

(2011) 01 GUJ CK 0031

In the Gujarat High Court

Case No : Company Application No. 218 of 2007 in Company Application No. 21 of 1994 and Company Application No's. 258, 285 and 301 of 2009

Textile Labour Association

APPELLANT

Vs

O.L. of Prasad Mills Ltd. and Others

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Citation : (2011) 01 GUJ CK 0031

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

Bench : Single Bench

Advocate : D.S. Vasavada, in Company application No. 218 of 2007, M.B. Gandhi, in Company application No. 258 of 2009 A.S. Asthawadi, Company application No. 285 of 2009, for the Appellant; Ameer Yajnik, for Official Liquidator R.M. Desai, for Respondent No. 2, Government Pleader, for Respondent No. 3, M.B. Gandhi and Pushpadatta Vyas, in Company Application No. 218 of 2007 D.S. Vasavada, in Company Application No. 258 of 2009, R.M. Desai, for Respondent No. 3. in Company Application No. 258 of 2009, for the Respondent

Judgement

K.A. Puj, J.—Since all these matters are in relation to the properties of the erstwhile Prasad Mills Company Limited (in liquidation) and since the issue is in relation to the alleged tenancy rights of the applicants of Company Application Nos. 258 of 2009, 285 of 2009 and Company Application No. 301 of 2009 and since they are heard together, the same are being disposed of by this common judgment and order.

2. Company Application No. 218 of 2007 is filed by the Textile Labour Association praying for the direction to the Official Liquidator to construct strong compound wall and put up iron gate to protect the boundaries of the Prasad Mills Company Limited (in liquidation). It also sought the direction to the Official Liquidator to evict the unauthorized encroachers who have recently encroached the land of the Company in liquidation because of the widening of the road by the Ahmedabad Municipal Corporation. Lastly, it has sought the direction to the Police authorities

to put up the police force to prevent the encroachment in the land of the Company in liquidation.

3. Company Application No. 258 of 2009 is filed by Ajit Medical Store, the alleged tenant seeking declaration that Mohammad Aga Birjandi, the partner of Ajit Ayurvedic Store is tenant of the Company in liquidation and the rights of the tenant are right in rem and the Official Liquidator or the Company in liquidation has no right to evict without the due procedure of law and without following the proceeding as prescribed in Bombay Rent Act, 1947. The applicant has also prayed for the declaration that the notice dated 22.06.2009 issued by the Official Liquidator for vacating the property is erroneous, illegal and without jurisdiction and without authority and, therefore, the said notice seeking possession from the applicant is required to be quashed and set aside or in the alternative, the Official Liquidator may be directed to withdraw the said notice.

4. Company Application No. 285 of 2009 is filed by Smt. Aruna P. Modi, the daughter of the alleged tenant Shri Prabhudas Modi, praying for quashing and setting aside the notice dated 22.06.2009 issued by the Official Liquidator seeking possession of the subject premises from the applicant.

5. Company Application No. 301 of 2009 is filed by Tractor Trading Corporation, the alleged tenant praying for the declaration that the applicant is the tenant of the Company in liquidation and the right of tenant is right in rem and the Official Liquidator has no right to evict the applicant without due procedure of law and without following the proceeding as prescribed in the Bombay Rent Act. The applicant has also prayed for the declaration that the notice issued by the Official Liquidator for vacating the property is erroneous, illegal and without jurisdiction and without authority and, therefore, the said notice seeking possession from the applicant is required to be quashed and set aside or in the alternative, the Official Liquidator may be directed to withdraw the said notice.

6. The case of Textile Labour Association, applicant of Company Application No. 218 of 2007 is that the Company was ordered to be wound up on 05.05.1989. After its winding up, the properties of the Company, namely, loose stock, plant and machinery and buildings were sold. Thereafter, only the land was remained to be sold. The Ahmedabad Municipal Corporation has started widening of the road. The Company in liquidation was located in a very sensitive area. As a result of widening of the road, the shops and the residential premises of the inhabitants have been demolished and, therefore, this people have started encroaching upon the land of the Company in liquidation. They came in mob and, therefore, the security personnels were unable to protect the land and to prevent the encroachment. One of the security guards had, therefore, lodged a complaint on 24.04.2007 to the Official Liquidator. In the said complaint, it was clearly stated that the unknown persons have encroached upon the land of the Company in liquidation and they might also put up the construction at some point of time. Although the Official Liquidator was served with the complaint on 24.04.2007, no prompt action was taken by him. If urgent steps were not taken, in that case,

the situation would become irreversible and thereafter it would be extremely difficult to evict the encroachers. It is also alleged by the applicant that the office of the Official Liquidator was very slow and hence, urgent order is required to be passed by this Court by issuing direction to the Official Liquidator to take steps immediately and to use the Police force so that the encroachers could be removed immediately. Under these circumstances, the present application is filed by the applicant before this Court.

7. This Court has passed an order on 01.05.2007 recording therein that in view of the stay granted by the Division Bench, the land in question could not be sold and it was further reported that OJ appeal before the Division Bench was likely to come up on board on 02.05.2007. A further order was passed by the Court on 13.06.2007 recording the submission of Ms. Amee Yajnik, learned advocate appearing for the Official Liquidator that on 19th April, 2007, the Official Liquidator has already approached the Police Inspector, Raykhad Police Station with a prayer to remove the encroachment and submit the report to that effect. Again, a reminder was sent by the Respondent No. 1. Despite the direction of this Court, no report was submitted by the Police Inspector, Raykhad Police Station, Ahmedabad. The Court has directed the Police Inspector, Raykhad Police Station to personally remain present before the Court on 19.06.2007 with appropriate report of the investigation. One more order was passed by this Court on 19.06.2007 recording the presence of Shri A. S. Rathod, 1st Police Inspector of Haveli Police Station. The Court has directed the joint inspection of the property in question by the Police Inspector of Haveli Police Station, representative of Official Liquidator, T.L.A. and State Bank of India. On 25.07.2007, M/s. Ajit Medical Stores, the applicant of Company Application No. 258 of 2009 and M/s. Tractor Trading Corporation, the applicant of Company Application No. 301 of 2009 were joined as party Respondents in Company Application No. 218 of 2007. The Court thereafter passed a detailed order on 02.09.2008 wherein the Court has held that it is necessary to have exact sketch with measurement on record to decide the status of Respondent Nos. 5 and 6. On acquisition of land by AMC for road widening, the premises allegedly in possession of Respondent Nos. 5 and 6 are not existing now. The entire area has been acquired by the Municipal Corporation and Respondent Nos. 5 and 6 have conveniently shifted from the area of Prasad Mills [company in liquidation]. The Court further observed that before passing any harsh order against Respondent Nos. 5 and 6, the newly joined parties, it will be appropriate for the Court to ascertain the status of Respondent Nos. 5 and 6 keeping in mind the area acquired for the purpose of widening of road, at relevant place and the map of Ahmedabad Municipal Corporation showing the road widening that has taken place in the first case. On 09.02.2009, further order was passed by this Court observing therein that not only the two shop owners, but even certain workers have encroached upon the land of the company and therefore, such workers and their encroachments should also be removed. The Court, therefore, felt it necessary to direct the Official Liquidator to carry out the survey of the land of

the company in liquidation within a period of one week from the said order and also to find out as to what is the extent of encroachment and to file details thereof along with the list of the names of the encroachers who are in illegal and unauthorized occupation of the land in question. The Official Liquidator was further directed to explain, in the report, as to what steps were taken by him for removing encroachment, if any. After the survey, if it was found that there was encroachment on the land of the Company in liquidation, the Official Liquidator was permitted to take all necessary steps and actions to immediately remove the encroachment. The Court, therefore, directed the Official Liquidator to file the report on the above issues.

8. So far as the prayers made in the application filed by the Textile Labour Association is concerned, the first affidavit-in-reply was filed by the Respondent No. 5 - M/s. Ajit Medical Stores on 29.08.2007. Based on this affidavit, Mr. M. B. Gandhi, learned advocate appearing for the said party has submitted that Ahmedabad Municipal Corporation has started widening of the road, is not disputed. He has, however, submitted that M/s. Ajit Medical Stores is on the land in question since several years and is a tenant of the Company in liquidation and hence, there is no question of any encroachment. Because of widening of the road, part of the shop has already been demolished and total area in possession of the Respondent No. 5 is reduced. But still there is a shop and after demolition of the part of the property, new shutters have been placed and there is a continuous business even thereafter. So far as the complaint lodged by one of the security Guards is concerned, the allegation made therein is totally ill-founded and no encroachment was done by the Respondent No. 5. It is further stated that the Respondent No. 5 has been carrying on the business in the name and style of M/s. Ajit Medical Stores for the last more than 50 years. The Official Liquidator has been accepting the rent from the Respondent No. 5 upto 31.12.2002 and receipts were also issued against the same. It is further stated that originally, a hotel was running in the said premises and the said hotel was very much popular and known in the entire city of Ahmedabad as Jawahar Irani Restaurant and the property in question was of the measurement of approximately 700 Sq. Feet. After the said hotel business was stopped, about 15 years back, the new business was started in the name of M/s. Ajit Medical Stores and for the last more than 15 years, the said business is going on in the said tenanted portion. It is further stated that Ahmedabad Municipal Corporation was assessing the tax at that time and even before demolition of the part of the property, the Corporation had sent the bill. He further submitted that only with a view to save the property from any proceedings being taken by the Corporation, the Respondent No. 5 had deposited for the year 2003 - 04, a sum of Rs. 35,218/- and the receipt for the said payment of outstanding tax amount to the Corporation for several years was issued. Thus, it is established beyond any doubt that the shop is in existence for the last several years and question of encroachment does not arise. It is further stated that electric connection is in the name of the Respondent No. 5. Even in the year 1987, Acquisition Surveyor has

prepared a map duly signed by him which indicates that when the Corporation wanted to expand the road, the map was prepared and the Respondent No. 5 who is in possession of the shop in question is also shown in the said map. The area in possession of the Respondent No. 5 after its demolition is approximately 30 Feet (East - West) X 15 Feet (North - South) depth.

9. Mr. Gandhi further submitted that the Official Liquidator has been collecting the rent from the Respondent No. 5 and the Respondent No. 5 was also depositing the same regularly with the Official Liquidator. The rent was paid from January 1987 to December, 1995 and thereafter upto March 2003. The receipts of all these payments were issued. He has, therefore, submitted that the proceedings initiated by the applicant are required to be dropped.

10. An affidavit-in-reply is filed on behalf of Respondent No. 6 on 03.03.2008. Mr. Mrugen Purohit, learned advocate appearing for the Respondent No. 6 has submitted that the entire Judges Summons taken out by the applicant is required to be dismissed as the same is without any basis and facts. He further submitted that the Respondent No. 6 is an old tenant for the last more than five decades and hence, there is no question of any encroachment. After the road widening, the reduction of the land to the extent of road widening was effected. He further submitted that the Official Liquidator has himself accepted the rent from the Respondent No. 6. The Respondent No. 6 is the tenant and occupant of the premises in question and all these averments are on record. The Respondent No. 6 by cheque dated 31.08.2006 and forwarding letter tried to submit the rent amount including of the Financial Year 2003/07 but the same was not accepted and is lying with the Respondent No. 6. The light bill and telephone bills of the recent years are produced. Based on these facts, he has submitted that the notice of eviction issued by the Official Liquidator deserves to be quashed and set aside.

11. Pursuant to the order passed by this Court, the Official Liquidator wrote a letter dated 17.05.2007 and in response thereto, an affidavit is filed by P.S.I. of Gaekwad Haveli Police Station and it was submitted therein that Ahmedabad Municipal Corporation has undertaken the project of widening of road and has demolished the structure of the road line. The watchman appointed has informed that some unauthorized persons have encroached in the Mills premises by constructing some structure inside the Mills premises with a view to have permanent encroachment on the said land. The joint inspection was taken place of the Mills premises on 20.06.2007. The detailed investigation in the Mills premises inside and outside was done where the Ahmedabad Municipal Corporation has demolished the shops / structures while widening of the road. The Police Inspector has further observed that the Respondent Nos. 5 & 6 have encroached in the Mills premises after widening of the road. After the road cutting to the place, shops were demolished and they have made encroachment putting new shutters on walls of those Godowns / premises. During joint visit, both the shops were visited from inside and outside. The recent photographs of

the premises have also been taken and they have been placed on record.

12. A further affidavit was filed on behalf of Respondent No. 5 wherein certain new facts were placed before the Court. It is in relation to separate electric connection and filing of suit for possession by the Mills Company in the Small Causes Court at Ahmedabad. There is also reference of a civil suit filed by the Respondent No. 5 in the City Civil Court at Ahmedabad against the Corporation which was lost. All these facts clearly indicate that there is no justification in making an allegation against the Respondent No. 5 that he is a recent encroacher. By filing further affidavit on 13.07.2009, the Respondent No. 5 has brought to the notice of the Court the fact that in 1988, the Ahmedabad Municipal Corporation was trying to widen the Astodiya road and at that point of time, suit bearing No. 2872 of 1988 was filed in which it was averred that the Respondent No. 5 is tenant since 1954 and the rent of the occupied area was Rs. 225/- per month. When the work of road widening was under operation, the Respondent No. 5 had made an application to Estate department of the Corporation for providing alternative accommodation on the basis of the Standing Committee Resolution of the Corporation and a reply to that application was given by the Corporation as late as on 01.10.1991. All these facts indicate that the Respondent No. 5 was an old tenant.

13. Pursuant to the order passed by this Court, the Official Liquidator has entrusted the work of surveying the premises in question to Shri Pranav Parikh, Chartered Engineer who prepared a survey report with the help of Ahmedabad Municipal Corporation officials. A detailed map was submitted along with the report indicating therein the open area as well as the occupied area. From this survey record, it appears that the shops etc. facing main road were demolished for road widening. M/s. Ajit Medical Stores was one of such 15 occupants. A compensation of Rs. 59.06 Lacs was paid by Ahmedabad Municipal Corporation to the Official Liquidator for acquisition of land for road widening. The area of shops etc. demolished for road widening is marked yellow in the map. The survey report further reveals that M/s. Ajit Medical Stores after demolition of the original shop in its possession, has moved back in the Company's land and has occupied a larger area. Similarly, M/s. Tractor Trading Corporation has also moved back in the Company's land after demolition of the original construction. The Official Liquidator has also made a reference in his report to the letter dated 14.10.2008 received from the Ahmedabad Municipal Corporation wherein he was informed that 6027.06 Sq. Mts. of land of City Survey No. 5002 to 5001 was acquired for road widening and compensation of Rs. 59,05,962/- was paid for the same. The Corporation has also furnished a map indicating the area of land acquired for road widening. The said map also confirms that there were construction of shops etc. on the land which was acquired by the Ahmedabad Municipal Corporation. All such constructions were demolished for road widening. It, therefore, gets established that the shops earlier occupied by M/s. Ajit Medical Stores and M/s. Tractor Trading Corporation were demolished for road widening and thereafter they have illegally and unauthorizedly moved back in the land of the Company

and have constructed and occupied larger area. The survey report clearly indicates that the area of the shop used by M/s. Ajit Medical Stores before the effect of road line was 15.60 Sq. Mts. in single floor as per the tax bill. The total shop area i.e. 15.60 Sq. Mts. Of M/s. Ajit Medical Stores was made open for widening of the road. The present status shows that M/s. Ajit Medical Stores had moved inside the premise and used area of 35.45 Sq. Mts. on ground floor and 35.25 Sq. Mts. on first floor as commercial shop and store. In all, present usage is 79.90 Sq. Mts. which is excess by 55.35 Sq. Mts. Even with regard to Tractor Trading Company, it is stated that the area occupied before road line effect as per the tax bill is 98.64 Sq. Mtrs. On the basis of this survey report, it is stated that both these Respondents have encroached upon the land of the Company in liquidation.

14. The veracity of this report was challenged by the Respondent No. 5 by filing further affidavit on 19.03.2010. It is stated that the area in the table is not showing the correct situation. According to Ahmedabad Municipal Corporation, 612.14 Sq. Mts. land was acquired for road widening whereas the survey report shows the area of 691.49 Sq. Mts. is shown in the road line. A reference is also made to the map received from Ahmedabad Municipal Corporation which was prepared by the Acquisition Surveyor on 07.11.1987. The shop of the Respondent No. 5 was intact shape from which the front portion has gone in road line and the balance portion reflected in the map is in possession of the Respondent No. 5. The map showing the correct situation as per the Corporation report is produced on the record of this proceeding. It is further stated in this affidavit that at the time when the road line was operated by Ahmedabad Municipal Corporation, the Respondent No. 5 had taken photograph of the operation and the CD was prepared which indicate the left out portion in possession of the Respondent No. 5.

15. Since M/s. Ajit Medical Store and Tractor Trading Corporation are the parties in Company Application No. 218 of 2007, in their respective applications, it is their stand that their pleadings are same as that of Company Application No. 218 of 2007. Hence, it is not required to be separately dealt with.

16. So far as Company Application No. 285 of 2009 is concerned, it is filed by Smt. Aruna P. Modi and it is her specific case before the Court that her father is the tenant of the Company in liquidation. The rent receipts were issued by the erstwhile owners, namely, Bechardas Spinning & Weaving Mills Limited which subsequently became M/s. Prasad Mills Limited. It is further stated that in the year 1989, the property occupied by the applicant was sealed by the Official Liquidator. The applicant approached this Court by way of Company Application No. 193 of 1989 wherein this Court vide its order dated 07.10.1989 restored the possession of the applicant. The said order was passed on the ground that the applicant is a sitting tenant and HRP Suit was pending before the Small Causes Court against the applicant. The said HRP Suit remains pending before the Small Causes Court, Ahmedabad for considerably a long period. Because of the old age

of the applicant, the said suit could not be followed up. The applicant, however, made an application under the Right to Information Act and asked for several details including the details of HRP Suit. However, no reply was given by the Official Liquidator. It is, therefore, urged before the Court that the possession of the applicant being tenant of the premises in question could not have been disturbed and the notice issued in this regard deserves to be quashed and set aside.

17. The Official Liquidator has filed his report on 08.09.2010 wherein the Official Liquidator has merely reproduced the facts stated by the present applicant. The Official Liquidator has not disputed the fact regarding earlier proceedings and also the order of this Court directing him to restore the possession of the applicant. The fact regarding pendency of the suit in the Small Causes Court, Ahmedabad is also not disputed by him. However, he has not stated anything about the outcome of the said suit. On the contrary, he made a request to this Court that the applicant may be directed to produce the copies of the case papers of HRP Suit which is still pending before the Small Causes Court, Ahmedabad.

18. The applicant by way of further affidavit filed on 30.11.2010 has stated that HRP Civil Suit No. 4392 of 1983 filed by the Mills Company against the father of the applicant was dismissed on 10.12.1991. Though the said suit was dismissed for want of prosecution, no steps were taken by the Official Liquidator.

19. In the above view of the matter, the fact regarding tenancy rights of the applicants cannot now be disputed by the Official Liquidator.

20. Having heard learned Counsels appearing for the parties and having considered their rival submissions in light of the documents placed on record of this proceeding, the Court is of the view that all these proceedings were started pursuant to Company Application No. 218 of 2007 filed by Textile Labour Association seeking direction to the Official Liquidator to evict the unauthorized encroachers who have encroached the land of the Company in liquidation because of widening of the road by the Ahmedabad Municipal Corporation. Pursuant to the order passed by this Court in the said Company Application, several notices were issued by the Official Liquidator for eviction of the premises. The present proceedings are confining to merely three occupants, namely, Ajit Medical Store, Tractor Trading Corporation and Mrs. Arunaben P. Modi. So far as Ajit Medical Stores and Tractor Trading Corporation are concerned, they have filed separate Company Applications before this Court and they were also impleaded as party - Respondents in Company Application No. 218 of 2007. However, so far as Smt. Arunaben P. Modi is concerned, she has filed separate Company Application for and on behalf of her father Shri Prabhudas Modi, the alleged tenant of the Company in liquidation. She has, however, not been impleaded as party - Respondent in Company Application No. 218 of 2007.

21. So far as tenancy of all the three occupants in question is concerned, there is

no much scope to dispute the said fact. The question, however, remains as to whether the premises which were occupied by them prior to acquisition of land by the Ahmedabad Municipal Corporation for the purpose of road widening, still remain with them, as it is or any portion thereof, after the said acquisition, is required to be seen. The facts and evidence on record clearly indicate that after acquisition of land by the Ahmedabad Municipal Corporation, for the purpose of road widening, almost entire structure was demolished and the Survey Report of the Govt. Valuer duly appointed by the Official Liquidator, the Police Report as well as the informations supplied by the Ahmedabad Municipal Corporation clearly indicate that both M/s. Ajit Medical Store as well as Tractor Trading Corporation have shifted much inside and encroached upon the land of the Company in liquidation. The report of Shri Pranav Parikh, Chartered Engineer dated 04.09.2009 clearly states that both M/s. Ajit Medical Stores as well as M/s. Tractor Trading Corporation were having their shop / offices in City Survey No. 5002. The original area of this Survey No. is 13076.79 Sq. Mts., out of which 691.49 Sq. Mts. was acquired by Ahmedabad Municipal Corporation under road line. M/s. Ajit Medical Stores was occupying 15.60 Sq. Mts. and M/s. Tractor Trading Corporation was occupying 98.64 Sq. Mts. of land before road line was effected. He has specifically stated in his report that their shops / offices were demolished and removed for widening of road. He has further stated in his report that shops / office area of M/s. Ajit Medical Stores is under road line and only rear wall of the premises remained unaffected. The area which is in the present use was the residential rooms of Irani Shed as stated by dwellers of mills premises. The area of the shop used by M/s. Ajit Medical Stores before the effect of road line was 15.60 Sq. Mts. in single floor as per the tax bill. The total shop area i.e. 15.60 Sq. Mts. of M/s. Ajit Medical Stores was made open for widening of road. Giving the present status, the report states that M/s. Ajit Medical Stores has moved inside the premise and using the area of 35.25 Sq. Mts. on ground floor and 35.25 Sq. Mts. on the first floor as commercial shop and store. In all, present usage is 70.90 Sq. Mts. which is excess by 55.30 Sq. Mts.

22. Similar position is of M/s. Tractor Trading Corporation. The entire area of 98.64 Sq. Mts. occupied by the said tenant was demolished and removed in road widening. Thus, nothing is left on which they can carry on their business.

23. The Police report also clearly indicate that M/s. Ajit Medical Stores and M/s. Tractor Trading Corporation were occupying their shops facing the main road, but outside the Mill premises just opposite the Church, situated near Victoria Garden, Ahmedabad. They have encroached in the Mills premises after widening of the road. The report further states that after the road cutting place, the shops were demolished and thereafter they have made encroachment putting new shutters on walls of those godowns / premises. Thus, even if it is believed that they are the tenants, they have no right to retain the premises which were not let out or which were not legally occupied by them. No sooner the land and/or premises occupied by them have gone into road widening and nothing there from remains, the tenancy has come to an end by creating an encroachment on the Company's

land. They cannot now say that they are still tenants of this illegal and encroached acquired land. The Court is, therefore, of the view that the Official Liquidator is justified in issuing notice on M/s. Ajit Medical Stores as well as Tractor Trading Corporation for evicting the premises forthwith and the prayer made by the Textile Labour Association in its Company Application, to this extent is granted. The Official Liquidator is, therefore, directed to take all necessary actions for taking possession of the premises in question from these two parties forthwith, along with the arrears of rent, if any.

24. In view of the above finding in respect of these two parties, Company Application Nos. 258 & 301 of 2009 stand rejected.

25. So far as Company Application No. 285 of 2009 is concerned, the original tenant I.e. Mr. Prabhudas Modi is occupying the said premises as tenant for the last more than 5 decades. It is also equally true that he has been restored the possession of the tenanted premises by an order of this Court passed on 07.10.1989 in Company Application No. 193 of 1989. At that time, the Official Liquidator has sealed the premises on the ground that the said Mr. Prabhudas Modi was an encroacher. However, HRP Suit No. 4392 of 1983 was pending. It was filed by the Company against the said Mr. Prabhudas Modi. The Court, therefore, while disposing of Company Application No. 193 of 1989 has observed that the applicant was in possession of this premises prior to winding up order and only because accidentally, he was absent when the premises were sealed, these difficulties have arisen. While granting the application, the Court has clarified and keeping the rights and contentions of the Official Liquidator in the pending HRP Suit open, the Court observed that its order would not have any effect on the pending rent possession suit proceedings before the competent Court.

26. It is worthwhile to mention here that though the suit was filed in 1983 and the Mills Company went into liquidation in 1989, no actions were taken by the Official Liquidator to be joined as party - Plaintiff in the said suit. It now transpires that the said suit was dismissed for want of prosecution on 10.12.1991. Even till this date, the Official Liquidator was not impleaded as party. Since the Company was already in liquidation and the Official Liquidator was not joined as party, the order passed by the learned Small Causes Court on 10.12.1991 dismissing the suit for want of prosecution, is absolutely illegal order and it is non-est at law. It is very unfortunate that though the said order was passed on 10.12.1991, the Official Liquidator has not taken any action even thereafter. It appears that Official Liquidator has not taken any care nor even he understood the efficacy of his inaction.

27. Be that as it may, the suit itself was filed by the Company against Shri Prabhudas Modi on the ground of arrears in rent as well as acquisition of another suitable premises. It is specifically stated in the plaint of the suit that the said Mr. Prabhudas Modi has acquired a bungalow at Gulbai Tekra, Ellisbridge, Ahmedabad. Since he has already acquired a suitable accommodation in the year

1983 when the said suit was filed, the said Mr. Modi was not entitled to retain the possession of the suit premises. The learned Small Causes Court has neither dealt with this issue on merits nor made any inquiry in this regard. Since the suit was dismissed for want of prosecution and that too without joining the Official Liquidator as a party, it is open for the Official Liquidator now to proceed further and take the possession of the said premises if the said Mr. Prabhudas Modi is not staying there and he has already acquired another suitable accommodation. Subject to this direction, Company Application No. 285 of 2009 is accordingly disposed of.

28. So far as main Company Application No. 218 of 2007 is concerned, though notices were issued on several persons, it appears that the Official Liquidator has not proceeded further in respect of other persons. He is, therefore, directed to proceed further with regard to the other persons on whom the notices were already issued earlier.

29. With this direction, the said application is also disposed of.

30. In the result, all these four Company Applications are accordingly disposed of.

31. On pronouncement of judgment, so far as the order passed by the Court today in relation to Company Application Nos. 258, 285 & 301 of 2009 is concerned, learned advocates appearing for the applicants have prayed for stay against operation, implementation and execution of this order for a period of four weeks so as to enable them to approach the higher forum. Mr. D. S. Vasavada, learned advocate appearing for the Textile Labour Association has submitted that appropriate order may be passed by the Court in this regard. Considering the long stay of the parties, though unauthorized, request for stay is granted for three weeks.