

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPLICATION NO.249 OF 2013
IN
COMPANY PETITION NO.166 OF 2002**

Sri Ashok Rajaram Rajeswari)....Applicant
And

Board for Industrial & Financial Reconstruction)....Petitioner
V/s.

The official liquidator of M/s.Modistone Ltd)
(in liquidation))....Respondents

Mr.Mayur Khandeparkar a/w Ms.Priyanka Shetty for the applicant.

Mr.Sharan Jagtiani for the Official Liquidator.

Mr.Vijayprakash Yadav for Noticee.

**CORAM : K.R.SHRIRAM,J
DATE : 17.12.2015**

P.C.:-

1 This application is taken out on behalf of a workman of the company in liquidation praying for a direction to the Official Liquidator to forthwith take possession of the properties of the company in liquidation mentioned in schedule-A thereto and to dispose of the same in accordance with law.

2 The counsel for the applicant, on instructions, restricted his application only to the properties mentioned at serial nos.13 & 14 of schedule-A to the application. These two properties are 18, Camac

Street, Kolkata-700 017 and SCI 43, Madhya Marg, Sector-26, Chandigarh-160 026. The application has been filed by the applicant as a General Secretary of the Modistone Kamgar Sangarsh Samittee. The grievance of the applicant is that the official liquidator has not taken possession of these 2 properties and disposed the same.

3 As regards Kolkata property :-

One Sitalaprasad Jaiswal and one Rameshkumar Jaiswal had filed an ejectment suit before the presidency, small causes court at Calcutta. As the company was already in liquidation much prior to filing of the said ejectment suit, it is the case of the applicant that the said Shri Sitalaprasad Jaiswal and Rameshkumar Jaiswal ought to have taken leave of the court under Section 446 of the Companies Act 1956 prior to filing of the said suit in Calcutta and in view of the fact that they did not obtain permission or such leave from this court, any decree from the presidency of the small causes court is voidable at the instance of the official liquidator. The said Sitalaprasad Jaiswal and Rameshkumar Jaiswal have not only failed to take leave under Section 446 but have gone ahead and executed the decree that they obtained ex-parte on 13.3.2006 for eviction and recovery of possession of the said property from the company in liquidation. The grievance is that the official liquidator has not taken steps to get the

decree reversed and take back possession.

4 As regards Chandigarh property :-

It is the case of the applicant that one H.C.Gupta who was the lessee of the property had filed a suit/petition no.317 of 1999 in Chandigarh, inter alia, seeking eviction of the company in liquidation from the said shop. According to the applicant, in this case also, the said H.C.Gupta though he made official liquidator, High Court as a defendant and got summons issued, did not take leave under section 446 of the companies Act 1956. Further grievance is that the official liquidator despite receiving the summons, did not defend the suit. Therefore, the counsel submitted that in this case also the decree passed by the court of Sr.Judge, Sr.Division at Chandigarh, is voidable at the instance of the official liquidator. The counsel further submitted that the said H.C.Gupta in fact, misled the court and obtained orders. The applicant submits that the said H.C.Gupta took out a company application no.61 of 2005 praying, inter alia, for an order of allowing him to break open the lock of the premises. The application was first listed on 27.7.2006 when the matter was stood over by two weeks. The applicant states that by this date, H.C.Gupta had already taken possession of the property in execution proceedings commenced by him which he did not disclose to the

court. When the matter was finally heard on 9.11.2006 the court had observed that the said H.C.Gupta had mis-led the court and has wrongfully taken possession of the premises which was in the possession of the official liquidator and dismissed the application no.61 of 2005. The court also granted liberty to the official liquidator to take back possession of the premises and re-seal the same.

5 Against this order, the said H.C.Gupta preferred an appeal bearing No.6 of 2007. On 14.3.2007 when the Notice of Motion No.46 of 2007 in the said appeal no.6 of 2007 was heard, the counsel appearing for the official liquidator made a statement to the court that the official liquidator was not interested in taking possession of the said premises. The counsel also made a statement regarding certain movable articles, which were originally in the said premises, that they are not stored in the said premises. In view of the statement, the Notice of Motion was made absolute and disposed of.

6 When the said appeal was again listed before the Division Bench of this court on 1.7.2010, the counsel appearing for the said H.C.Gupta requested leave to permit him to withdraw the company application no.61 of 2005. The court granted leave and disposed of the appeal as infructuous.

7 The counsel for the applicant states that in view of the above, that is in both the cases the owners/lessees of the premises having misled the court, the official liquidator should be directed to take possession of the premises and dispose of the same.

8 I asked the counsel even if such a direction is passed, i.e., to take possession back of the premises from the owners/lessees, can the official liquidator dispose of the premises, as admittedly they did not belong to the company in liquidation. The counsel in fairness agreed that the two premises cannot be disposed of by the official liquidator.

9 The official liquidator as regards the Chandigarh property has made a statement before the Division Bench through its counsel that they were not interested in the suit property. The official liquidator has also filed a report dated 5.2.2014 in which he has given reasons as to why he cannot take possession of the properties mentioned therein. Two of the properties are the subject matter of this application.

10 As regards the Kolkata property, the official liquidator has

examined and listed the documents which were examined and has stated that the property does not belong to the company in liquidation. Similarly, for the Chandigarh property, after examining the documents which are listed therein, the liquidator has stated that the property does not belong to the company in liquidation.

11 After the counsel appearing for the applicant was heard, I made my intention clear to the counsel for the applicant that I was inclined to reject the application and asked him to take instructions whether he would be willing to withdraw the application. The counsel after taking instructions, requested the court to pass the order.

12 Admittedly both the properties do not belong to the company in liquidation. Admittedly, the Official Liquidator has said he does not want the property. Further, the official liquidator will not be able to dispose the properties and use the sale proceeds for the benefit of the creditors of the company (in liquidation). Therefore, no purpose would be served in directing the liquidator to take back the possession of the properties just because the applicant's feel so, as the owners/lessees of both the properties had not taken leave under Section 446 of the Companies Act 1956. The liquidator's office is already over-burdened with work and I see no reason to add to their

burden purely for academic interest of the applicant.

13 In the circumstances, the application is rejected with no order as to costs.

(K.R.SHRIRAM,J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**