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(2008) 03 GUJ CK 0038

In the Gujarat High Court

Case No : Company Application No. 103 of 2008 to Company Application No. 152 of 2008 in Company Petition No. 79 of 1989, Company Application No. 181 of 2008 to Company Application No. 195 of 2008 in Company Petition No. 79 of 1989 and Official Liqudator Report No.

Rameshbhai Tank and Others — APPELLANT

Vs

O.L. of Vijay Mills Ltd. — RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(1), 12(2), 12(3), 13
Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 446, 446(2), 456, 457(1), 468

Citation : (2008) 3 CompLJ 516 : (2008) 3 GLR 2486 : (2008) 85 SCL 262

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : R.S. Sanjanwala and Dilip L. Kanojiya, in Company application Nos. 103 to 152 and 181 to 195 of 2008, for the Appellant; J.S. Yadav, for Official Liquidator in Company Application Nos. 103 to 152 and 181 to 195 of 2008 and O.L.R. No. 55 of 2008, for the Respondent

Judgement

K.A. Puj, J.—Since common issue is involved in all these Company Applications and since they are more or less heard together, the same are being disposed of by this common judgment and order.

2. Official Liquidator Report No. 55 of 2008 is a compliance report filed by the Official Liquidator pursuant to the directions issued by this Court in respect of the subject matter of all these Company Applications and hence, the same is also being disposed of by this common judgment and order.

3. In all these Company Applications, the applicants have taken out separate Judge''s Summons praying for quashing and setting aside the notices issued by the Official Liquidator dated 24.05.2007 and 10.10.2007. The applicants have also prayed for the direction to the Official Liquidator to restrain him from taking

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possession of the rooms occupied by them and situated on land bearing Survey Nos. 410/1/B bearing Final Plot No. 46 of T.P. Scheme No. 12 of Ahmedabad. All applicants have filed their separate affidavits in support of Judge''s Summons.

4. Mr. R.S. Sanjanwala, learned advocate along with Mr. Dilip L. Kanojiya appears for the applicants and Mr. J.S. Yadav, learned advocate appears for the Official Liquidator in all these Company Applications.

5. It is the case of the applicants in all these Company Applications that by an order dated 07.03.1993 passed in Company Petition No. 79 of 1989, Vijay Mills Limited has been ordered to be wound up by this Court. The Company in liquidation owns land bearing Survey No. 410/1/B, bearing Final Plot No. 46 of T.P. Scheme No. 12 of Ahmedabad. On the said land, Chawl was constructed by the Company in liquidation which is known as Krishna Chawl. The said Chawl was given on rent to various persons. The Chawl is in existence for the last more than 70 years and ever since it was constructed, it was given out on rent to various persons. The persons who were given the Chawl premises on rent were / are not connected with the Company in liquidation and are independent tenants of the Chawl. The applicants are the lawful tenants of the rooms given to them on rent and they have been regularly paying their rent earlier to the Mills Company and thereafter to the Official Liquidator of the Company in liquidation. It is also their say that since they are tenants of the Company in liquidation, they are entitled to protection under the provisions of the Bombay Rent Hotel and Lodging Houses Rates Control Act, 1947. Neither the Mills Company nor the Official Liquidator has initiated any proceedings for recovery of possession of the property on any of the ground permissible under the Bombay Rent Act. The Official Liquidator has not even approached this Court for any orders permitting him to recover possession of the premises from the applicant. This Court has also not in any appropriate proceedings passed any order directing the Official Liquidator to take over possession from the applicants. No such order has ever been passed by this Court and no such order has been passed after hearing the applicants, affording an opportunity to show cause against such order.

6. It is also the case of the applicants that all the occupants of the Chawl have been served with the notices dated 24.05.2007 and 10.10.2007 calling upon them to hand over vacant and peaceful possession of the premises in their possession. The said notices issued by the Official Liquidator are wholly without authority in law and without jurisdiction. It is settled position that by virtue of the order of liquidation, the relationship between the landlord and the tenant does not come to an end and the applicants continue to be the lawful tenants of the Mills Company in liquidation. The Official Liquidator has not initiated any legal proceedings against the applicants for taking possession of the premises from the applicants and hence, without any order from this Court, the Official Liquidator cannot demand possession from the applicants.

7. All these matters were heard to some extent on 05.03.2008 and 11.03.2008. Though this Court has reserved the judgment on 11.03.2008, it was, however,

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observed in its order dated 11.03.2008 that it is open for the parties to produce the details with regard to the original occupants of the premises in question, as to whether they have transferred subsequently by way of sub-tenancy or sale and in that case the list of original tenants and the present occupiers of the premises in question be furnished. The Court has also directed to make it clear as to whether all these applicants have paid rent, mesne profit or occupation charges to the Official Liquidator or to the previous Management prior to winding up till this date. The Official Liquidator was also directed to verify his own record and if the list of the original persons occupying the premises on the date when the winding up order is passed, was available, the said list be placed on record and be furnished to Mr. R.S. Sanjanwala, learned advocate for the applicants and necessary details are directed to be placed on record on or before 14.3.2008.

8. On 14.03.2008, the Official Liquidator has filed his report along with the list called for by the Court. Mr. R.S. Sanjanwala, learned advocate appearing for the applicants has also filed written submissions and various details were furnished in respect of each of the applicants. He has also furnished statements indicating the application No. , name of the tenant, name of the occupant, whether the premises is occupied by the original tenant or by any one else who acquired the possession either by way of sub-tenancy, transfer or inheritance and showing the nature of use of the premises whether by way of shop or residence.

9. Mr. R.S. Sanjanwala has submitted that the applicants are persons presently occupying Krishna Chawl. The said Krishna Chawl is of the ownership of Vijay Mills Limited (In Liquidation). The Company was ordered to be wound up on 07.09.1993. The applications are filed, being aggrieved by the notices issued by the Official Liquidator calling upon the applicants to hand over possession of the Chawl in their possession. He has further submitted that all the applicants or their predecessors were tenants of the Company in liquidation before its winding up and thereafter by the Official Liquidator. The statement of affairs filed by the Ex-Directors of the Company in liquidation describes Krishna Chawl as tenanted property. Along with the statement of affairs, the list of documents was also filed by Company in liquidation. A reference to the said list is also found in the notice dated 12.05.1994. Based on the list furnished by the Ex-Management of the Company, notices were issued on 12.05.1994 to the tenants as per the said list calling upon them to pay the rent / compensation to the Official Liquidator.

10. Mr. Sanjanwala has further submitted that the applicants have also produced rent receipts issued by the Ex-Management in favour of the applicants or their predecessors. The rent receipts describe the applicants or the predecessors as tenants and on overleaf thereof certain conditions of tenancy are written. The said document constitute an agreement / rent note. In some of the cases, the applicants have produced a letter / application submitted to the Ex-Management for being inducted as a tenant and an endorsement on the said application by the Ex-Management admitting the applicants as tenants is given. The said document also constitutes an Agreement / Rent Note. In any case, the law does not require

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a written agreement of lease and tenancy can be brought about by an oral agreement between the parties. Reliance is placed on the decision in the case of Tirath Ram Gupta Vs. Gurubachan Singh and Another, The existence of a rent note is not mandatory and documents such as rent receipts, electricity bills, telephone bills, licensee etc. constitutes a valid evidence of tenancy. Once it is shown that the occupant or the predecessor was lawfully inducted and that the owner has accepted the rent from such person, such person shall be entitled to a protection as tenant of the premises. He has further submitted that it is settled position that merely because Company goes into liquidation and Liquidator / Official Liquidator is appointed, the rights of the Company vis.a.vis its landlord and/or its tenants do not undergo any change. Reliance is placed on the decision in the case of Smt. Nirmala R. Bafna/Kershi Shivax Cambatta and others Vs. Khandesh Spinning and Weaving Mills Co. Ltd., and another/Official Liquidator and others,

11. Mr. Sanjanwala has further submitted that it is settled legal position that all tenants in Gujarat would be entitled to protection under the Bombay Rent Hotel and Lodging Houses Rates Control Act, 1947. Sub-Section (1) of Section 12 of the Rent Act restrains the landlord from taking recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of the Act. He has, therefore, submitted that any tenant pays or is ready and willing to pay the amount of standard rent or permitted increases and observes and performs the other conditions of the tenancy cannot be evicted from the premises. Reliance is placed on the decision in the case of Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad, and in the case of Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai,

12. All the applicants have paid rent till it was being accepted by the Official Liquidator. For subsequent period, letters have been addressed offering the rent and enclosing therewith cheques for the outstanding amounts. In any case, all the applicants are ready and willing to pay the rent and can deposit the outstanding amount, if any. Mr. Sanjanwala has further submitted that in addition to the documents produced on record evidencing tenancy, all the applicants can lead further evidence, documentary as well as oral in support of their claim of tenancy. He has further submitted that under the Bombay Rent Act, all the applicants are entitled to protection against recovery of possession. In case, any of the applicants is found in breach of any of the conditions of tenancy, necessary proceedings will have to be initiated in appropriate Court for recovery of possession. In such proceedings, the breach of conditions of tenancy will have to be pointed out and the applicants would be entitled to an opportunity to dispute the alleged breach and/or raise such contention as may be available in law and oppose the motion for eviction. The Official Liquidator, however, cannot straightway demand possession based solely on the fact that the Company, the original owner of the land is ordered to be wound up. He has further submitted

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that the Official Liquidator has, so far not filed any report / reply dealing with the averments made and/or contentions raised in view of the contentions raised herein above, the applications ought not to be dismissed in limine.

13. Mr. Sanjanwala has further submitted that on 14.02.2008, this Court dismissed Company Application No. 73 of 2008 filed by one Mr. Prahlad Tanaji Patil, also an occupant of Krishna Chawl. The said judgment proceeds on the basis that the said occupant is covered by Section 630 of the Companies Act, 1956 and as such, cannot claim to occupy the premises posing to be a tenant. The said applicant claims that he is in rightful possession and is entitled to protection under the Rent Act. While dismissing the said Company Application, this Court relied upon the judgment in the case of Textile Labour Association v. Official Liquidator of Amruta Mills reported in (2005) 126 Comp Cas 469 . Against the said judgment, in the matter of Amruta Mills, O.J. Appeal Nos. 72, 73 & 74 of 2004 have been filed. By an order passed on 06.02.2004 by the Division Bench of this Court, the appeals have been admitted whereby the interim relief originally granted by the learned Company Judge on 26.11.2004 was extended. The said appeals are pending and interim relief is in force. He has, therefore, submitted that it would be in the interest of justice to admit these applications and await the outcome of the appeals or to order that these Company Applications be heard along with the O.J. Appeals. The judgment which may be delivered in the above Appeal will have a direct bearing on the subject matter of the present applications.

14. Mr. Sanjanwala has alternatively submitted that the applicants have also offered to purchase the premises at the market value. The market value may be determined by this Court after calling for the Valuation Report or by adopting any other method and the applicants shall purchase the property after paying the market value as may be determined by this Court. In similar circumstances, occupants of rented premises have been permitted to purchase the properties at the prevailing market value. He relied on the decision of this Court in the case of Official Liquidator of Ambica Mills Limited v. Bank of India decided on 21.04.2005 in OLR No. 67 of 2004.

15. Mr. Sanjanwala has further submitted that as directed by this Court vide its order dated 11.03.2008, the list has already been filed. As per the said list, most of the applicants are original tenants and/or their heirs and legal representatives. In 18 cases, the applicants are transferee, who have acquired tenancy rights from the original tenant. Such transfers are not prohibited in law and have been accepted by, either the Company in liquidation or by the Official Liquidator. The transferees are also tenants in possession and assuming for the sake of argument that such transfers furnish a ground for eviction u/s 13 of the Bombay Rent Act, necessary proceedings in this regard will have to be initiated before the appropriate Court giving the persons in occupation an opportunity to defend any motion for eviction.

16. Mr. Sanjanwala has further submitted that the commercial use being made

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by some of the occupants was permitted by the Company in liquidation and there is no prohibition against such commercial use. In any case, the transfer of tenancy or commercial use having been condoned and in view of the acquiescence or waiver by the Company in liquidation or Official Liquidator, would not furnish a ground for eviction.

17. Lastly, Mr. Sanjanwala has submitted that the Company was ordered to be wound up on 07.09.1993 and for a period of 12 years thereafter, the Official Liquidator has recognised the occupants as tenants. In any case, all the occupants have enjoyed possession to the knowledge of the Official Liquidator. No efforts were made by the Official Liquidator to obtain possession. The applicants have thus become owners by adverse possession and cannot be evicted in the manner sought to be done by the Official Liquidator. He has, therefore, submitted that the reliefs prayed for in all these applications deserve to be granted and the applications be allowed accordingly.

18. In his compliance report being OLR No. 55 of 2008, the Official Liquidator has stated that this Court vide order dated 14.02.2008 passed in Company Application No. 73 of 2008 directed the Official Liquidator to proceed further in respect of the notice dated 10.10.2007 issued by him to 66 occupants of Krishna Chawl of the Company and to get the said premises vacated forthwith. The Official Liquidator was also directed to take help from the concerned Police Station for implementation of the notice issued by him. The Court further observed in its order dated 14.02.2008 that the notice to the occupants of Chawl was issued by the Official Liquidator on 10.10.2007 directing the occupants to vacate the premises within 10 days, but on expiry of the said period of notice, the Official Liquidator has not taken any action and, therefore, it appears to the Court that the Official Liquidator is not giving due weightage to the orders passed or directions issued by this Court. In this regard, the Official Liquidator has stated that after issuance of notice on 10.10.2007, he has received a letter dated 19.10.2007 from the advocate of the occupants stating therein that they are not illegal occupants but they are lawful tenants of the Company and requested the Official Liquidator to withdraw the notice dated 10.10.2007. He has thereafter issued a letter on 23.11.2007 requesting the Advocate of the occupants to furnish copies of rent note, agreements, if any, executed by the Company in favour of his clients and also to intimate the dates since when the properties are in their possession. Since no reply was received, he issued another letter on 31.01.2008. Instead of giving any reply or furnishing details, Company Application No. 73 of 2008 was filed before this Court. On rejection of the said application, O.J. Appeal was filed before the Division Bench and the Official Liquidator was orally directed without any express specific operating order, not to evict the occupants of the Chawl till 25.02.2008. The Official Liquidator has further stated in his report that there are 66 families occupying the Krishna Chawl on whom the notices dated 10.10.2007 were served by him. Majority of the occupants are staying in the Krishna Chawl with their family and, therefore, the eviction proceedings involve forcible removal of more than 200 persons

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including ladies and children from the Krishna Chawl. He does not have adequate manpower within his office to forcibly remove such a large number of persons from the Company''s premises and even otherwise, if the clerical staff of the office of the Official Liquidator is deployed to physically pull the occupants out of the rooms occupied by them and to shift their belongings outside the Chawl, in all probabilities, the life of the officials of the office of the Official Liquidator shall be at risk and there may be a danger of disturbance in the law and order situation. Therefore, he sent a request to the Police Inspector, Saher Kotada Police Station, Ahmedabad requesting him to provide adequate police assistance including ladies police to assist the representative of the Official Liquidator in getting the Krishna Chawl vacated and also to maintain the law and order. He has further stated that on 25.02.2008, Police Inspector, Saher Kotada Police Station informed the Official Liquidator that they are ready to provide police assistance and protection but cannot provide any assistance in removing the goods, articles and any other things and for removing the encroachments and also furnished the list of estimated cost for providing police assistance for getting evicted the quarters of the Company. The Official Liquidator has further stated in his report that on 27.02.2008, he has deputed his persons at Krishna Chawl for vacating the quarters of the Company. However, a representation was made by the occupants stating that stay has been granted in O.J. Appeal No. 17 of 2008 till 03.03.2008 against eviction and hence, no further steps were taken by him.

19. The Official Liquidator has filed further report on 13.03.2008 stating that this Court has directed the Official Liquidator vide order dated 11.03.2008 to verify its own record and if the list of the original persons occupying the premises on the date when the winding up order was passed is available, the said list be placed on record and be furnished to Mr. R. S. Sanjanwala, learned advocate appearing for the applicants. Pursuant to the said order, the Official Liquidator has submitted that total 51 occupants as per List A to the report are the original occupants of the quarters on the date of winding up order and 15 occupants as per List B have come in possession of the quarters at Chawl after the date of winding up order. 13 occupants as per List C who were in possession of the quarters as on the date of winding up order are not in possession now. After furnishing this report, he has sought the direction of the Court for further order in the matter.

20. Mr. J. S. Yadav, learned advocate appearing for the Official Liquidator has submitted that the distinction sought to be made by the learned advocate appearing for the applicants that the applicants are not the service tenants is absolutely uncalled for and unwarranted. The contention raised is not based on any material or evidence. On the contrary, the evidence is otherwise. The applicants have themselves stated in their letter dated 07.06.2007 addressed to the Official Liquidator that most of the tenants are the ex-workers / employees of the closed Mills Company. As a matter of fact, Krishna Chawl was constructed for the residence of workers / employees of the Mills Company and it was never the intention of the Mills Company to give rooms of this Chawl on rent to any

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outsider. Hence, the present occupants of the Chawl are either relatives or legal heirs of the ex-workers or employees of the Mills Company or they have directly or indirectly derived their title of whatever worth, from such persons. Hence, provisions of Section 630 of the Companies Act, 1956 equally apply to them.

21. Mr. Yadav has further submitted that the Official Liquidator is entitled to claim possession of the premises in question on termination of the lease agreement, if any, as soon as the Company went into liquidation and the employer - employee relationship between the Company in liquidation and the applicants has come to an end. Mr. Yadav has relied on the decision of the Delhi High Court in the case of K. K. Dhawan v. Dr. (Mrs.) Promila Suri reported in All India Rent Control Journal 1998 (1) 181, wherein it is held that relationship of landlord and tenant is created by a contract, mere payment of rent does not necessarily establish the relationship of landlord and tenant. Therefore, on the ground that landlady Mrs. Suri had issued rent receipt in the name of Mr. K. K. Dhawan would not make him a direct tenant of Mrs. Nirmal Kanta Suri. In fact the appellant failed to produce any contract establishing the relationship of landlord and tenant. On the contrary Ex.A-2 is a rent agreement entered in between the landlady and the Company to which present appellant was a signatory. Thus, signing Ex.A-2 he admitted that he occupied the tenanted premises as an employee of the tenant i.e. the Company. He was to remain in the premises so long as he was the employee of the Company. That is the reason, the Company issued notice to him to vacate and handover the rented premises to the landlady as he was no more an employee of the company.

22. Mr. Yadav further relied on the decision of the Hon''ble Supreme Court in the case of Sheodhari Rai and Others Vs. Suraj Prasad Singh and Others, , wherein it is observed that payment of rent does not necessarily establish relationship of landlord and tenant. Such payment may only prove permissive occupation not amounting to any right or title to possession.

23. Mr. Yadav further relied on the decision of Hon''ble Supreme Court in the case of D.H. Maniar and Others Vs. Waman Laxman Kudav, wherein it is held that a person continuing in possession of the premises after termination, withdrawal or revocation of the license continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises.

24. Based on the aforesaid judgments and provisions of law, as interpreted by the Courts, Mr. Yadav has strongly urged that all these applications deserve to be summarily rejected.

25. After having heard learned advocates appearing for the respective parties and after having gone through the documents produced before the Court and the authorities cited by both the parties, the Court is of the view that the applicants have not made out a case that they are the tenants of the Company in liquidation. Though an attempt is made to make a distinction between the applicants and the other service tenants on the ground that the applicants were

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never in the employment of the Company in liquidation, however, in view of their own admission before the Official Liquidator, it is difficult to accept this proposition. The documents which are produced before the Court are either in the nature of rent receipts, telephone bills, electricity bills or tax bills. Such documents are not enough to establish their claim that they are the tenants of the Company in liquidation.

26. Judgments relied upon by Mr. Sanjanwala in support of his various contentions would not render much assistance to the applicants. The decision of the Hon''ble Supreme Court in the case of Smt. Nirmala R. Bafna and Ors. v. Khandesh Spinning and Weaving Mills Co. Ltd., (SUPRA) would not apply to the facts of the present case. In the case before the Hon''ble Supreme Court, the liquidated Company was a tenant and had sub-let the portion of tenanted premises with the consent of the landlord. The consent of landlord however was not duly established before the High Court. The High Court disbelieving factum of landlord''s consent directed the Liquidator to take possession of tenanted premises of liquidated Company, permitted the sub-tenant to occupy the portion of it as agent of Liquidator, enhanced the rent and passed other directions. The consent of landlord to creation of sub-tenancy was later on established before the Supreme Court which in turn held that in the above circumstances, the sub-tenant''s claim of protection of Bombay Rent Control Act cannot be rejected. In this context, the Hon''ble Supreme Court held that merely because a Company goes into liquidation and a Liquidator / Official Liquidator is appointed, the rights of the Company vis.a.vis its landlord and/or its tenants do not undergo any change and in view of these facts and circumstances, the directions made by the High Court were not really warranted.

27. In the present case, the Company in liquidation has not created any tenancy or sub-tenancy nor given its consent to the alleged tenancy rights of the applicants. On the contrary, the Official Liquidator issued notices of eviction and pursuant to the directions of this Court, he tried to implement the said notices. Since there being no tenancy rights of the applicants, there is no question of undergoing any change in the rights of the Company vis.a.vis the applicants.

28. Similarly, the decision in the case of Tirath Ram Gupta v. Gurubachan Singh and Anr. (Supra), is relied upon by the applicants for limited purpose to contend that the law does not require a written agreement of lease and tenancy can be brought about by an oral agreement between the parties. The case before the Hon''ble Supreme Court was eviction of sub-tenant''s on surrender of lease by the tenant. An agreement of lease was not in dispute. It was observed in this context that a lease is a transfer of a right to enjoy the property. It creates an interest in the property by virtue of the contract of lease which may be either oral or written. The interest created in the property can be put an end to by terminating the contract. The contract, however, cannot be terminated in part. Since agreement of lease was not in dispute and that was sought to be terminated in part, the above observations were made. Here in the present case,

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there is no admission of leasehold or tenancy rights of the applicants nor there are any valid documents to this effect. Hence, there is no question of presuming any oral or written contract between the company and the applicants.

29. In the case of Bhaiya Punjalal Bhagwanddin v. Dave Bhagwatprasad Prabhuprasad and Ors. (Supra), the appellant was a tenant of certain residential premises situate at Anand and belonging to the respondent - landlords. There was a contract of lease and the appellant did not pay rent nor evicted the premises despite service of notice u/s 12(3)(a) of the Bombay Rent Act. The respondents landlords, therefore, filed the suit for ejectment basing their claim of ejectment on the provisions of Section 12(3)(a) of the Bombay Rent Act. In this context, the Hon''ble Supreme Court held that the provisions of Section 12 of Bombay Act 57 of 1947 will operate against the landlord after the determination of the tenancy by any of the modes referred to in Section 111 of the Transfer of Property Act. What this section of the Act provides is that even after the determination of the tenancy, a landlord will not be entitled to recover possession, though a right to recover possession gets vested in him, so long as the tenant complies with what he required to do by this section. It is this extra protection given by this section which will be useful to the tenant after his tenancy has determined. The section does not create a new right in the landlord to evict the tenant when the tenant does not pay his rent. A landlord''s right to evict the tenant for default in payment of rent will arise only after the tenancy is determined and the continued possession of the tenant is not on account of the contractual terms but on account of the statutory right conferred on him to continue in possession so long as he complies with what Sub-section (1) requires of him. Hence, where a tenant is in possession under a lease from the landlord, he is not to be evicted for a cause which would give rise to a suit for recovery of possession u/s 12 if his tenancy has not been determined already. It follows that whenever a tenant acts in a way which would remove the bar on the landlord''s right to evict him, it is necessary for the landlord to serve him with a notice determining his tenancy and also serve him with a notice under Sub-section (2) of Section 12 of the Act.

30. Here in the present case, applicants are not the tenants under any agreement and they are not in possession of the premises under a lease from the Company.

31. In the case of Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai (Supra), admittedly, there is relationship of landlord and tenant between the parties and the landlord called upon the tenant to deliver possession of the premises alleging that the tenant had failed to pay rent and the tenant in reply contended that he had paid rent at the agreed rate and that he was entitled to get credit for certain amount being the costs incurred by him for Selectric installation in the premises with the consent of the landlord and that the rent stipulated was excessive. In this context, it was observed that the clause applies to a tenant who continues to remain in occupation after the contractual tenancy

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is determined. It does not grant a right to evict a contractual tenant without determination of the contractual tenancy. Protection from eviction is claimable by the tenant even after determination of the contractual tenancy so long as he pays or is ready and willing to pay the amount of the standard rent and permitted increases and observes and performs the other conditions of the tenancy consistent with the provisions of the Act.

32. Even with regard to the admission of appeal and grant of stay against the order of the Learned Single Judge in the case of Textile Labour Association v. Official Liquidator of Amruta Mills reported in (2005) 126 Comp Cas 469 it is to be worthwhile to note that subsequent to that, another Division Bench of this Court has dismissed the appeal preferred against the similar order of the Learned Single Judge and observed in its order dated 01.04.2005 passed in O.J. Appeal No. 60 and 61 of 2004 in the case of K.G. Sukumaran Nair v. O.L. of Navjivan Mills Limited, that the Company Court had the fullest authority to direct eviction of an unauthorized occupant or a person who is an encroacher, a person who enters into possession with the permission of the Company or its officials, cannot say that the Company Court cannot evict him. The Court after taking into consideration the totality of the circumstances, the conduct of the appellant and legal position refused to interfere in the matter and dismissed the appeals.

33. The Court has also considered certain other judgments which have bearing on the issue involved in all these applications. In the case of Bimal Chand Vs. D.C.M. Ltd., while dismissing the petition, the Court held that the question whether a person is tenant or licensee necessarily has to be determined keeping in view the intention of the parties. It has to be seen whether the documents create a lease or license. Giving the payment a label of rent will not make a person a tenant. It was obvious from the findings on record that the petitioners had been in the employment of the respondent. The quarters had been built for the employees. The same were allotted after the petitioners joined service at Hissar. Outsiders had never been allotted quarters. Obviously the same were for the benefit of the workers. There was nothing to indicate that there was any intention to create a demise in the property. In the absence of any such intention, it must follow that the petitioners were not tenants in the property. It was also held that no distinction had been made by the Legislature pertaining to an employee or an ex-employee.

34. In the case of Prahladbhai Rajaram Mehta Vs. Popatbhai Haribhai Patel and Another, this Court has held that Section 630 of the Companies Act, 1956, applies to a past officer or employee of a Company, if the wrongful obtaining, withholding or application of the property was done in his capacity as such Officer or employee. Thus, when an employee refuses to vacate the premises of the Company on determination of the employment or on his retirement but continues in possession even after his retirement, the employee can be held liable u/s 630 of the Act. The Court further held that Section 13(1)(f) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, provides that if

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premises are let to a tenant for use as resident in consequence of his being in service, it is also a ground for eviction. This clause refers to an occupation by a servant as tenant, whether by way of remuneration or a part payment for services or whether paying rent or not. If the Company decides to seek possession u/s 13(1) of the 1947 Bombay Act against the employee ? tenant the Company has to pursue the remedies before a competent Court as provided u/s 28 of the 1947 Bombay Act. The provisions of Section 630 of the Companies Act, 1956, also provide a special remedy which is summary in nature against a person who ceases to be in the employment of the Company who was given possession of the premises out of such service relation. The Company has an option either to pursue the remedy provided u/s 630 of the Companies Act or u/s 13(1)(f) under the 1947 Bombay Act. There are thus two remedies open to companies. Both provisions give different but concurrent remedies to companies. Even in the case of tenancy, the provisions of Section 630 of the Companies Act are available to a Company. The provisions of the 1947 Bombay Act and the provisions of Section 630 of the Companies Act are required to be interpreted harmoniously so that the object of both the statutes is advanced and not defeated. To say that the provisions of Section 630 cannot be invoked in a case of tenancy would be to render the provision otiose. The provisions of a Central legislation later in point of time, will prevail over the provisions of an earlier State law. Therefore, even if there were any inconsistency, the remedy under the provisions of Section 630 of the Companies Act, 1956, would be unaffected by Section 28 of the 1947 Bombay Act.

35. In the case of Lalita Jalan and Another Vs. Bombay Gas Co. Ltd. and Others, the Hon''ble Supreme Court has held that if an erstwhile or former employee is prosecuted u/s 630 of the Act on account of the fact that he has not vacated the premises and continues to remain in occupation of the same even after termination of his employment, in normal circumstances it may not be very proper to prosecute his wife and dependent children also as they are bound to stay with him in the same premises. The position will be different where the erstwhile or former employee is himself not in occupation of the premises either on account of the fact that he is dead or he is living elsewhere. In such cases all those who have come in possession of the premises with the express or implied consent of the employee and have not vacated the premises would be withholding the delivery of the property to the Company and, therefore, they are liable to be prosecuted u/s 630 of the Act. This will include anyone else who has been inducted in possession of the premises as such person is equally responsible for withholding and non-delivery of the property of the Company.

36. In the case of Shubh Shanti Services Ltd. Vs. Manjula S. Agarwalla and Others, the Hon''ble Supreme Court has held that the respondents having remained in possession after the death of the employee as his heirs and the Company not having authorized them to remain in possession, possession of the Company''s flat by the respondents, after the service of notice to vacate the premises by the company, is wrongful withholding of the property of the

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company. The respondents by having wrongfully withheld the possession of the company''s flat and not delivered the property to the company, had committed an offence u/s 630 of the Companies Act. The Court further held that the decision of the High Court that Section 630 of the Companies Act being penal in nature, proceedings thereunder could not be construed as proceedings taken in due process of law, was unsustainable. The filing of a Civil suit for possession by the Company did not deprive the Company of the right to institute prosecution under the Companies Act and incidentally get an order for delivery of possession.

37. In the case of O.L. of Aryodaya Spg. and Weaving Mills Co. Ltd. Vs. Charansingh Dhupsingh, this Court has held that once it is found that a person is a trespasser, proceedings u/s 446 of the Act are due process of law, and the trespasser as such can be directed to be evicted and such direction cannot be said to be without due process of law. The Court can always make an order which is just and proper in the facts and circumstances of a case and it is immaterial as to what the prayers are in the application and particularly in winding up proceedings, whenever the Court discovers any property of the Company in the possession of anybody since the court is to administer justice and to prevent multiplicity of proceedings when the fact of unauthorized occupation of the Company''s asset or property by a person is clearly proved before the Court, the Court has ample power u/s 446(2)(a), (b), (d) and Section 468 read with Rule 9 of the Companies (Court) Rules, 1959 to pass such order as it may think proper which the facts and circumstances of the case demand, for determining the rights of the parties. Once it is established that there was failure by the heirs of respondent No. 1 to comply with the terms of the decree, in the civil suit the Company in liquidation became entitled to seek vacant and physical possession of the land from them. The Company became entitled to vacant and physical possession of the land from all the persons claiming through the deceased respondent No. 1 when the default in making payment of compensation from 1986 and sub-letting was admitted.

38. There is no substance in the contention that the applicants are ready and willing to purchase the property in question at market value. When the possession is sought to be taken from the applicants, it is not just and proper on their part to put forward such a contention especially when the applicants are not legally inducted tenants in the premises. When, how and to whom the properties of the Company are sold, is governed by the provisions contained in the Companies Act, 1956 and the Official Liquidator is vested with such powers with approval and sanction of the Company Court. Section 456 of the Companies Act, 1956 provides that where a winding up order has been made or a Provisional Liquidator has been appointed, the Liquidator or the Provisional Liquidator as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the Company is or appears to be entitled. Property which is in the possession of a tenant is the property of the Company, and on the appointment of the Provisional Liquidator or the Liquidator under the authority of the Court, the Liquidator is entitled to take into his hands all the

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properties which belongs to or which appear to belong to the Company. Section 457(1)(c) of the Act authorizes the Liquidator in a winding up to have power with the sanction of the Court to sell the immovable and movable property and actionable claims of the Company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels. The Liquidator would also be entitled to do all such other things as may be necessary for winding up the affairs of the Company and distributing its assets. Section 477(6) of the Act provides that if, on his examination, any such officer or person admits that he has in his possession any property belonging to the Company, the Court may order him to deliver to the Provisional Liquidator/Liquidator, as the case may be, that property or any part thereof, at such time, in such manner and on such terms as seem just to the Court. The endeavour of a Company Judge in the case of a Company in liquidation is to convert every property of the Company into cash and distribute it either pari passu or pro rata in accordance with the provision of the Companies Act. If the applicant - Company was allowed to continue as tenant it would not be an act of prudence and was likely to reduce the value of the property. Reference is made to the decision of Patna High Court in the case of Rohtas Industries Limited and Anr. v. Official Liquidator reported in (2005) 128 Comp Cas 421 (Pat).

39. Even otherwise, the very object of Section 468 of the Companies Act, 1956 is to provide a summary procedure for enabling the Liquidator to avoid expensive litigation in the discharge of one of his primary duties, viz., the collection of the assets of the Company. This section can be resorted to only after making of a winding up order. Even under this section, the Court has power to order a former employee of a Company in winding up, who still has in his possession the property of the Company to deliver possession thereof to the Official Liquidator.

40. In the case of Krit Narayan Thakur v. State of Bihar 2002 CLC 1552 (Pat), the question was of evicting an employee from occupation of premises of the Company in liquidation. The applicant employee resisted but could not show any justification for it. Other employees who resisted it could get no relief even upto the Supreme Court. An employee claiming that his eviction was not proper, the Court said that he could not be put back into possession. Thus, over and above Section 630 of the Act, Section 468 of the Act empowers the Official Liquidator to take back the delivery of the property of the Company in liquidation.

41. One more contention raised on behalf of the applicants that since they were in possession of the property for the period of more than 12 years, they are entitled to retain the said possession even on the principle of adverse possession. There is no much substance or merits in this contention for variety of reasons. It is all throughout the say of the applicants that they are legally inducted tenants and when this contention is not found favour with the Court, for the first time in their written submissions, this contention is raised on behalf of the applicants. The applicants either succeed or fail only on the ground that they are tenants or not. They were allowed to retain possession till this date only because their claim

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regarding tenancy rights is under consideration of the Court. The Official Liquidator is in the process of liquidating the undisputed assets of the Company and now the disputed assets are taken on hand. So at this stage, the Court will not allow the applicants to raise such contention. Even otherwise, there is no merits or substance in this contention and hence, it is rejected. Section 468 empowers the Court to make an order at any time after making a winding up order on any contributory, Trustee, Receiver, Banker, Agent, Officer or other employee of the Company, to pay, deliver, surrender or transfer forthwith or even such time as the Court directs, to the Liquidator, any money, property or books and papers in his custody or under his control, to which the Company is prima facie entitled.

42. In view of the above factual and legal position, none of the applicants of this group deserve any relief from this Court. All these applications are, therefore, rejected. The Official Liquidator is, therefore, directed to implement the notices issued by him on 24.05.2007 and 10.10.2007. Since the State Government is a party in OLR No. 55 of 2008, the concerned Police authorities are hereby directed to render all assistance to the Official Liquidator for the purpose of implementation of the notices and to comply with the order passed by this Court. The Official Liquidator is also permitted to engage labour force for the purpose of carrying out this order if the possession is not handed over by the applicants to him willfully.

43. Subject to the aforesaid directions and observations, all these Company Applications as well as OLR No. 55 of 2008 are accordingly disposed of.

44. At this stage, Mr. S.H. Sanjanwala, learned Senior Counsel appearing with Mr. Dilip L. Kanojiya for the applicants prays for stay against operation and implementation of this judgment and order. Considering the ensuing Holi festival and intervening holidays, this judgment and order is stayed upto 28.03.2008.

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