
(2004) 12 PAT CK 0029

In the Patna High Court

Case No : Company Petition No. 3 of 1984

Rohtas Industries Ltd.

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Citation : (2004) 12 PAT CK 0029

Judgement

R.S. Garg, J.—Flag-439 filed by M/s. Indequip Leasing and Finance Ltd. was taken up for consideration yesterday only. It was recorded in yesterday's proceedings that although the counsel had been saying that M/s. Indequip Leasing and Finance Ltd., is the tenant of the property and as such they cannot be evicted by the Official Liquidator. This Court had made it clear that in accordance with the powers vested in the Company Court u/s 456, read with Section 457, the Company Court is entitled to evict each and every person, who is in possession of the property of the company and if the Court wants to exercise such powers what right a tenant would have, the learned counsel for M/s. Indequip Leasing and Finance Ltd. did not make any submission on that aspect of the matter. Instead of passing the orders on Flag-439, I directed that the matter be taken up today so that the tenant in possession may make an offer for alienating the property under tenancy in his favour. The matter is taken up today.

2. Sri Madhuresh Prasad, learned counsel appearing for M/s. Indequip Leasing and Finance Ltd., submits that it was not possible for the arguing counsel to seek instructions from the tenant about his offer.

3. Taking into consideration that much time had flown and even on 8-11-2004 time was given to M/s. Indequip Leasing and Finance Ltd. to make the offer and they have not made any offer, I propose to dispose of the application at Flag-439, the arguments on which were already heard.

4. Flag-439, in fact, is an application for review and stay of the operation of the orders dated 27-8-1999, 12-5-2000 and 25-8-2000 to declare that the applicant-company M/s. Indequip Leasing and Finance Ltd. is the lawful tenant in the

property, stay the proceedings of the District Magistrate, Dehradun, not to proceed with the proceeding with respect to taking possession of Sahu Jain Court and pass any other orders. In support of the application, it has been contended by M/s. Indequip Leasing and Finance Ltd., the tenant that the property was given in their tenancy on 28-7-1984 and since thereafter they are continuing in the property as a lawful tenant. It has also been submitted in the application that to make the property habitable, a good fortune has already been spent and the tenant is residing in the property peacefully. It has also been contended that M/s. Indequip being the tenant cannot be evicted in these proceedings and either the Official Liquidator or the purchaser of the property will have to take steps against the tenant in the ordinary Court of law for his eviction. It was also submitted that the tenant validly inducted in the property cannot be evicted unceremoniously.

5. In support of the application, learned counsel for the tenant has placed his strong reliance upon the judgments of the Supreme Court in the matter of Nirmala R. Bafna (Smt)/Kershi Shivax Cambatta and Others Vs. Khandesh Spinning and Weaving Mills Co. Ltd. and Another/Official Liquidator and Others, and Anthony C. Leo Vs. Nandlal Bal Krishnan and others,

6. Opposing the application Sri Alok Agrawal, learned counsel for the Official Liquidator, submits that the company petition was filed in this Court on 23-5-1984 and as such any action taken by the management subsequent to the institution of the company petition would not be saved. It is further submitted that the two judgments on which strong reliance has been placed are distinguishable on facts and would not apply to the present case. It is also submitted that the tenancy cannot be continued because the endeavour of a Company Judge/Company Court in the company proceedings is either to revive the company or to dissolve the company. In case of dissolution of the company, all assets, movable or immovable are to be converted into cash and the cash is to be distributed in accordance with law. According to him, it is also a notoriously known fact that if the property occupied by the tenant is sold in the market it does not fetch its real market value because a person who proposes to spend a good fortune would not purchase a litigation, the property being in possession of the tenant. According to him, the application in its form is not maintainable and no reliefs as claimed by the tenant can be granted to him.

7. It is undisputed that the company has been put under liquidation and the Official Liquidator has already been appointed.

8. Section 456 of the Companies Act reads as under :

"456. Custody of company's property.--(1) Where a winding up order has been made or where 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.

(1A) For the purpose of enabling the liquidator or the provisional liquidator, as

the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon, after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

(1B) For the purpose of securing compliance with the provisions of Sub-section (1A), the Chief Presidency Magistrate or the District Magistrate may take cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.

(2) All the property and effects of the company shall be deemed to be in the custody of the Tribunal as from the date of the order for the winding up of the company."

9. A fair understanding of Section 456 would make it clear that where winding up order has been made or where 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. Undisputedly the property which is in possession of the tenant is property of the company, therefore, on 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 properties which belong to or which appear to belong to the company. In the present case, the tenant does not dispute the ownership of the company. If that be so, the simple question which remains to be decided is whether a tenant can be evicted from the premises which were let out to be tenant after filing of the company petition and issuance of the notices in the same.

10. Section 457(1)(c) authorises the liquidator in a winding up to have power with the sanction of the Court to sell the immovable and movable property and actionable claim 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.

11. 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 which seems just to the Court.

12. Section 531A of the Companies Act provides that any transfer of the property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Court or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.

13. A fair understanding of Section 531A of the Act would make it clear that any voluntary transfer which has been made by the company not being any transfer in the ordinary course of its business then such a transfer would be void against the liquidator. The Company Court would have powers to declare that any transfer made within one year prior to filing of the company petition would be void and would not operate against the liquidator. In the present case the company petition was filed on 23-5-1984, notices were directed to be issued and the lease was created on 28-7-1984. If that be so, it has to be held that the transfer made by the company in favour of the tenant by creating the lease rights in the company's property are void and would not bind the Court/liquidator being fraudulent in nature and as the same were not made in ordinary course of business of the company. It is to be seen that the company was engaged in manufacturing different things and to lease out the property was not its ordinary business.

14. It would be apt to rely upon Section 531 of the Act which clearly says that any transfer of property, movable or immovable, etc., done by or against a company within six months before the commencement of its winding up which had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound-up, be deemed a fraudulent preference of the creditors and be invalid accordingly.

15. Sub-section (1) of Section 531 puts the company at par with an insolvent under the provisions of the Indian Insolvency Act. Any act of insolvency committed by the adjudged insolvent within a period of three months, if is bad then any action taken by the company within six months before filing of the winding up petition would be an act of insolvency and would be deemed, I repeat would be deemed to be an act of insolvency and fraudulent. In the present matter, the action of creating the tenancy rights and transferring the property was taken in hand by the company and its Directors/officials after filing of the company petition and as such the action of the company and its Directors cannot be saved even u/s 531 of the Companies Act.

16. I have already referred to Section 477(6) of the Companies Act. In the present matter, the question of examination of the officers or the employees of M/s. Indequip Leasing & Finance Ltd. does not arise because they have already appeared in the Court and have filed their statements on oath. The statements

on oath are equal to their examination in the Court. On oath they have stated that they entered into the property as a tenant under the lease dated 28-7-1984. If they are in possession of the property of the company then it would be for the Company Court to require them to continue in possession or require them to vacate the possession and give the possession to the Official Liquidator on such terms as may be deemed just.

17. At this stage, it would be necessary to refer to the judgments cited by the learned counsel for the tenant.

18. So far as the judgment in the case of Smt. Nirmala R. Bafna (*supra*) is concerned, it was a matter where the company was the tenant and the tenanted property of the company was sub-let to the third party. The Official Liquidator evicted the sub-tenant and the sub-tenant came to the Court. The Official Liquidator opposed the application saying that the sublease was not created by the consent of the original landlord and as such, the sub-lease being illegal, the sub-lessee or the sub-tenant was not entitled to continue in possession and his position was that of a trespasser. The High Court agreed with the submissions made by the Official Liquidator. When the matter went to the Supreme Court, the Supreme Court observed that the question whether the sub-lease was valid or in accordance with law, could not be decided by the Company Court. The Supreme Court observed that in a case like that the matter was required to be looked into by the competent rent control Court which in its turn could decide that the sub-lease was valid or not. In the preset case, the company admittedly is the owner of the property and as such the question of the third party rights are not involved in the matter. According to Section 477(6) of the Companies Act, when any person is found to be in possession of the company's property then he can be ordered to be evicted by the Company Court.

19. Strong reliance was also placed on the judgment of the Supreme Court in the matter of Anthony C. Leo (*supra*) to contend that the position of the Official Liquidator is akin to that of a Receiver appointed under Order XL, Rule 1 of the Code of Civil Procedure. In the opinion of this Court Order XL, Rule 1, C.P.C. works in a different field. Order XL says that where it appears to the Court to be just and convenient, the Court may order, appoint a Receiver of any property, whether before or after decree; remove any person from the possession or custody of the property; commit the same to the possession, custody or management of the Receiver, and confer upon the Receiver all such powers to manage, protect, reserve and improve the property. Once an application under Order XL, Rule 1, C.P.C. is made by an aggrieved party then the other party would be heard and if the Court is satisfied in its discretion that appointment of a Receiver is must then the Court would appoint a Receiver. In a matter of company petition, the moment the company is taken up for winding-up an Official Liquidator has to be appointed. The powers on a Receiver are to be conferred by the Court while in case of an Official Liquidator the powers flow from the Act itself. The position of an Official Liquidator is much higher in

comparison to a Receiver. The Official Liquidator is a statutory authority and not an authority made or created by the Court looking to the nature of the dispute pending before it.

20. The two judgments cited by the learned counsel for the tenant are distinguishable on facts and in fact do not apply to the facts of the present case.

21. So far as prayer for review of orders dated 27-8-1999, 12-5-2000 and 25-8-2000 are concerned, the tenant has failed to make out any good cause and case for review or recall of said orders. There is no need for declaration that M/s. Indequip Leasing and Finance Ltd. are lawful tenant in the property. I have already observed that the act of the company was an act of insolvency as it was committed much after institution and issuance of the notices of the company petition to the parties.

22. On earlier occasion I have already observed and ordered but even for the sake of repetition I would again observe that in a company petition where the company has been put under liquidation and proceedings for dissolution are going on the endeavour of a Company Judge is to convert every property, movable or immovable belong to the company, into liquid cash so that in future no disputes remain pending for consideration and the liquid cash received in the Court is distributed either *pari passu* or *pro rata* in accordance with the provisions of the Companies Act. I hasten to add that when any property which is occupied by the tenant is to be sold in the open market, it does not fetch its real market value. The continuance of tenant in the property belonging to anybody in fact is a menace to the landlord because any person who proposes to purchase the property would not purchase a litigation which he will have to face in future against the tenant for his eviction.

23. This Court is trying to dispose of this company petition which is pending for last 20 years. This Court has already ordered that all the persons who are in possession of the company's property be evicted. Offers have been invited from the persons in possession of the property that if they are ready and willing to purchase the property at the market value as on today then the property may be settled in their favour because they continue to be in possession. It is to be noted that the company owns more than 2000 residential houses in Rohtas and number of offers have been received from the persons who are residing in those premises. The Court has to undergo a herculean task to sell the property and collect the cash for its distribution. If M/s. Indequip Leasing and Finance Ltd. is allowed to continue as the tenant then that would not be an act of prudence as it is likely to reduce the value of the property. Flag-439 deserves to and is, accordingly, rejected.

24. It is hereby directed that on or before 15th January, 2005 the tenant M/s. Indequip Leasing and Finance Ltd. shall hand over vacant and peaceful possession of the property possessed by him to the Official Liquidator or his representative. In case of any default on his part, the Official Liquidator or his

representative may make a complaint to the District Magistrate/Local Administration, Dehradun, for putting them in possession of the property.

25. It is further directed that the District Magistrate/Local Administration/Local Police, Dehradun, after receiving a copy of this order along with an application of the Official Liquidator shall be obliged to observe this order in its true spirit.

26. Flag-642 has been filed by the Jalaluddin Chaudhary of Kairana, District Muzaffar Nagar (UP) stating therein that he wants to purchase the property well-known as "Sahu Jain Court" for a sum of Rs. 7 Lakhs only. In the opinion of his Court this offer cannot be accepted. It is to be recorded that the total area of the property is more than one acre and there is a big building situated in it along with outhouses. I reject the application at Flag-642 with direction that in future as and when the property in question is proposed to be sold the offerer may make his offer in accordance with law.

27. Office to proceed further.