

(2015) 02 CAL CK 0070

In the Calcutta High Court

Case No : CA Nos. 325 of 2010 and 116 of 2013 and CP No. 151 of 2003

Vikrant Forge Limited and Others

APPELLANT

Vs

Official Liquidator and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Companies Act, 1956 — Section 446, 446(2), 535
Constitution of India, 1950 — Article 246, 246(1), 254
West Bengal Premises Tenancy Act, 1956 — Section 13
West Bengal Premises Tenancy Act, 1997 — Section 12A

Citation : (2015) 4 CHN 400

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Samit Talukdar, Senior Advocate, Sumon Dutta, Prithwiraj Sinha, Pradip Sancheti and Sougata Chatterjee, for the Appellant; S.N. Mookherjee, Ratnanko Banerjee, Ashok Bose, Ajay Gaggar, Kuldeep Mallick and Sanket Sarawgi, Advs., Advocates for the Respondent

Judgement

Sanjib Banerjee, J.—The applicants question the extent of the authority available to a company Judge under Section 535 of the Companies Act, 1956 and cite the constitutional provisions pertaining to distribution of legislative powers between the Union and the States in suggesting that an order of January 22, 2013 passed on a disclaimer application was in excess of the company court's jurisdiction.

2. When this application was received on March 13, 2013 along with two other similar applications, it was noticed that the applicants claimed to have been dispossessed from areas under their occupation on the second floor of premises No. 14 Netaji Subhas Road, Calcutta - 700001. It was the common case of all three lots of applicants that they had no notice of the proceedings that culminated in the order of January 22, 2013. Such order was made on an application under Section 535 of the Act and the relevant part of the operative portion of the order read as follows:

"So far the balance area of 1030 sq. ft. is concerned no one intervened nor there

is any objection by anyone. Therefore, the Official Liquidator is also directed to remove trespassers if any from the said area of 1030 sq. ft. and hand over vacant possession to the applicant. In the event, the Official Liquidator requires any police assistance for vacating the said 1030 sq. ft. area, he will seek police assistance from the concerned Police Station and the Officer-in-Charge of the concerned Police Station is directed to render all assistance to the Official Liquidator." 3. The applicant in the proceedings in the nature of disclaimer was one PDGD Investments and Trading (P) Ltd. It is such party which has opposed the present application.

4. The order of March 13, 2013 passed at the time of receiving, inter alia, the present application noticed that the minutes prepared by the official liquidator on March 7, 2013 in course of taking possession of the said 1030 sq. ft area referred to in the order dated January 22, 2013 recorded the name of one Saroj Chhajer to be in occupation of an area of 521 sq. ft at the said premises. The order of March 13, 2013 then noticed that the official liquidator had taken possession of the area under the applicants' possession with police assistance. It, prima facie, appeared to this court on March 13, 2013 that no notice had been issued to the applicants herein prior to an adjudication of these applicants' rights qua the area under their occupation and the applicants herein were dispossessed as a result of the order passed on January 22, 2013. Accordingly, the applicants herein were required to deposit a sum of Rs. 2 lakh with the official liquidator and a special officer was appointed to restore the applicants' possession of the 521 sq. ft area under their previous occupation upon such deposit being made. The official liquidator was directed to invest the sum of Rs. 2 lakh in a short-term deposit. The applicants were restrained from dealing with or disposing of or alienating or parting with possession of such area or any part thereof without the express leave of court and upon notice to PDGD Investments and Trading (P) Ltd, the applicant in CA No. 325 of 2010 which was the beneficiary of the order dated January 22, 2013.

5. Pursuant to such direction of March 13, 2013 the applicants' possession of the 521 sq. ft previously occupied by them on the second floor of premises No. 14 N.S. Road has been restored to them and they now continue in undisturbed enjoyment thereof.

6. The applicants suggest that the order of January 22, 2013 was in excess of the authority available to the company Judge and, as such, to the extent the same prejudices the applicants, the same should be recalled or set aside. Ideally, this application ought to have been heard by the same Bench that passed the order of January 22, 2013, at least at the final stage, but the application was released by the Bench on July 26, 2013.

7. Before the contentions of the applicants are noticed in greater detail, it may do well to appreciate the circumstances in which CA No. 325 of 2010, which resulted in the order dated January 22, 2013, was brought to this court. The applicant therein, PDGD Investments and Trading (P) Ltd. (hereinafter referred to

as the lessor), claimed in such application to be the owner of the entirety of the second floor of premises No. 14 N. S. Road. The application said that the company in liquidation was a monthly tenant under the lessor in respect of a demarcated portion of 2621 sq. ft on the eastern side of the second floor of the building. The company, prior to its liquidation, was said to have obtained the tenancy from one Venkatesh Company Ltd. The lessor claimed that Venkatesh Company Ltd. was a party to a scheme of arrangement sanctioned by this court on February 1, 2006 under which the demerged division of Venkatesh, including the second floor of premises No. 14 N.S. Road, was transferred to and stood vested in the lessor. The lessor asserted that it had given notice to the company in liquidation on June 4, 2007 to pay fair rent and other charges but complained that no rent of any kind had been received by the lessor from the company in liquidation after May, 2007. The lessor alleged in the application that the lessor was informed by the official liquidator's letter of February 13, 2009 that the official liquidator had not obtained possession of the said premises and that third parties were in occupation thereof and claimed to be tenants thereat. The letter issued by the official liquidator referred to three sets of occupants, Adhunik Corporation Ltd, Jugal Kishore Agarwal and Adhunik Metaliks Ltd, who claimed to be tenants under the company in liquidation and requested the official liquidator to accept the rent from them. A letter issued by advocate representing the three parties claiming to be in possession of a part of the said premises was enclosed with the official liquidator's relevant letter and was also appended to the lessor's application. Taking a cue from the official liquidator's reference to the said three occupants, the lessor claimed in its application that such occupants had no right to be in possession of the said premises and the lessor had no relationship with such occupants.

8. The lessor's application proceeded to record that the lessor had submitted all documents pertaining to the lessor's claim to the said premises to the official liquidator, but the official liquidator had failed to disclaim the said premises in the lessor's favour despite the lessor's specific request in such regard. The lessor asserted that since the company in liquidation had been inducted as a tenant at the said premises by the lessor or its predecessor-in-interest and the official liquidator had not attempted to obtain possession of the said premises from the occupants thereat and failed to pay the rent or the fair rent in respect thereof, the official liquidator should be directed to disclaim the property. The following prayers were made in the Judge's summons pertaining to the application:

"a) The Official Liquidator be directed to disclaim the said tenanted premises, particulars whereof have been given in Annexure A to the Affidavit in support of Judge's Summons in favour of the applicant on such terms and conditions as to this Hon'ble Court may deem fit and proper;

b) The respondent be directed to pay a sum of Rs. 25,79,450/- claimed in paragraph 16 of the affidavit in support of Judge's Summons;

c) The respondent be directed to make payment of a sum of Rs. 27,000 per

month on and from April, 2010 each month till the said premises is disclaimed and possession handed over to the applicant;

d) The respondent be directed to hand over vacant and peaceful possession of the said tenanted premises to the applicant;

e) An order of injunction restraining the respondent from dealing with and/or disposing of the said tenanted premises in any manner except for the purpose of disclaiming the said property;

f) Ad-interim orders in terms of prayers above;

g) Costs of this application be paid by the respondent;

h) Such further or other order or orders be passed and/or direction or directions be given as to this Hon"ble Court may deem fit and proper."

9. The order of January 22, 2013 on CA No. 325 of 2010 recognised the application to be one for disclaimer under Section 535 of the Act. It appears that the thrust of the submission on behalf of the lessor, as recorded in the relevant order, was that the official liquidator had no use of the said premises and the three named occupants thereat had no right, title or interest in respect thereof. The order noticed that the official liquidator had accepted that retaining the said premises by the official liquidator was onerous and it could be disclaimed, but the named occupants had sought to resist the disclaimer. The following submission attributed to the lessor is of some relevance:

"...Mr. Mukherjee submitted the objection to the disclaimer has come from Jugal Kishore Agarwal, Adhunik Metallic Ltd. and Adhunik Corporation Ltd. who are alleging that they are sub-tenants in the said premises. He submits that these three entities are in total occupancies of area 1645 sq. ft. out of total area of 2675 sq. ft. which was under the tenancy of the Company (in liquidation). He referred paragraph 3(i) and 3(iii) of affidavit of Jugal Kishore Agarwal. It was submitted that except those interveners, who have come forward as alleged sub-tenants, no one else has objected to this disclaimer. Therefore, the balance area of 1030 sq. ft. could be vacated by removing the trespassers and vacant possession of 1030 sq. ft. could be given to the PDGD." 10. Most of the discussion in the order of January 22, 2013 pertained to the rival claims of the lessor and the said three named occupants, the scope of Section 535 of the Act read with Section 446 thereof and the provisions of the rent control Act that govern the right of a lessor and the rights of the occupants of any property covered by such Act. The order, thereafter, proceeded to acknowledge the lessor as the owner of the said premises as it was the "admitted" position and directed the official liquidator to release the property in favour of the lessor. The rights of the three named occupants, who had intervened in the proceedings, were not finally adjudicated as "this Court is of the view that the issue should be resolved by filing a suit before the Company Court." The operative part of the order, in so far as it is relevant for the present purpose, has been extracted earlier in this

judgment.

11. The court also observed that the jurisdiction available under Section 446(2) of the Act would "include eviction of trespassers from property of the Company (in liquidation) and the Company Court also by a summary order can direct eviction of a trespasser from the Company property."

12. The sheet-anchor of the applicants' submission is that if the said three named occupants were allowed to retain possession of the part of the premises that they claimed to be in occupation of, subject to the lessor's right to evict them in pursuance of any decree passed in a suit lodged before the company court, the other perceived trespassers at the said premises ought to have been accorded the same treatment. The applicants insist that if the law of the land prevents even a trespasser from being dispossessed of any immoveable property under his possession except by procedure established by law, even if the applicants had been impleaded in the disclaimer proceedings their eviction could not have been sought or obtained thereat. The applicants spare no occasion to remind the court that the scope of the application carried by the lessor to the company court was not as wide as the ultimate order passed in its favour.

13. The applicants refer to the provisions of the West Bengal Premises Tenancy Act, 1956 as they deem such Act to be relevant in the context of their induction into a part of the said premises. They place several provisions from the successor statute of 1997 to emphasise on the protection that an occupant at an immoveable property enjoys thereunder. Section 12A of the West Bengal Premises Tenancy Act, 1997 has been invoked by the applicants to suggest that no court other than the civil court recognised therein would have the authority to receive a claim for the eviction of a person entitled to protection under the said Act from any immoveable property.

14. The ultimate argument of the applicants is that in view of Section 12A of the 1997 Act, the company court did not have any authority to order the eviction of a sub-tenant when neither the head-lessor nor the sub-tenant was amenable to its authority as a company in liquidation. The applicants assert that in view of Article 254 of the Constitution, when a State has enacted a law in relation to a matter covered by an Entry in List III of the Seventh Schedule to the Constitution and such enactment has received the Presidential assent, then the law made by the State legislature will prevail in the State if any provision therein is repugnant to the provisions of an earlier law made by the Parliament. In support of such contention, that the perceived authority of the company court to evict a sub-tenant is eclipsed by Section 12A of the 1997 Act, the applicants have referred to several judgments, including those reported at *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, *Shri Sarwan Singh and Another Vs. Shri Kasturi Lal*, *Employees Provident Fund Commissioner Vs. O.L. of Esskay Pharmaceuticals Limited*, *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, *Indu Bhushan Bose Vs. Rama Sundari Debi and Another*, *Accountant and Secretarial Services Pvt. Ltd.*

and Another Vs. Union of India (UOI) and Others, and M. Karunanidhi Vs. Union of India and Another, . The applicants submit that premises tenancy is covered by Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution and, as such, the provisions of a State Act pertaining thereto will enjoy primacy in this State notwithstanding any provision contrary thereto in the earlier 1956 Act enacted by the Parliament.

15. Several of the judgments referred to by the applicants in such context do not throw any light on the matter in issue. What fell for consideration in J.K. Cotton Spinning and Weaving Mills Co. Ltd. was the operation of a State law in the context of another State law and the Supreme Court observed that in case of an unavoidable conflict in such a situation, a special statute would prevail over a general statute and, as a corollary, a special provision pertaining to a specific aspect would prevail over a general provision.

16. In Sarwan Singh, different statutes passed by the same legislature fell for consideration and the Supreme Court held that the later non-obstante clause would prevail in such circumstances. In Esskay Pharmaceuticals Ltd., two statutes of the same legislature were again considered and the Supreme Court ruled that the provisions of the later Act would prevail. It was the same observation in Ashoka Marketing Ltd. where the later special Act was seen to hold sway over the earlier general statute.

17. In Indu Bhushan Bose, the matter pertained to the operation of a State rent control Act in a cantonment area and the Supreme Court agreed with the High Court that the notification by which the operation of the rent control Act had been extended to the cantonment area was ultra vires the Constitution and void. In Accountant and Secretarial Services Pvt. Ltd, the Supreme Court held that Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution governed tenancy legislation and not Entry 18 of List III.

18. In M. Karunanidhi, the Supreme Court applied the pith substance test to unravel the substantial legal conundrum in that case.

19. In addition to the above judgments on the perceived conflict between Section 446 of the 1956 Act enacted by the Parliament and Section 12A of the 1997 Act of the State, the applicants have also referred to a judgment reported at Nirmala R. Bafna (Smt)/Kershi Shivax Cambatta and Others Vs. Khandesh Spinning and Weaving Mills Co. Ltd. and Another/Official Liquidator and Others, for the proposition that a claim of eviction should be decided by the suit court. A further decision, reported at East India Trading Company Vs. Radha Kanta Dhar and Others, has been cited by the applicants for the proposition that when a landlord applies for disclaimer against the official liquidator in control of the assets and properties of a company in liquidation on the ground that the company in liquidation had wrongfully sub-let the tenanted premises, the landlord has to be left free to file a suit to obtain the eviction of the sub-tenant. Neither judgment is an authority for the proposition that the company court cannot direct the eviction

of any person from an immoveable property where the company in liquidation is a landlord or a tenant.

20. On the challenge fashioned with reference to Chapter I of Part XI of the Constitution as to the company court's jurisdiction to, in effect, pass an order of eviction in a matter pertaining to premises tenancy, the lessor has referred to the entire gamut of Articles in the relevant Chapter. On the distribution of the legislative powers, the lessor refers to the Constitutional provisions as to federal supremacy and a case of repugnancy arising only when there is no Constitutional solution to the apparent imbroglio. The lessor refers to, inter alia, Article 246 of the Constitution to suggest that if the two apparently inconsistent laws cannot be reconciled and there is an unavoidable conflict, the law made by the Parliament with respect to a matter enumerated in List I in the Seventh Schedule would prevail over any law made by any State; that a law made by a State in respect of any matter enumerated in List II in the Seventh Schedule would prevail in that State over any law made by the Parliament in respect of any matter enumerated in List III in the Seventh Schedule; and, by virtue of Article 254 of the Constitution, only such law as made by a State in respect of any matter enumerated in List III in the Seventh Schedule will prevail over an earlier law made by the Parliament in respect of that matter in that State if the State law has received the assent of the President. The lessor says that it is elementary that no Union law made in respect of a matter covered by List I in the Seventh Schedule can be overridden by any State law. The lessor points out that it is not in dispute that the Companies Act, 1956 has been enacted by the Parliament in respect of a matter covered by List I in the Seventh Schedule.

21. The lessor emphasises that the pith and substance test, that is recognised in several Supreme Court decisions in resolving any apparent conflict of laws, does not apply to any law made by the Parliament in respect of a matter covered by the Union List qua any State law whether made under the State List or the Concurrent List. The methodology in assessing a challenge on the ground of legislative competence, the lessor asserts, would involve several considerations including the determination of the Lists and the Entries which cover the subject-matters of the apparently conflicting enactments. The lessor says that in making the assessment for such purpose, it is not necessary to look for the reference to the relevant Lists or Entries in the two apparently conflicting statutes; as neither the Parliament nor any State legislature is obliged to indicate the same. The lessor submits that the Lists and the Entries covered by the apparently conflicting enactments have to be discerned from the substance of such statutes and that such determination is not called for unless there is a doubt as to the legislative competence in the enactment of one or both of the apparently conflicting statutes.

22. The lessor distinguishes several of the Supreme Court judgments cited on such score by the applicants on the ground that the two conflicting enactments in such cases were made by the same legislature; which is not the case here. The

judgments in Ashoka Marketing Ltd, J.K. Cotton Spinning and Weaving Mills Co. Ltd., Sarwan Singh and Esskay Pharmaceuticals Ltd. are, according to the lessor, not germane in the present context on such ground.

23. As to federal supremacy, the lessor has referred to a judgment reported at In Re: The Central Provinces and Berar Sales of Motor Spirit AIR 1939 1 (Federal Court) which was rendered on a special reference by the Governor General under Section 213 of the Constitution Act and pertained to a statute in the Central Provinces and Berar relating to a tax on motor spirit and lubricants. The object of the exercise before the court and the approach of the court in such a case were summarised in the following paragraph from the leading opinion at pages 5-6 of the report:

"The question before the Court admits of three possible solutions: (1) that the provincial entry covers the tax now challenged and that the federal entry does not; (2) that the federal entry covers it, but that the provincial entry does not; and (3) that the tax falls within both entries, so that there is a real overlapping of jurisdiction between the two. In the first case, the validity of the tax could not be questioned; in the second, the tax would be invalid as the invasion of an exclusively federal sphere; in the third, it would, because falling within both spheres, be invalid by reason of the non obstante clause. It is necessary therefore to scrutinize more closely the two entries, first separately and then in relation to each other and to the context and scheme of the Act." 24. The road map to be charted by a court in assessing such a matter may not have altered much notwithstanding that the Constitution came to be adopted more than a decade after the opinion was rendered by the Federal Court.

25. As to the exclusive authority of the Parliament in enacting laws, the lessor refers to the expression "Notwithstanding anything clauses (2) and (3)" appearing at the beginning of Article 246(1) of the Constitution and the exclusive authority of a State legislature to make laws for such State with respect to any of the matters enumerated in the State List being subject to the legislative supremacy of the Parliament as recognised in the Article. As to the tests to be applied in determining legislative competence upon a State law being in apparent conflict with a statute enacted by the Parliament, the lessor has referred to the decision reported at Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, .

26. The lessor has referred to a Constitution Bench judgment reported at Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., where the essence of the "pith and substance test" was described by the Supreme Court in the following words at paragraph 5 of the report:

"If in pith and substance a legislation falls within one list or the other but some portion of the subject-matter of that legislation incidentally trenches upon and might come to fall under another list, the Act as a whole would be valid notwithstanding such incidental trenching." 27. The lessor suggests that since

this High Court exercises original jurisdiction and the property at 14, N. S. Road is within the ordinary original jurisdiction of this court, there is really no merit in the applicants' assertion, even if it were to be assumed that Section 12A of the West Bengal Premises Tenancy Act, 1997 would apply to the case, that this court did not have the authority to pass an order of eviction. The lessor submits that the lack of authority of the High Court to receive a suit would be if it did not have original jurisdiction as noticed in the judgment reported at *Raja Soap Factory and Others Vs. S.P. Shantharaj and Others*, , where the High Court of Mysore entertained a passing off action though such court had no original jurisdiction.

28. In the context of the authority available to the company court to pass an order of eviction, the lessor has referred to the judgments reported at *Vidyadhar Upadhyay Vs. Sree Sree Madan Gopal Jew and Others*, , 143 Comp Cas 563 (Tata Steel Limited v. Official Liquidator), *Birla Corporation Ltd. Vs. Basant Properties Ltd. and Another*, , *Wellman Wacoma Ltd. Vs. Tivoli Park Apartments (P.) Ltd.*, and *Biswanath Poddar Vs. Archana Poddar and Another*, . An unreported judgment delivered on December 16, 2014 in APO 444 of 2014 (*SST Media Private Limited v. Official Liquidator*) has also been placed for the same purpose.

29. In *Vidyadhar Upadhyay*, the width of the authority available under Section 446(2) of the Companies Act fell for consideration before a Division Bench of this court. The more complex facts in *Vidyadhar Upadhyay* need not be referred to and it may suffice for the present purpose to notice that an application was made before the company court for a declaration that the appellant was a trespasser in respect of the concerned premises and a consequential order of his eviction therefrom. The company court set the application down for trial on evidence, framed issues, give directions for discovery and inspection of documents and proceeded just as a suit would be conducted. However, the appellant took no steps to participate in the process and failed to appear in course of the trial on several occasions, whereupon the company Judge answered the issues in favour of the applicants. The appellant then sought to contest the maintainability of the application on a point of law, but failed to avail of the opportunities afforded to argue the matter. It was thereafter that the relevant application was allowed and the appellant was directed to deliver vacant possession of the relevant premises upon being declared a trespasser thereat. The primary ground urged in the appeal was that the relevant room was not the property of the company in liquidation and the official liquidator had not taken possession thereof. The Division Bench referred to an unreported judgment of another Division Bench of this court (*Indramoni v. Shriram Jute Mills (P) Ltd.* in Appeal No. 154 of 1976 dated December 6, 1976) and concluded that the authority under Section 446(2) of the 1956 Act was wide and proceedings thereunder for eviction would be regarded as "due process of law."

30. In *Tata Steel Limited*, this court accepted that the authority available under Section 446(2) of the Companies Act was wide enough to entertain and adjudicate on a claim for eviction made in connection with a company in

liquidation. However, as would appear from the judgment in East India Trading Company and the view taken by the company court as evident therein, that notwithstanding the authority available to the company court under Section 446(2) of the 1956 Act, a claim for eviction may, ordinarily, not be entertained unless the claimant was the company in liquidation or the claim for eviction was made against the company in liquidation. In Tata Steel Limited, it was the person who was in occupation who put his head on the chopping block, in a manner of speaking. That would be evident from paragraph 21 of the report:

"Here, Garg came in seeking leave to intervene, thus obviating any decision being made by the company court as to whether to permit the applicant to have Garg's right to possession tried in course of these proceedings or to leave the applicant to institute appropriate proceedings against Garg by merely requiring the official liquidator to notionally surrender the company's right to the property in favour of the applicant. Once Garg has come in, of his own accord, sought to produce all that he has in support of his right to retain possession of the property, there is no impediment in considering the entirety of the matter and Garg's rights. Garg can no longer be heard to urge that despite his intervention, he should be permitted to go out and the entire matter be required to be adjudicated afresh either in the applicant's suit or in fresh proceedings to be instituted by the applicant. Such a step would lead to multiplicity of proceedings which courts generally frown upon." 31. In Birla Corporation Limited, a tenant inducted a sub-tenant without the owner of the property being a party to such agreement. The question that arose was as to whether any clause in such sub-tenancy agreement to the prejudice of the owner could be used against the owner. There is a similar clause in the present case in the agreement between the applicants and the company (prior to its liquidation) of April 2, 1993 which claims that the company as the tenant had the "absolute right to sub-let the tenanted portion at the same rent." In Birla Corporation Limited, the court referred to Section 13 of the West Bengal Premises Tenancy Act, 1956 and held that when a sub-tenancy had been created after the commencement of such Act "without prior consent of the superior landlord, such a landlord is not required to make such a sub-tenant a defendant in the suit for recovery of possession filed against his tenant and after the ejectment decree is passed against the tenant of the first degree, it would be binding upon such subtenant meaning thereby that a sub-tenant has no independent legal status and is not entitled to the benefits of protection against eviction."

32. In Wellman Wacoma, the Division Bench considered the scope of Section 535 of the Companies Act read with Section 446 thereof. It was held that the power was wide and it is necessary to see the authority thereunder to be wide since the purpose of Section 446 of the Act was to streamline the process of winding-up. The judgment also referred to what would amount to "due process of law" in the context of the adjudication of a claim for eviction under Section 535 of the Companies Act read with Section 446 thereof. A similar view was expressed in the unreported judgment of a Division Bench in SST Media Private Limited.

33. In *Biswanath Poddar*, the Supreme Court held that any statement made in an agreement between a tenant and a sub-tenant as to the tenant having the owner's consent to sub-let the premises, would not be binding on the owner unless it was demonstrated by cogent evidence that the owner had issued a previous written consent to the tenant to create the sub-tenancy.

34. Before taking up the real issue as to the ambit of the authority available to the company court under Section 535 read with Section 446(2) of the Companies Act, it is necessary to deal with the matter as to the perceived conflicting provisions in a previous Act enacted by the Parliament and a later Act of the State legislature which has received the Presidential assent.

35. There is no doubt, as there cannot possibly be, that the Companies Act is in respect of a matter in the Union List over which the Parliament had exclusive authority to legislate. Every enactment has a purpose and, typically, it has a core area where the norms pertaining to the matters that it covers are laid down. Laws also deal with other aspects which are incidental to the principal substantive provisions. Such incidental provisions may cover diverse areas as the manner of implementation of the substantive provisions or matters that are connected with the core provisions which, if not provided for, would make the enactment incomplete. The difficulty in interpreting a statute or attempting to reconcile the apparent conflict in two enactments is not always in determining the matters which the statute or the apparently conflicting statutes cover. Even if a statute does not expressly indicate the Entry in any of the Lists that it seeks to cover, that may be discerned from the object and purpose of this statute. When two apparently conflicting statutes, whether of the same legislature or of legislative bodies of varying degrees of competence, throw up divergent provisions pertaining to aspects incidental to the core substantive provisions of such statutes, the relevant provision in one may have to yield to the other - depending on the competence of the law-making bodies that made them and the proximity of the matters in issue in the list to either of the statutes.

36. Since the Companies Act pertains, undeniably, to a matter in the Union List which falls within the exclusive domain of the Parliament to legislate on, that such enactment contains incidental provisions which apparently stray into fields that may be covered by the State List or the Concurrent List, may be of no relevance. If the authority of the company court is seen to cover all matters pertaining to companies in liquidation as covered in the Companies Act, that the exercise of the jurisdiction thereunder may be in conflict with a provision in a State law made under the State List, or a State law subsequently made under the Concurrent List with Presidential assent, may only be a consideration relevant for the company court as to whether the jurisdiction ought to be wielded or an element of self-restraint should be exercised in dealing with the list. That a court has the authority to adjudicate a matter may not necessarily prompt the court to take up the adjudication, if the court finds that there is an equally convenient and efficacious forum specifically designated therefor. But the

existence of such alternative forum cannot be cited to suggest that the court had been robbed of its authority to adjudicate on the lis upon the creation of the alternate forum, unless the subsequent enactment specifically provides therefor and the legality of such provision is beyond question.

37. If, however, the repugnancy had occurred as a result of a provision in a subsequent State law that had received the Presidential assent being in conflict with a previous law enacted by the Parliament in respect of any matter in the Concurrent List, the provision in the State law would have prevailed. The applicants appear to perceive that a State law made in respect of a matter in the Concurrent List that has received the Presidential assent would prevail in all cases. That is not so. When a provision in a State law, whether in respect of a matter in the State List or the Concurrent List, appears to be repugnant to a provision in an earlier law enacted by the Parliament in respect of a matter in the Union List, it is the provision in the parliamentary enactment that would govern the field. The Companies Act is not relatable to any Entry in the Concurrent List; such statute has been made in respect of a matter in the Union List. It is such fact that clinches the issue in favour of the provision in Section 446(2) of the Companies Act - the authority wherein cannot be affected by anything contained in Section 12A of the West Bengal Premises Tenancy Act, 1997.

38. The several judgments of this court in assessing the width of the authority available under Section 446 of the Companies Act instruct that as long as there is a substantial connection of the lis with a company in liquidation, the company court presiding over such liquidation may receive it and adjudicate thereupon. But the authority under Section 446(2) of the Companies Act is not absolute and a later special Act as the Recovery of Debts due to Banks and Financial Institutions Act, 1993 has been seen to have substantially denuded the authority of the company court to address certain matters pertaining to a company in liquidation. However, such analogy is of no relevance in the present context as it is a subsequent State law which is cited here and not a subsequent enactment by the Parliament.

39. The key to the primary issue that has arisen herein may not be so much in discovering that the company court would not have the jurisdiction to adjudicate on a claim of eviction made by the owner of an immoveable property against a company in liquidation or the illegal sub-tenants inducted by the company, whether prior to or after the commencement of its liquidation. Even if it is accepted that such jurisdiction is available to the company court, as the several judgments cited on such aspect instruct, there is an element of discretion available to the company court as to whether or not the jurisdiction should be exercised and the manner in which it should be exercised.

40. Ordinarily, when an applicant seeks the eviction of the company in liquidation from an immoveable property, whether by way of disclaimer or otherwise, the company court should deal with the matter itself. But when an applicant claims that the possession of the applicant's property had been wrongfully parted with

by the company in liquidation, several other considerations come into play to assess whether the jurisdiction which is available to the company court ought to be exercised to decide the whole or a part of the claim. For instance, there could be a claim before the company court that those in control of a company in liquidation had fraudulently parted with possession of the tenanted premises in favour of an alter ego after the commencement of the liquidation proceedings; or, that an encroacher had trespassed into the property in question when the official liquidator was already in possession thereof. Such matters may excite the company court to adjudicate the claim in its entirety; but the same claim with a slight twist to the facts may prompt the company court to adjudicate a part of the claim in so far as it directly pertains to the company in liquidation and allow the applicant to obtain the other reliefs before a regular forum.

41. As would be evident from the judgment in *Tata Steel Limited*, the company court would have been diffident in receiving the claim against an alleged illegal occupant; but when such alleged illegal occupant intervened in the proceedings and insisted on his rights qua the property being adjudicated by the company court, the entirety of the matter was assessed by the company court. When the same genre of claim was made before the company Judge in *East India Trading Company*, the company Judge declined to entertain the lis as an application that could be addressed in a summary manner and gave liberty to the applicant to file a regular suit before the company court itself. The jurisdiction is surely available, whether it ought to be exercised or not would depend on the nature of the claim.

42. Since there is no real conflict between Section 446(2) of the Companies Act and Section 12A of the West Bengal Premises Tenancy Act, 1997 as the State law has invariably to yield, in the circumstances, to the law made by the Parliament by virtue of Article 246 of the Constitution, the consideration is now whittled down to whether the nature of the application or the prayers therein by the lessor ought to have resulted in an order that, effectively, dispossessed the applicants herein from an immoveable property that they were admittedly in possession of. The question causes substantial embarrassment as the assessment here cannot be made as in an appeal and must be made with due regard to the fact that the order of January 22, 2013 was made by a coordinate Bench.

43. The main plank of the applicants' submission in seeking the order dated January 22, 2013 being recalled is that the accidental absence of the applicants has resulted in the extreme prejudice visiting them though others similarly placed as the applicants who were before the court were treated differently. As a corollary, the applicants contend that they had not been made aware of CA No. 325 of 2010 and, as such, could not intervene therein even though their failure to intervene in the proceedings despite being aware thereof could never have been counted against them. The applicants say that the procedure was so unfair that to the extent the order passed on CA No. 325 of 2010 affects them, it should be recalled for the mere asking. The applicants say that they do not insist

on their right to remain in occupation being adjudicated by way of a more protracted process only on account of the inevitable delay of the laws and the judiciary attendant thereto, but they have a right to insist on a fair procedure being followed before it is concluded that they have no right to occupy the relevant premises. The applicants point out that even the basic adjudication of the title of the lessor was not undertaken in course of CA No. 325 of 2010 and such issue was decided on the concession of the official liquidator. The applicants lament that they were deprived of a fair opportunity to assert their rights to occupy the premises by virtue of the relevant clause in their agreement with the company prior to its liquidation and the chance to produce cogent evidence in support of the substance of the clause. After all, the applicants suggest, there was a different head-lessor at the time that they were inducted at the said premises.

44. There is a considerable basis to the applicants' submission on such score. Indeed, on the prima facie satisfaction of the immense prejudice caused to the applicants by the order dated January 22, 2013, they were allowed to go back into the possession of the said premises by the ad interim order passed on the present application. The applicants' claim here must not be seen as one seeking to establish their rights as sub-tenants at the said premises, but only for the purpose of undoing the prejudice that has been caused to them by an order passed in proceedings that they were not invited to participate in. It was possible, by virtue of the authority available under Section 446(2) of the Companies Act, to have tried this application on evidence, but that would have enlarged the scope and nature of the adjudication conducted in course of CA No. 325 of 2010. The ad interim order passed on this application was not by way of conferring any benefit on the applicants upon the appreciation of their title to the premises; it was only to undo the extreme prejudice suffered by the applicants which was substantiated by the official liquidator's report that the applicants had been dispossessed from the said premises in course of the official liquidator implementing the order of January 22, 2013.

45. There is no doubt that if the appropriate procedure had been followed in course of CA No. 325 of 2010 to give due notice to these applicants and try the claim of the lessor against these applicants, such adjudication would have had to be regarded as being in accordance with the procedure established by law. Again, if the present application was tried on evidence to adjudicate on the applicants' title to remain in possession of the said premises, that would also have been a fair procedure as established by law. But it was not necessary to undertake the elaborate exercise of a trial on evidence of this application in the context of the summary procedure adopted in course of CA No. 325 of 2010.

46. Since it is evident that the order of January 22, 2013 had the effect of, and ultimately resulted in, dispossessing these applicants from an immoveable property that was admittedly under their possession, without notice to them, CA No. 116 of 2013 is allowed and the order of January 22, 2013, in so far as it

provided for the eviction or removal of the applicants from the said premises, is recalled. The lessor is left free to pursue any claim against the applicants herein, but in view of the property having been disclaimed in the lessor's favour by the order dated January 22, 2013 no suit to claim eviction may be instituted by the lessor against these applicants before the company court.

47. As a consequence, the official liquidator will refund the deposit made by these applicants together with all interest accrued thereon within four weeks from date. The lessor will pay costs assessed at 6000 GM to the applicants herein.

48. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.