

(2003) 04 RAJ CK 0077

In the Rajasthan High Court

Case No : Company Application No. 4 of 2003 In Company Petition No. 36 of 2000

Official Liquidator of Rathi Alloys and Steel Ltd.

APPELLANT

Vs

Shashi Mohan Mathur

RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Companies (Court) Rules, 1959 — Rule 234, 239
Companies Act, 1956 — Section 456, 468, 477

Citation : (2004) 49 SCL 579

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : B.K. Sharma, for the Appellant;

Final Decision : Allowed

Judgement

S.K. Keshote, J.—Despite service of the notice, none appeared for the respondent.

2. Heard the learned counsel for the petitioner, perused the application and its enclosed documents.

3. Rathi Alloys & Steels Limited (In Liquidation) was ordered to be wound up by this Court under the order dated 24th of August, 2001 passed in S.B. Company Petition No. 36/2000. The applicant was appointed its Official Liquidator with further direction to take necessary action in accordance with the law. As per the provisions of Section 456 of the Companies Act, 1956 (for short, "the Act, 1956") all the assets and effects of the company (in liquidation) are under the deemed custody of the court with effect from the aforesaid date of winding up of orders. The ex-Directors of the Company (in liquidation) have filed the statement of affairs u/s 454 of the Act, 1956. As per the statement of affairs one Bajaj Scooter of the company (in liquidation) bearing registration No. DAM 8020 is in possession of the respondent. The Official Liquidator has requested the respondent Shri Shashi Mohan Mathur, vide his letter No. RASL/SA/2755-56,

dated 21-3-2002 to hand over the Scooter to the Officials of the Official Liquidator. He also deputed his officials at the factory premises for taking over the delivery thereof on 2-4-2002 and 19-4-2002, but neither the intimation nor the delivery of the aforesaid Scooter was given by the respondent on the dates and time fixed by the Official Liquidator. Therefore, the Official Liquidator issued a Notice No. RASL/SA/2/239, dated 3-5-2002 under Rule 234 of the Companies (Court) Rules, 1959 in Form No. 99 read with Section 468 of the Act, 1956 to surrender the Scooter as detained therein which is under the possession of the respondent. Though, this notice was duly served upon the respondent and acknowledgement was received in the office of the Official Liquidator, neither the reply has been given by him nor the possession of the Scooter has been delivered till day. The respondent, though, served with the notice of this application but he has not filed reply to the same nor he has delivered the possession of the Scooter aforestated to the Official Liquidator. He has not denied the averments made in this application. Thus, it is to be accepted that the Bajaj Scooter No. DAM 8020, the property of the company (in liquidation), is in possession of the respondent. He is unauthorisedly retaining the Scooter and thus has violated the provisions of Sections 456, 468 and 477 of the Act, 1956 read with Rules 234 and 239 of the Companies (Court) Rules, 1959. The respondent is liable to hand over the possession of the Scooter, aforestated to the Official Liquidator.

4. Accordingly this application succeeds and the same is allowed. The respondent is directed to hand over the possession of the Bajaj Scooter No. DAM 8020 to the Official Liquidator within a period of 15 days from the date of receipt of the copy of this order. In case he fails to deliver the possession of the Scooter aforestated, the Official Liquidator is free to execute this order.