreclosing any part or in full in any other mortgaged property, including the landed property i.e. leasehold and free hold, building, movable etc. mortgaged or otherwise to the bank against the loan taken by the said Bank whatsoever. The said one time settlement offer submitted by said Mr. Shashikant Pasari is stated to be rejected by the Central Bank of India as the said offer was not improved inspite of letter dated 2nd November, 2012 from the Central Bank of India to the said Mr. Shashikant Pasari.

(l) On 31st October, 2012 the Central Bank of India filed CA No. 653 of 2012 in this Court, inter alia, praying for permission to release all claims of the leasehold rights in respect of the plots bearing Block Nos. 400, 401, 402, 403, 405 and 427 situated at Barshi, Taluka Barshi, District Sholapur in favour of owners of the properties by accepting a sum of Rs. 1.40 crore and prayed for a direction against the Official Liquidator to release and relinquish leasehold rights by the said Company (in liquidation) in favour of the owners of the said properties and to execute necessary deeds and/or documents. A copy of the said Company Application was served by the Central Bank of India upon the Official Liquidator. In the said application, it was stated that the said Company had mortgaged leasehold rights over the said property with the Central Bank of India by depositing title deeds. The Central Bank of India had applied for issuance of recovery certificate before the DRT Pune. The Bank had filed Misc. Application No. 117 of 2005 for issuance of recovery certificate for recovery of Rs. 1.40 Crores with interest on the said sum from the date of filing of said misc. application. It is stated in the said application that Mr. Prabhakar Barbole and others have proposed to pay lumpsum amount estimating the net income of the said lands for unexpired lease period i.e. 21 and 30 years respectively if the bank was ready for redemption of the mortgage in respect of such properties for consideration of Rs. 1.40 Crores. It is also stated that the said amount would be deposited with the Central Bank of India by the Company (in liquidation) within a period of six weeks from the date of obtaining necessary permission from this Court. It is stated that the Central Bank of India or the Official Liquidator did not get any income from the said properties which were mortgaged with the Central Bank of India. The Central Bank of India have been making payment of security

charges, charges of Official Liquidator and had to spend lakhs of rupees for the same. The Central Bank of India also annexed copy of the report dated 11th June, 2010. The Central Bank of India relied upon the order passed by the DRT granting permission in favour of the Bank to allow the Bank to settle the claim with Mr. Prabhakar Barbole and others to release all claims as mortgagees on the leasehold rights on the said properties. A copy of the draft MoU also was annexed. In the said application, the Official Liquidator filed an affidavit. It is stated in the said affidavit that DRT had appointed Mr. Anant Kulkarni, a Government registered valuer on 30th November, 2009 for valuation of the said immovable property. It is stated in the said affidavit that according to valuation report carried out in the month of June, 2010, the valuation of the said property arrived at Rs. 1,52,02,655/-. It is stated that the security charges for safeguarding the said properties which were being incurred by the Central Bank of India be directed to be settled from the amount which were received by releasing their claim in favour of Mr. Prabhakar Barbole and others and no amount shall be claimed from the Official Liquidator in that regard. It is also stated that the Official Liquidator had invited claims of workers/creditors in response to which various claims were received by the Official Liquidator. It is stated that the Central Bank of India shall be directed to file an Undertaking to the effect that they shall deposit with the Official Liquidator proportionate amount due to the workers of the Company (in liquidation) in terms of Section 529A of the Companies Act, 1956 and other claims.

(m) By an order dated 12th February, 2013 passed by this Court after considering the pleadings and documents and after hearing the learned counsel for the Central Bank of India and also the Assistant Official Liquidator, this Court allowed the said C.A. No. 653 of 2012 in terms of prayer clause (a) and (b). This Court also accepted the Undertaking rendered by the C.B.I. in paragraph No. 3 of the affidavit dated 8th February, 2013 to the effect that the said Bank shall deposit proportionate amount, if any, due to workers of the said Company (in liquidation) in terms of Section 529A of the Companies Act, 1956 from the amount recovered as and when required and/or directed by this Court or the DRT.

(n) Mr. Shashikant Pasari, ex-Director of the Company has filed this application for recalling of the said order dated 12th February, 2013 on various grounds.

2. Learned counsel for the applicant submits that the applicant was not served with the copy of the Company Application (C.A. No. 653 of 2012) filed by the Central Bank of India and an ex-parte order came to be passed in favour of the Central Bank of India with consent of the Official Liquidator. It is submitted that the applicant being ex-Director of the said Company and a guarantor is jointly and severally liable in respect of the dues of the said Company. Learned counsel further submits that in view thereof no order could be passed without effecting service of papers and proceedings and hearing the applicant. It is submitted that the applicant has thus locus standi in the present proceedings to oppose the relief that was sought by the Central Bank of India and has thus locus to file this

application recalling the order passed by this Court which was passed ex parte.

3. Mr. Balsara submits that no valuation of the property was obtained by the Official Liquidator before giving consent in favour of the Central Bank of India to settle the claims of third parties. It is submitted that value of the property in question which is sought to be transferred in favour of Mr. Prabhakar Barbole and others is much more than what is being paid by the proposed purchasers. Mr. Balsara submits that on the contrary by letter dated 28th September, 2012 the applicant had made offer to pay Rs. 1.75 Crores to the Bank which offer was not accepted and the Bank chose to accept offer of Rs. 1.40 Crores. It is submitted that if any higher amount is received on sale of the properties of the said Company (in liquidation) liability of the Company against various creditors including applicant being a guarantor could have been reduced. It is submitted that no recovery certificate has been issued by the DRT so far in favour of the Central Bank of India and thus no order could have been passed granting permission in favour of the Central Bank of India by the DRT for settling the claims of third parties. Learned counsel placed reliance on Sections 19, 28 (5), 31-A of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in support of the plea that DRT could not have sanctioned and/or permitted the Central Bank of India to settle the claims of third parties and transfer the Mortgaged properties in favour of such party. It is submitted that such application could have been made only in this Court and not before the DRT. It is submitted that as the recovery certificate has not been issued by the DRT, Central Bank of India could not have applied for permitting bank to settle claims with Prabhakar Barbole and others. It is submitted that the DRT had no power to settle or mediate. It is submitted that Company Court ought to have gone into the issue as to whether permission should be granted to the Central Bank of India to sell the right, title and interest of the Central Bank of India in the mortgaged properties in favour of Mr. Prabhakar Barbole and others. It is submitted that at this stage Company Court ought to have enquired as to whether amount offered by such third party was as per gross valuation of the property and whether such permission in favour of the Central Bank of India would be in the interest of Company (in liquidation), its shareholders and creditors. It is submitted that in view of Section 60 of the Transfer of the Property Act, redemption could not have been done without valuation. Part Redemption is not permissible. Mr. Balsara placed reliance upon paragraph Nos. 13 and 15 of the judgment of the Supreme Court in the case of Allahabad Bank Vs. Canara Bank and Another, in support of his plea that in this case decree was not passed by the DRT and recovery certificate has not been issued, stage of execution did not reach. It is submitted that such permission could have been applied by the Central Bank of India only after recovery certificate was issued and such steps could not be taken in the absence of any recovery certificate. Mr. Balsara then submits that his client is ready and willing to deposit Rs. 1.40 Crores in this Court within such time as may be prescribed, if order passed by this Court is set aside.

4. Mr. Sakhare, learned senior counsel appearing for Mr. Barbole and others on the other hand submits that the applicant herein has no locus to oppose the reliefs sought by the Central Bank of India in Company Application No. 653 of 2012 and has thus no locus to file this Company Application for recalling of the order passed by this Court in Company Application No. 653 of 2012. It is submitted that the Central Bank of India had obtained valuation report which was annexed to the application filed by the Bank before the DRT. It is submitted that the DRT has already granted permission in favour of the Central Bank of India to settle the dues of Mr. Prabhakar Barbole and others after considering all the facts. Said order passed by the DRT is not stayed so far by any Court. It is submitted that though the applicant herein is stated to have filed an appeal against the said order passed by the DRT before the Appellate Tribunal, no steps are taken by the applicant for obtaining stay of the order passed by the DRT. It is submitted that the Central Bank of India thus rightly filed Company Application No. 653 of 2012 in Company Petition for obtaining appropriate reliefs from this Court. Mr. Sakhare, learned senior counsel submitted that one of the lease would expire on 24th December, 2030. Attention of this Court is invited to the order of this Court passed on 16th December, 2004 in the same Company Petition (20 of 1984) on Official Liquidator's report dated 1st August, 2003 by which the Official Liquidator had applied for sanction of the sale of the properties. Mr. Sakhare, placed reliance on the order dated 16th December, 2004 of this Court. Paragraph Nos. 1 and 2 of the said order read thus:

1. In the present case it is an admitted position that the recovery proceedings are pending before the D.R.T. The said recovery proceedings are instituted by various banks and financial institutions. In view of the pendency of the said recovery proceedings which is initiated by the secured creditors, it is not possible to sanction the sale of the properties at the instance of Official Liquidator in the present winding-up proceedings. In my view the properties which are the subject of security of the banks and financial institutions will have to be sold and disposed of by the recovery officer in pursuance of the recovery certificate issued by the D.R.T. under the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In view thereof I reject the present report made by the Official Liquidator. However, I direct the Official Liquidator to hold the properties subject to the orders passed by the D.R.T. in the said recovery proceedings which are pending before it. It is made clear that the Official Liquidator will hand over the possession of the premise as per the direction of the D.R.T. subject to recovery of necessary security charges and other expenses incurred by the Official Liquidator for protecting the said property.

2. Mr. Madon, learned counsel appearing for the Central Bank of India however states that security charges up to date has been paid and he further states that few security charges are also paid as per the direction contained in this order. The Official Liquidator admits that up to date the security charges are already received by him from the secured creditors.

5. Relying upon the aforesaid order dated 16th December, 2004 passed by this Court, learned senior counsel submits that powers of the Official Liquidator in this proceeding are very limited to the extent that the Official Liquidator holds the property subject to the order passed by the DRT and has to hand over the possession of the properties as per the directions of the DRT subject however to recover all necessary security charges and other expenses incurred by the Official Liquidator for protecting the said properties. It is submitted that in view of the order passed by the DRT granting permission in favour of the Central Bank of India who is decree holder, the Official Liquidator could not have objected to the reliefs sought by the bank in relation to proceedings which were filed in furtherance of the order passed by the DRT in respect of which no stay has been granted by the Debt Recovery Appellate Tribunal.

6. Mr. Sakhare, learned senior counsel also invited my attention to the orders passed by this Court on 23rd June, 2005 and 26th August, 2005 in Company Application No. 12 of 2004 and 453 of 2003 respectively, by which this Court had granted liberty to Mr. Prabhakar Barbole and others to take recourse to such remedies as may be permissible in law in view of the judgment of this Court dated 14th January, 2005 in case of Devi Chemicals & Ors holding that remedy of the applicant would lie before the DRT in view of the order that the Official Liquidator was directed to hold the properties subject to orders passed by the DRT. By order dated 26th August, 2005 this Court granted leave in favour of Mr. Prabhakar Barbole and others u/s 446 of the Companies Act, 1956 to prosecute the proceedings before the Civil Court or further proceedings against the Official Liquidator. It is submitted that in all proceedings the applicant herein was present and after hearing the applicants, these orders were passed in favour of Mr. Prabhakar A Barbole. It is submitted that in the last eight years no objection of any nature has been raised by the applicant herein opposing the applications filed by Mr. Prabhakar Barbole in respect of rights claimed in respect of properties in question. It is submitted by the learned senior counsel that even Mr. Prabhakar Barbole also succeeded in various proceedings filed before the Authorities under the provisions of the Bombay Tenancy and Agricultural Lands Act. Writ petitions filed by Mr. Prabhakar Barbole are admitted by this Court which are admitted. It is submitted that sale in favour of Prabhakar Barbole has not been challenged by the applicant.

7. Mr. Sakhare, learned senior counsel also placed reliance on the judgment of the Supreme Court in the case of Allahabad Bank Vs. Canara Bank and Another, and also judgment of this Court in Company Petition No. 2151 of 1977. By order and judgment dated 14th January, 2005 in Company Petition No. 2151 of 1977 this Court adverted to the judgment of the Supreme Court in the case of Allahabad Bank (supra) has held that provisions of DRT Act by virtue of section 34(1) has an overriding effect and that the recovery officer has absolute power to execute said recovery certificate by sale of immovable assets and for that purpose neither leave of the Company court is necessary u/s 446 nor the company court has any control on the said proceedings. This court held that once

the recovery certificate is issued, then in that event in respect of the secured assets in favour of the Banks and Financial institutions and which is subject matter of recovery certificate, the recovery officer and particularly D.R.T. should have an exclusive jurisdiction and the company court cannot through the Official Liquidator in winding up of the company disposed of the immovable properties of the company in favour of the banks and financial institutions and distribute the sale proceeds thereof. It is held that the jurisdiction of the company court is ousted in so far as the sale of immovable properties which are secured in favour of the banks and financial institutions and which are subject matter of recovery certificate is concerned. In the said judgment, it is also clarified that in case the recovery certificate is not issued by the D.R.T., the proceedings filed by the Banks and Financial Institutions pending before the D.R.T., even in those cases the liquidator could not proceed and dispose of the immovable assets which are secured in favour of the Banks and Financial Institutions and in such event, the Official Liquidator is required to seek directions from the D.R.T., in respect of the assets held by him and which are secured in favour of the Banks and financial institutions. It is held that the assets which are held by the Official Liquidator during the pendency of the proceedings before the D.R.T., shall hold such assets till appropriate directions are given by the D.R.T. and is bound to hand over possession thereof to such private receiver appointed by the D.R.T. subject to recovery of his costs, charges and expenses as well as on payment to the security agencies appointed by the Official Liquidator. Paragraphs 6, 7, 9 and 10 of the said judgment which are relevant for the purpose of deciding this matter read thus:

6. In my opinion the judgment of the apex court in the case of Allahabad Bank Vs. Canara Bank and Another, covers the issue at hand. In the said case also the apex court has considered the scheme of the provisions of the DRT Act as well as the Companies Act (1 of 1956) particularly the provisions of winding up of the company. The apex court while considering the said scheme has formulated the question which is directly relevant in the present case. The apex court has considered whether the jurisdiction of the recovery officer is exclusive for execution of the recovery certificate and while answering the aforesaid question formulated, the apex court has stated as under (page 77):

22. We hold that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the appellant-bank is concerned.

(ii) Execution of certificate by Recovery Officer: Is his jurisdiction exclusive.

23. Even in regard to "execution", the jurisdiction of the Recovery Officer is exclusive. Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained in Chapter V of the Act and is covered by Sections 25 to 30. It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal u/s 17, the banks/financial institutions should go to the

civil court or the company court or some other authority outside the Act for the actual realisation of the amount. The certificate granted u/s 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual jurisdictions at different stages are contemplated. Further, Section 34 of the Act gives overriding effect to the provisions of the RDB Act. That section reads as follows:

Section 34. Act to have overriding effect.--

(1) Save as otherwise provided in Sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), and the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).

The provisions of Section 34(1) clearly state that the RDB Act overrides other laws to the extent of "inconsistency". In our opinion, the prescription of an exclusive Tribunal both for adjudication and execution is a procedure clearly inconsistent with realisation of these debts in any other manner.

6. The apex court has thereafter proceeded further to consider whether the company court has any control over the execution proceedings and or leave of the company court is necessary before the recovery certificate can be executed by the recovery officer to recover the amounts from sale of the secured assets in favour of the banks and financial institutions. While considering the aforesaid issue, the apex court has held that the provisions of the DRT Act by virtue of Section 34(1) have an overriding effect and that the recovery officer has an absolute power to execute the said recovery certificate by sale of immovable assets and for that purpose neither the leave of the company court is necessary u/s 446 and nor the company court has any control on the said proceedings. The apex court in the case of Allahabad Bank Vs. Canara Bank and Another, , has in paras. 30, 49 and 50 held as under (pages 79 and 88 of 101 Comp Cas):

30. The learned Attorney General has, in this connection, relied upon Damji Valji Shah and Another Vs. Life Insurance Corporation of India and Others, , to contend that for initiating and continuing proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, no leave of the company court is necessary u/s 446. In that case, a Tribunal was constituted under the Life Insurance Corporation Act, 1956. The question was whether u/s 446 of the Companies Act, 1956, the said proceedings could be stayed and later be transferred to the company court and adjudicated in that court. It was held that the said proceedings could not be transferred. Section 15 of the Life Insurance Corporation Act, 1956--which we may say, roughly corresponds to

Section 17 of the RDB Act--enabled the Life Insurance Corporation of India to file a case before a special Tribunal and recover various amounts from the erstwhile life insurance companies in certain respects. Section 41 of the Life Insurance Corporation Act conferred exclusive jurisdiction on the said Tribunal just like Section 18 of the RDB Act, 1993. There the company was ordered to be wound up by an order of the company court passed u/s 446(1) on January 9, 1959. The claim was filed by the Life Insurance Corporation against the company before the Tribunal and its directors in 1962. The respondents before the Tribunal contended that the claim could not have been filed in the Tribunal without the leave of the company court u/s 446(1). This court rejected the said contention and held that though the purpose of Section 446 was to enable the company court to transfer proceedings to itself and to dispose of the suit or proceedings so transferred, unless the company court had jurisdiction to decide the questions which were raised before the Life Insurance Corporation Tribunal, there was no purpose of requiring leave of the company court or permitting transfer. It was held by this court (para 18 of AIR):

In view of Section 41 of the Life Insurance Corporation Act, the company court has no jurisdiction to entertain and adjudicate upon any matter which the Tribunal is empowered to decide or determine under that Act. It is not disputed that the Tribunal has jurisdiction under the Act to entertain and decide matters raised in the petition filed by the Corporation u/s 15 of the Life Insurance Corporation Act. It must follow that the consequential provisions of Sub-section (1) of Section 446 of the Companies Act will not operate on the proceedings which may be pending before the Tribunal or which may be sought to be commenced before it.

Just as the company court was held incompetent to stay or transfer and decide the claims made before the Life Insurance Corporation Tribunal because the company court could not decide the claims before the Life Insurance Corporation Tribunal, the said court cannot, in our view, decide the claims of banks and financial institutions. On the same parity of reasoning as in *Damji Valji Shah and Another Vs. Life Insurance Corporation of India and Others*, there is no need for the appellant to seek leave of the company court to proceed with its claim before the Debt Recovery Tribunal or in respect of the execution proceedings before the Recovery Officer. Nor can they be transferred to the company court.

49. For the aforesaid reasons, we hold that at the stage of adjudication u/s 17 and execution of the certificate u/s 25, etc. the provisions of the RDB Act, 1993, confer exclusive jurisdiction in the Tribunal and the Recovery Officer in respect of debts payable to banks and financial institutions and there can be no interference by the company court u/s 442 read with Section 537 or u/s 446 of the Companies Act, 1956. In respect of the monies realised under the RDB Act, the question of priorities among the banks and financial institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with Section 19 read with Section 529A of the Companies Act and in

no other manner. The provisions of the RDB Act, 1993, are to the above extent inconsistent with the provisions of the Companies Act, 1956, and the latter Act has to yield to the provisions of the former. This position holds good during the pendency of the winding up petition against the debtor company and also after a winding up order is passed. No leave of the company court is necessary for initiating or continuing the proceedings under the RDB Act, 1993. Points Nos. 2 and 3 are decided accordingly in favour of the appellant and against the respondents.

Points 4 and 5:

50. We have already held that the adjudication, execution and distribution of the sale proceeds and working out priorities as between banking and financial institutions and other creditors of the defendant-company--so far as the monies realised under the RDB Act are concerned--has to be done only by the Tribunal and not by the company court. The next question is as to the manner of distribution of these monies between the banks or financial institutions on the one hand and the other creditors, secured or unsecured of the company under winding up. This question depends upon the effect of Section 19(19) of the RDB Act as introduced by Ordinance No. 1 of 2000.

7. In my opinion on a plain reading of the judgment of the apex court it is clear that once a recovery certificate is issued then in that event in respect of the secured assets in favour of banks and financial institutions and which is a subject-matter of recovery certificate, the Recovery Officer and particularly the DRT should have an exclusive jurisdiction and the company court cannot through the official liquidator in winding up of the company dispose of the immovable properties of the company in favour of the banks and financial institutions and distribute sale proceeds thereof. This is because the provisions of the DRT Act have an overriding effect by virtue of the provisions of Section 34 of the said Act and thus the jurisdiction of the company court is ousted in so far as the sale of immovable properties which are secured in favour of banks and financial institutions and which are subject-matter of the recovery certificate is concerned.

9. However, the official liquidator who has appeared in person has contested the present proceedings and has contended that the jurisdiction of the official liquidator in the winding up proceedings cannot be treated as ousted and that he has full right and power to dispose of the assets even though the same are secured in favour of the banks and financial institutions and in respect of which the recovery certificate has been issued by the DRT. In support of the aforesaid contention he has relied upon the judgment of the apex court in the case of *International Coach Builders Ltd. v. Karnataka State Financial Corporation* particularly the following observation (headnote):

The official liquidator is the representative of the workmen entitled to enforce such *pari passu* charge. He would be in the position of a co-mortgagee. The statutory right of the corporation to sell the property u/s 19(19) of the 1951 Act

has now to be exercised in tandem with the rights of the pari passu charge in favour of the workmen created by the proviso to Section 529 of the Companies Act. The realisation of the security can therefore be done by the secured creditor either by satisfaction of the pari passu charge or by a suit in which the pari passu charge holder would be a party defendant. In other words, the existence of the pari passu charge holder being represented by the official liquidator would necessarily bring in the supervision of the company court as the official liquidator cannot act without directions from and the supervision of the company court. The realisation of the security can only be done by both charge holders joining and realising the security simultaneously. If a sale takes place, it can only be simultaneously for recovery of the claim of all pari passu charge holders and the sale proceeds are to be divided in proportion to their dues.

10. I do not see any application of the said judgment to the facts of the present case. Firstly, because the said judgment was not considering the scheme of the DRT Act vis-a-vis the provisions of the Companies Act (1 of 1956). The issue before the court was in respect of the conflict between the provisions of Section 529 and Section 529A of the Companies Act (1 of 1956) on one hand and Section 29 of the State Financial Corporations Act, 1951, on the other. In that view of the matter the aforesaid judgment has no relevance.

8. Mr. Sakhare the learned counsel also placed reliance upon the judgment of the Supreme Court in the case of Ravindra Ishwardas Sethna and Another Vs. Official Liquidator, High Court, Bombay and Another, . The learned senior counsel also placed reliance upon the judgment of this court in the case of Patel Engg. Co. Ltd. Vs. Official Liquidator, in support of his plea that if the Official Liquidator does not require the leasehold premises of the company for carrying out winding up activities of the company, since the premises are required to be surrendered to landlords to save recurring liability to pay rent. Paragraphs, 3, 4 and 6 of the said judgment read thus:

3. The Official Liquidator as well as the ex-director have already placed on record their respective stand that holding on to the premises in question, is not essential any more. It is not in dispute that the company had stopped its activities and business since long and now the company has already been directed to be wound up by order dated 23rd January, 2004. That order is holding the field as of now. In other words, the official liquidator as well as the ex-director have conceded the position that the premises in question are no longer required for the company in liquidation. If it is so, ordinarily, having regard to the legal position enunciated by the Apex Court in the case of Ravindra Ishwardas Sethna and Another Vs. Official Liquidator, High Court, Bombay and Another, , particularly paragraphs 9 and 11 thereof, this Application ought to succeed. Paras 9 and 11 of the said decision read thus:

9. The company was a tenant or a lessee of the premises of which the appellants are the landlords. The date of the commencement of the lease is not made available to us, but it is also not claimed on behalf of the liquidator that there

was lease of long duration. If so, the company was a statutory tenant under the Rent Act. The statutory tenancy confers the right to be in possession but if the tenant does not any more require use of the premises, the provisions of the Rent Act and especially sections 13 and 15 completely prohibit giving the possession of the premises on licence or on sub-lease. The learned company judge, therefore, spelt out a third way of parting with the possession by the liquidator, namely, that he may give the premises to the second respondent under a caretaker's agreement. This caretaker's agreement appears to us to be an euphemism for collecting compensation which is nothing else but the charge for use and occupation of the premises exclusively by the second respondent. Whether it is sublease or licence does not call for decision. For the purpose of the present proceedings it is enough for us to say that the company and its liquidator no more need the premises for its own use. The liquidator does not need the use of the premises for carrying on the winding up activities of the company because he sought direction for parting with possession. We are not impressed by the learned Judge saying that there is some third mode of parting with possession of the premises exclusively in favour of the second respondent, namely, caretaker's agreement which appears to us to be a facade to wriggle out of the provisions of the Rent Act. The Rent Act is no doubt enacted for protecting the tenants, and indisputably its provisions must receive such interpretation as to advance the protection and thwart the action of the landlord in rendering tenants destitute. But this does not imply that the Court should lend its aid to flout the provisions of the Rent Act so as to earn money by unfair and impermissible use of the premises. And that is what the Liquidator sought to do and the court extended its help to the liquidator. This, in our opinion, is wholly impermissible. The learned company Judge could not have authorised the liquidator to enter into such an agreement and, therefore, his order is liable to be set aside. 11. The learned company Judge could not have permitted holding on to possession of the premises, not needed for efficiently carrying on winding up proceedings. The only course open to him was to direct the liquidator to surrender possession to landlords and save recurring liability to pay rent. Before we part with this judgment, we must take note of one submission that was made on behalf of the respondent. It was said that the creditors and members of the company in liquidation have suffered huge losses and if the Liquidator would have been permitted to enter into an agreement with the second respondent, it would fetch a steady income which would have gone towards mitigating the hardships of the creditors and members of the company. The accounts of the company in liquidation were not brought to our notice nor can we permit violation of law howsoever laudable the object of such act may be.... (p. 1064)

4. However, the relief as claimed on behalf of the applicant is resisted only by the workers' union of the erstwhile workers of the company in liquidation. Essentially, only four points have been raised to oppose the relief as prayed in this application. The first contention on behalf of the workers' union is that admittedly, the applicant has filed suit in the court of Small Causes for eviction

against company in liquidation-original tenant, and that suit is pending adjudication. It was argued that since the applicant has already taken recourse to remedy of eviction as permitted by the provisions of the Rent Act, the relief claimed in the present application is unavailable. I find no substance in this argument. Merely because the landlord has instituted suit for eviction against the tenant, who happens to be company in liquidation, that alone cannot be the basis of non-suiting the landlord to invoke the present remedy which is an independent and special remedy available to him by virtue of the provisions of the Companies Act. Whereas, having regard to the purport of the Companies Act and the law enunciated by the Apex Court in Ravindra Ishwardas Sethna's case (supra), there will be no impediment for the landlord to take recourse to the remedy under the provisions of the Companies Act on the established fact that the premises were no longer required for the business of the Company in liquidation or by the official liquidator.

6. That takes me to the third objection raised on behalf of the workers' union. It was contended that it was obligatory to give notice to all the creditors before passing any order on this application because it would amount to divesting of the property of the company in liquidation. In support of this submission, reliance was placed on the decision of the Apex Court in the case of Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd., . In my opinion, reliance placed on this decision is wholly misplaced. The dictum in the said decision would be appropriate to proceedings wherein the Court was still to pass the order of winding up. That stage has already passed; and now the landlord of the premises which were occupied by the company in liquidation as lessee has approached this court for the relief as referred to above. In so far as the relief claimed in this application is concerned, the question of giving notice to all the creditors or hearing all the creditors, will not arise. The circumstances in which such relief can be and ought to be granted, is already enunciated in the decision of the Apex Court in Ravindra Ishwardas Sethna's case (supra). Those circumstances are clearly present in this case. Accordingly, I find no substance even in the third contention canvassed on behalf of the workers' union.

9. Mr. Sakhare, learned senior counsel submits that though the applicant was fully aware of the rights claimed by Prabhakar Barbole and others in respect of some of the properties of the company in liquidation, in last 8 years, no objection has been raised by the applicant. It is submitted that the offer given by the applicant to the bank in the sum of Rs. 1.75 Crores was a conditional offer. It is submitted that for last several years, no such offer came to be made by the applicant. It is submitted that the Central Bank of India who had to recover large amount from the company in liquidation and the applicant had already rejected such proposal. It is submitted that the said proposal was also for release of the freehold land which would fetch large amount to the secured creditors.

10. As far as offer of the applicant to deposit sum of Rs. 1.40 Crores in this court at this stage on the condition that order passed by this court be set aside is

concerned, the learned senior counsel opposed the said offer of the applicant at this stage on the ground that no such offer was made at any point of time earlier. D.R.T., has already permitted the Central Bank of India to settle the claims of Mr. Barbole and others. There is no stay of the said order granted by any competent court. It is submitted that no such offer can be accepted at this stage.

11. Mr. Nair, learned counsel appearing for Central Bank of India submits that the Central Bank is the secured creditors of the company in liquidation which had mortgaged leasehold rights of the land in question to the bank. The company in liquidation was not the owner of the said plots. The learned counsel submits that the valuation report was obtained by the bank for calculating the estimate income of unexpired part of lease of the properties in question. It is submitted that by virtue of proposal made by Mr. Prabhakar Barbole and Others, the Central Bank of India had agreed for release of leasehold rights in land bearing gat no. 400, 401, 402, 403, 405 and 427 in favour of the owners on payment of Rs. 1.40 Crores. In addition to the said payment, the Central Bank of India would also get substantial amount by sale of ownership land bearing gat no. 399 admeasuring approximately about 20 acres and also from the sale of the building, structures, chimney etc. situated on the land bearing gat no. 427. It is submitted that in view of these facts, the Central Bank of India had already rejected the alleged offer made by the applicant. It is submitted that the applicant made such proposal for the first time only on 20th September, 2012. The company is closed for last more than 45 years. The bank has to incur huge liabilities of payment of security charges and other expenses on the properties in question. The Official Liquidator has not fetched any income from the leasehold properties which rights were mortgaged with the Bank. The Official Liquidator has to spent lacs of rupees towards the payment to security which are claimed by the bank. If unexpired period of lease expires, Bank would not be able to recover nay amount from such leasehold rights in the property.

12. It is also submitted that the Bank has not been served with any papers and proceedings in the appeal stated to have been filed by the applicant before the Debt Recovery Appellate Tribunal.

13. Mr. Cyrus Ardeshir, learned counsel for the Official Liquidator submits that the Official Liquidator is not fetching any income by way of rent or otherwise from the properties in question. The Official Liquidator does not require the suit property for the purpose of winding up of the company. The learned counsel clarified that though in the earlier affidavit in reply filed in the company application filed by the applicant, a plea was raised by the Official Liquidator that the sale of the property in question by the then owners in favour of Prabhakar Barbole and others was without obtaining leave of the company court and thus no rights were conferred on Prabhakar Barbole and others, on taking legal advice, the Official Liquidator has corrected its stand and has given its consent in this proceedings for granting relief in terms of prayer clauses (a) and (b) on the Central Bank of India rendering an undertaking that the Bank shall deposit

proportionate amount if any due to the workers of the company (in liquidation) u/s 529(1) of the Companies Act, 1956 from the amount recovered as and when required or directed by this court or the D.R.T. The learned counsel submits that there are no allegations of collusion as made across the bar by the learned counsel for the applicant in the pleadings filed by the applicant and such allegations are totally false and incorrect. It is submitted that in view of the order passed by this court on 16th December, 2004, the powers of the Official Liquidator are very limited and the properties alleged to be held by the Official Liquidator are subject to the orders passed by the D.R.T. This court has already made it clear that the properties which are subject of securities to banks and financial institutions will have to be sold and disposed of by the Recovery officer in pursuance of the recovery certificate issued by the D.R.T., under the provisions of Recovery of Debts (due to Banks and Financial Institutions) Act, 1993. The learned counsel placed strong reliance on the order passed by this court on 18th December, 2004 in company petition which was filed in the same company Petition and also placed reliance on the judgment of this court delivered on 14th January, 2005 in Company Petition No. 215 of 1997. Learned counsel submits that the company court cannot reverse the order passed by the D.R.T. It is submitted that Recovery of Debt Due to Banks and Financial Institutions Act, 1993 is self contained code and it is not open to contend in the company proceedings that the order passed by the D.R.T., allowing the Bank to settle the claims of the owners of the properties is illegal. It is submitted that in view of the order passed by this court on 16th December, 2004 and in view of the order passed by the D.R.T., no further enquiry by this court is permissible. Mr. Ardeshir submits that the offer made by the applicant was a conditional offer which has been rightly rejected by the bank. It is submitted that even the applicant does not contend that the company in liquidation was owner of the plots in question. The learned counsel invited my attention to Page 8 of the affidavit in reply filed by the Official Liquidator by which the Official Liquidator has clarified his stand about the rights of the company in liquidation in the land in question. Mr. Ardeshir, on instructions submits that if any higher amount is paid by the applicant, or Mr. Prabhakar Barbole and Ors over and above Rs. 1.40 Crores, the Official Liquidator has no objection. This suggestion of the learned counsel appearing for the Official Liquidator is strongly opposed by Mr. Sakhare, the learned senior counsel appearing for Prabhakar Barbole and Ors. Mr. Ardeshir points out that though the proceedings are pending since the year 1984 the applicant had not approached the bank for settlement or did not bother to bring any funds for paying the creditors of the company in liquidation. The Central Bank of India can fetch much more than Rs. 1.75 Crores as offered by the applicant. It is pointed out that the claim of the Central Bank of India is more than Rs. 25 Crores, thus obviously the Central Bank of India would not accept the offer of the applicant for Rs. 1.75 Crores.

14. Mr. Balsara, learned counsel for the applicant in rejoinder submits that the restrictions u/s 27 of the Bombay Tenancy and Agricultural Land Act would not

apply in this case in view of section 88(1)(b) of the said Act. Learned counsel submits that the land in question was not an agricultural land. It is submitted that section 27 of the B.T. & A.L. Act would not apply to the land held by the Industrial company. The learned counsel placed reliance on the judgment of the Supreme Court in the case of Vishnu Mahadeo Pendse Vs. The Rajen Textile Mills (P) Ltd. and Another, and in particular paragraph 3 to 6 which read thus:

3. Mr. Patel learned Counsel for the appellants, raised two contentions; (I) the lands are agricultural lands and as such Section 88(1)(b) which excluded from the operation of the 1948 Act lands held on lease for the benefit of an industrial or commercial undertaking has no application, and (2) having regard to the proviso to Section 43C of the 1948 Act the auction sale and the subsequent assignment of the leasehold rights were void.

4. Before us we proceed to consider the merits of these contentions it seems to us that the suits for possession must fail on a preliminary ground, as urged by Mr. Bal, counsel for the respondents. In the plaint the plaintiff in each case asks for a declaration that the auction sale and the conveyance are both void. Giving effect to this contention means that the leases in favour of Barsi Mills remain live leases and Barsi Mills continue to be the tenant of the lands. If this his the position, the suits for possession are premature because the leases for 99 years have not yet run out. Further, the declaration asked for cannot be made in the absence of the liquidator representing Barsi Mills, but Barsi Mills have not been impleaded in the suits. It is well-known that a company until it is dissolved retains its distinct entity, though in the case of a company the liquidation the administration of its affairs passes to the liquidator. Clearly therefore these suits for possession are not maintainable.

5. On the merits also, the suits are bound to fail. The appellants contention is that the auction sale and the conveyance were void in view of Sections 27, and 63 of the 1948 Act Section 27 prohibits subdivision sub-letting and assignment of land by a tenant and any such act in violation of the provisions of this section make the tenancy "liable to termination" Section 28 bars attachment, seizure or sale in execution of a decree or order by civil court of any interest in the land held by the tenant. Section 63, as it stood at the relevant time, barred transfer of land in favour of a person who was not an agriculturists unless sanctioned by the prescribed authority. It will be seen that any act contrary to the provisions of Section 27 does not ipso facto terminate the tenancy but only makes the tenancy liable to termination. It is not claimed that the tenancy held by Barsi Mills was terminated before the suit was instituted.

6. Apart from this, Section 88(1)(b) of the 1948 Act makes it clear that the aforesaid provisions could have no manner of application. Section 88, so far as it is relevant, is in these terms:

Section 88(1): "Nothing in the foregoing provisions of this Act shall apply:

(a) x x x

(b) to lands held on lease for the benefit of an industrial or commercial undertaking;

There is no dispute that the lands in question were held on lease for the benefit of Barsi Mills which was an industrial undertaking. Section 88 remained in force from the time the 1948 Act came into operation till August 1, 1956 when it was replaced by a new section introduced by the amendment Act No. XIII of 1956. The auction sale and the conveyance having taken place before August 1, 1956, Section 27, 28 and 63 of the Act did not apply to the lands in dispute which were held on lease by Barsi Mills. Mr. Patel for the appellants argued that as the respondent Mills were using the lands largely for agricultural and not industrial purposes, Section 68(1)(b) itself had no application. Admittedly, the respondent Mills had built a few structures on the lands and used a large part of the remaining area for agricultural purposes. It is difficult to see why a land held on lease by an industrial or commercial undertaking, if used for agricultural purposes, would not be land held for the benefit of such industrial or commercial undertaking. But apart from this, there is an obvious answer to this contention as pointed out by counsel for the respondents. The lands in question were given on lease to Barsi Mills in 1943 when the Bombay Tenancy Act, 1939 was in operation. That Act defined "land" as meaning land which was used for agricultural purposes including, inter alia, the sites of farm buildings appurtenant thereto. The definition of land in the 1948 Act so far as it is material for the present purpose, is: "land" means land which is used for Agricultural purposes, and includes

(a) the sites of form buildings appurtenant to land used for agricultural purposes, and

(b) the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses.

15. Mr. Balsara, learned counsel submits that no recovery certificate has been issued by the Debt Recovery Tribunal. It is submitted that as no recovery certificate is issued, the Central Bank of India had to apply for leave of the company court for directing the bank to settle the claim with Mr. Prabhakar Barbole and Ors. The Debt Recovery Tribunal had no power to order sale. It is submitted that the redemption of mortgage could not have been permitted without valuation of the property. Mr. Balsara submits that the company court can deal with the issue of sale of property in execution only after recovery certificate is issued. The learned counsel submits that the order passed by this court in Company Application No. 653 of 2003 without hearing the applicant be recalled and after considering the objections raised by the applicant, the company application filed by the Central Bank of India be dismissed.

16. Question that arises for consideration of this court is whether applicant who is ex-director of the said company in liquidation has any locus standi to be heard in this application and was required to be heard by this court while disposing of

Company Application (653 of 2012). Question also arises for consideration of this court is whether order passed by this court in Company Application (653 of 2012) filed by Central Bank of India allowing the said bank to release all claims on the leasehold rights in favour of the owners of the properties which were mortgaged with the said bank by accepting a sum of Rs. 1.40 crores and by directing the Official Liquidator to release the leasehold rights held by the company in liquidation in favour of the owners of the said properties and to execute necessary documents is required to be recalled at the instance of ex-director or otherwise.

17. In view of Order dated 16th December, 2004 passed by this Court in Company Petition No. 20 of 1984 refusing to pass any orders as prayed by the Official Liquidator in his report dated 1st August, 2003 seeking sanction for sale of properties of the said company in liquidation on the ground that properties which were subject matter of the bank and financial institutions will have to be sold and disposed of by the recovery office in pursuance of the recovery certificate issued by Debt Recovery Tribunal, in my view Official Liquidator has limited role in respect of the lease hold rights in the mortgaged properties in question which were admittedly mortgaged in favour of Central Bank of India, one of the secured creditors in whose favour decree was passed by this court and execution proceedings have been filed before Debt Recovery Tribunal. It is clear that Official Liquidator holds the properties of the said company in liquidation subject to the order that may be passed by Debt Recovery Tribunal. Official Liquidator has been directed to handover possession of the properties as per directions of the Debt Recovery Tribunal subject to recovery of necessary security charges and other expenses incurred of the Official Liquidator for protecting the said property. It is not in dispute that Mr. Prabhakar Barbole and others had under two separate sale deeds acquired ownership rights in respect of the said property from the then owners. This court had granted leave in favour of Mr. Prabhakar Barbole and others to file appropriate proceedings against Official Liquidator in other courts in respect of the said properties after hearing applicant herein. Competent Authority had also allowed the said application filed by the owners for possession. Writ petition filed by the owners in this court arising out of such proceedings are admitted and are pending.

18. It is not in dispute that the said company in liquidation did not have ownership rights in respect of such properties but had only leasehold rights to the extent of unexpired period under the said two lease deeds. It is not in dispute that since last 45 years, the said company in liquidation is closed and there are no business activities. There is no income fetched out of the said properties in the hands of the Official Liquidator or otherwise. Since last several years Central Bank of India, the decree holders has been paying security charges and incurring expenses on the said properties and sends bills to the Official Liquidator. By order dated 16th December, 2004, this court has already ordered that the properties which are subject matter of the security of the bank and financial institutions will have to be sold and disposed of in pursuance of the

recovery certificate issued by the Debt Recovery Tribunal under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The said order passed by this court on 16th December, 2004 is subsisting and is binding on all parties including applicant and Official Liquidator. This court by an order and judgment dated 14th January, 2005 in Company Petition No. 215 of 1997 has after adverting to the judgment of the Supreme Court in case of Allahabad Bank (supra) has held that the provisions of Debt Recovery Tribunal by virtue of section 34(1) has an overriding effect and that the recovery officer has an absolute power to execute the said recovery certificate by sale of immovable assets and for that purpose neither the leave of the company court is necessary u/s 446 nor can the company court have control on the said proceedings. In my view once recovery certificate has been issued by Debt Recovery Tribunal, only Debt Recovery Tribunal has exclusive jurisdiction in respect of subject matter of such recovery proceedings and company court cannot dispose of such immoveable properties of the company in liquidation in favour of the bank and financial institutions and distribute sale proceeds thereof.

19. It is case of the Central Bank of India that Debt Recovery Tribunal Pune has already issued recovery certificate in favour of the bank which is disputed by the applicant herein. In the order and judgment dated 14th January, 2005 in Company Petition No. 215 of 1997, this court has also considered a situation where recovery certificate was not issued yet by the Debt Recovery Tribunal but the proceedings were pending before Debt Recovery Tribunal. This court has held that even in such situation, liquidator cannot proceed and dispose of the immoveable assets which are secured in favour of the bank and the financial institutions. In such an event, the Official Liquidator has to seek direction from the Debt Recovery Tribunal in respect of such assets held by the secured creditors.

20. Without going into the allegations of the applicants, that no recovery certificate has been issued by the Debt Recovery Tribunal and thus Debt Recovery Tribunal could not have passed any order allowing Central Bank of India to settle the claims with Mr. Prabhakar Barbole and others, in my view, even if no recovery certificate is issued by the Debt Recovery Tribunal, fact remains that the recovery proceedings filed by the secured creditors in whose favour decree against the company in liquidation has been passed, are pending before Debt Recovery Tribunal. In my view, this court thus cannot sanction any sale in favour of such secured creditors in respect of the properties of the company in liquidation.

21. It is not in dispute that on application made by the Central Bank of India, after hearing the applicant herein, Debt Recovery Tribunal has already passed an order permitting the Central Bank of India to settle the claims with Mr. Prabhakar Barbole and others in terms of the settlement proposed between the parties. It is not in dispute that the said order has not been stayed by the Debt Recovery Appellate Tribunal or by any other competent court. In my view, company court

cannot sit in appeal against the order of Debt Recovery Tribunal granting permission to settle the claims of the third parties in favour of the bank who was secured creditor. This court thus cannot consider the submissions of the applicant in this proceedings that the Debt Recovery Tribunal had no jurisdiction to grant such permission in favour of the Central Bank of India to settle the claims with Mr. Prabhakar Barbole and others. This court has already held that even if no recovery certificate is issued, Official Liquidator has to seek direction from the Debt Recovery Tribunal in respect of the assets held by him and holds the said assets till appropriate directions are given by the Debt Recovery Tribunal. Official Liquidator has to handover assets of the company in liquidation to the private receiver as may be appointed by the Debt Recovery Tribunal subject to recovery of his cost, charges and expenses as well as payment to the security agencies appointed by him. In my view, validity of the order passed by the Debt Recovery Tribunal thus cannot be gone into in this proceedings. This court in the said judgment has already negated the contentions of the Official Liquidator that jurisdiction of the Official Liquidator in the winding up proceedings cannot be treated as ousted or that the rights and powers to dispose of the assets of the company in liquidation remains even though the same was secured in favour of the bank and financial institutions and in respect of which the recovery certificate has been issued by the Debt Recovery Tribunal. I am respectfully bound by the judgment of this court delivered by the Learned Single Judge. I have no reason to take the different view in the matter. The said view has been taken by this court adopting the principles of law laid down in the judgment of the Supreme Court in case of Allahabad Bank (*supra*).

22. As far as issue of locus of the applicant to oppose the application filed by the Central Bank of India in this Court or to file this application for recalling the orders passed by this court is concerned, Debt Recovery Tribunal had already heard the applicants herein before passing the orders while granting permission in favour of the Central Bank of India to settle the claims with Mr. Prabhakar Barbole and others. Rights of the applicant if any is to challenge the said order passed by Debt Recovery Tribunal. It is stated by the applicant that the appeal has been preferred before the Debt Recovery Appellate Tribunal and the same is pending. In my view, the applicant thus had no locus of appearing in this proceedings for opposing the reliefs sought by the Central Bank of India and also to file this proceedings for recalling the orders passed by this court on the application made by the Central Bank of India. This court has passed order in furtherance of the order passed by the Debt Recovery Tribunal. By an order dated 16th December, 2004 in this company petition, this court has already held that Official Liquidator has to handover possession of the premises as per directions of the Debt Recovery Tribunal. Reliefs claimed by the Central Bank of India in this proceedings is consequential to the orders passed by the Debt Recovery Tribunal in favour of the Central Bank of India which has not been stayed and/or set aside by any competent court. In my view application thus filed by the Central Bank of India (653 of 2012) for seeking permission in favour

of the Central Bank of India to release all claims on the leasehold rights in favour of the owners of the properties which were mortgaged in favour of the bank by accepting a sum of Rs. 1.40 crores and for the directions to the Official Liquidator to release and relinquish the leasehold rights in favour of the owners and to execute documents was maintainable and this court has rightly allowed the said application in favour of the bank on the bank furnishing an undertaking that the bank shall deposit proportionate amount if any due to the workers of the company in liquidation in terms of section 529A of the Companies Act, 1956 from the amount recovered as and when required or be directed by this court or Debt Recovery Tribunal. While passing that order on 12th February, 2013 this court also considered affidavit in reply filed by the Official Liquidator.

23. If during the pendency of liquidation proceedings in this court or execution proceedings before Debt Recovery Tribunal, if unexpired period of leasehold rights in favour of the company in liquidation are not surrendered on payment of appropriate consideration, on expiry of such unexpired period, Official Liquidator would not be able to fetch any income and no funds will be made available for clearing the liabilities of the creditors including secured creditors and workers. Official Liquidator therefore made it clear that Official Liquidator did not require the unexpired leasehold rights in the said properties under two lease deeds for the purpose of winding up and if those rights are surrendered, it would save company not only from incurring further liability but would fetch some income which would be available for clearing the liabilities of the company of the secured creditors, workers and others. It is not in dispute that decree passed by this court in favour of the Central Bank of India is final and is being executed before Debt Recovery Tribunal. This court has already directed that all such secured properties will have to be sold by the Debt Recovery Tribunal.

24. This court in case of Patel Engineering Co. Ltd. (supra) after considering the judgment of Supreme Court in case of Ravindra Ishwardas Sethna has held that Official Liquidator cannot be allowed to hold on the possession of the properties not needed for efficiently carrying on winding up proceedings. It has been held that the only course open to the Official Liquidator would be to surrender possession to the landlord and save recurring liability to pay rent. It has been held that the Official Liquidator cannot be allowed to lend its aid to flout the provisions of the Rent Act so as to earn money by unfair and impermissible use of the premises. In my view, in execution of the decree passed by this court, Central Bank of India in whose favour lease hold rights of the company in liquidation was mortgaged and which has to spend substantial amount of security charges and other expenses is entitled to execute decree and recover its dues by appropriating the sale proceeds. No order restraining the decree holder from selling such property and to appropriate the sale proceeds towards its dues in satisfaction of decree can be passed by Company Court. In my view Official Liquidator even otherwise could not have raised any objection in the secured creditors selling and/or transferring the rights mortgaged in its favour in execution of decree which has become final. The Official Liquidator at most could

have considered whether amount agreed between the Central Bank of India and Mr. Prabhakar Barbole and others was proper or not.

25. Perusal of record in these proceedings indicates that Central Bank of India had obtained a valuation report in respect of the said properties which report was on record before Debt Recovery Tribunal and also in this proceedings. Considering the report, Debt Recovery Tribunal as well as this court was of the view that rights in favour of the secured creditors can be released in favour of the owners of the said properties on payment of Rs. 1.40 crores. In my view, if the Official Liquidator does not require the leasehold property of the company in liquidation for winding up of the company, with a view to avoid any further liability of the company in liquidation, Official Liquidator has to surrender the properties to the landlords and/or to the owners in the interest of the company in liquidation and also creditors and ex-management of the company.

26. In my view, when this court had considered all these aspects while allowing the application filed by the Central Bank of India. Applicant is not affected in any manner whatsoever by order of this court directing the Official Liquidator to execute the requisite documents in favour of the owners pursuant to the order passed by the Debt Recovery Tribunal.

27. As far as proposal of the applicant to deposit a sum of Rs. 1.40 crores in this court or proposal given in the year 2012 to the bank for Rs. 1.75 crores is concerned, it is case of the Central Bank of India that the said bank has to recover more than Rs. 25 crores from the company in liquidation and in view of the said proposal being conditional that on payment of Rs. 1.75 crores, bank shall give up all its claim not only in the said properties but also other free hold properties was most unreasonable and was thus rejected by the bank. Applicant has not placed any other proposal in this proceedings to indicate that even in past at any point of time, prior to 2012 in last several decades any such proposal was made by the applicant for settling the claim of the Central Bank of India or any other creditors. Applicant has not taken any steps or deposited any amount for clearing the liabilities of the company in liquidation. In my view, bank was thus justified in rejecting the proposal of the applicant. Similarly Mr. Sakhare, learned senior counsel appearing for the owners of the property is also justified to oppose the proposal made by the applicant at this stage to deposit Rs. 1.40 crores in this court on the condition that the order passed by this court is set aside.

28. On perusal of the record, in my view, there is no substance in the allegations of collusion made by the applicant between the Central Bank of India and the Official Liquidator. No such allegations are made in the pleadings. On perusal of the record, it is clear that Official Liquidator has acted independently and has not colluded with the Central Bank of India as alleged. Though at one stage, it was stand of the Official Liquidator that company in liquidation was the owner of the said properties, on having advised by advocate that the company in liquidation was not the legal owner but only has leasehold rights, Official Liquidator has

rightly taken a correct stand in affidavit in reply. In my view Official Liquidator has thus not given up any alleged ownership rights in the properties in question as company in liquidation did not have any such ownership rights. In my view, no case is made out by the applicant for recalling the order passed by this court. There is no merit in any of the submission made by the applicant and thus application deserves to be dismissed.

I, therefore, pass following order:-

Company Application No. 96 of 2013 is dismissed.

No order as to costs.