

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

**APPEAL (L) NO. 624 OF 2015
IN
COMPANY APPLICATION (L) NO. 369 OF 2015**

**Carl Advertising Pvt. Ltd. } Appellant/Intervener
 } versus
R-Tec Systems India Pvt. Ltd. }
and Ors. } Respondents**

Mr. Mathews J. Nedumpara with Mr. Nishant
Sangle i/b. Navaneetha Krishnan T. for the
Appellant.

Mr. Madhur Rai i/b. PRS Legal for Respondent
No. 4.

Mr. Sharan Jagtiani for Respondent No. 7.

**CORAM :- S. C. DHARMADHIKARI &
 B. P. COLABAWALLA, JJ.**

DATED :- AUGUST 26, 2015

P.C. :-

We have heard Mr. Nedumpara for the Appellant. In
pursuance of our earlier order, the Appellant has placed before us a
copy of the order impugned in this Appeal.

2) Though the memo of Appeal has not been amended, yet,
since Mr. Nedumpara sought to raise legal contentions, we have allowed
him to argue the Appeal, despite a formal amendment to the memo has
not been carried out.

3) Mr. Nedumpara has placed before us two contentions for our consideration. He submits that the impugned order, to the extent the learned Judge renders detailed conclusions particularly on the point of or claim of tenancy, is contrary to law. His second contention is that the Appellant/Applicant was seeking a limited relief and that was to protect the physical possession and occupation of the premises which was sought to be disturbed by the Official Liquidator. The Appellant company only wanted a limited protection against such dispossession and when the claim of tenancy is being adjudicated by a competent Civil Court. Therefore, if the learned Judge was required to consider a question or issue, it was only whether there is a prima facie case made out for grant of an equitable relief. Beyond that, the learned Judge was not required to consider much less decide anything. The impugned order travels beyond the limited issue. It suffers from serious legal infirmity and must be set aside.

4) The only contesting Respondent before us is represented by Mr. Jagtiani. The other party present is the secured creditor Abhudaya Co-operative Bank Ltd. Mr. Jagtiani would submit that the learned Single Judge was considering an application to grant an injunction so as to restrain the Official Liquidator from taking possession of the premises belonging to the company after passing a winding up order. He was

therefore fully justified in considering as to whether a *prima facie* case is made out, whether balance of convenience lies in favour of the Appellant or otherwise and whether irreparable loss or injury would be caused to the Appellant/Applicant. For that, the learned Single Judge was required to *prima facie* decide whether the subject immovable property belongs to the company in liquidation or not. It is while examining the contentions with regard to the above that the learned Single Judge was obliged to render a *prima facie* finding. He had to do so because *prima facie* case for injunction is to be mandatorily made out before that relief can be claimed. During the course of the same, the learned Single Judge found that the application is not bonafide as well. In the circumstances, the learned Single Judge has, while refusing the interim injunction, clarified that the claim of tenancy may have been raised, but that is pending before the Civil Court and therefore his order will not prevent the Civil Court from adjudicating that issue in accordance with law. That Court, while doing so, should not be influenced by the tentative and *prima facie* opinion of the learned Company Judge. In such circumstances, Mr. Jagtiani would submit that the Appeal be dismissed.

5) With the assistance of the Counsel appearing for both sides, we have perused the memo of Appeal and the order impugned before us

carefully. The Company Application was moved by the present Appellant seeking a restraint against the Official Liquidator from moving in and taking possession of the premises more particularly described by the learned Single Judge in para 1 of the order. It was the Appellant/Applicant's claim that he is a tenant of the premises and by virtue of a leave and licence agreement dated 16th June, 2009. In effect and substance it is an agreement of tenancy. It is an agreement falling within the provision, namely, section 107 of the Transfer of Property Act, 1882. Even though it does not fall in the first part of this provision, it would still be a lease of immovable property by oral agreement accompanied by delivery of possession. The argument was that this contention amongst others has been raised and claim of the tenancy has to be adjudicated by a Court of competent jurisdiction, namely, the Court of Civil Judge, Junior Division, Thane. The learned Single Judge noted that no application was made nor any interim order has been passed by that Civil Court. For the purpose finding out as to whether the Liquidator can be restrained by a order of injunction, the learned Judge verified and scrutinised the materials and arrived at a tentative and *prima facie* conclusion that the claim of tenancy does not inspire confidence. The learned Single Judge has taken care to observe that this is a tentative and *prima facie* conclusion and shall not influence the competent Civil Court while determining the Appellant/Applicant's

claim in the Suit. Additionally, the learned Single Judge found that the conduct of the Appellant/Applicant is such that the Appellant/Applicant is not entitled to any ad-interim relief/interim injunction. That is why the learned Single Judge perused the requisite materials and rendered a tentative and *prima facie* conclusion to above effect as well. However, his entire order and as clarified is not to influence the Civil Court in any manner. Therefore, we do not find any substance in the contention of Mr. Nedumpara that the learned Single Judge traveled much beyond the jurisdiction vested in him as a Company Judge. Once the request was made to the Company Judge and in the given facts and circumstances for an injunction restraining the Liquidator from taking possession of the company's assets, that he had also to consider whether the relief being discretionary and equitable the conduct of the Appellant justified grant of the same. He therefore indicated that the conduct as well does not inspire confidence. Those findings are also rendered on the materials produced and at a *prima facie* stage.

6) In view of above, we do not find any merit in either contentions of Mr. Nedumpara. The order of the learned Single Judge does not suffer from any serious illegal infirmity or perversity warranting interference in our appellate jurisdiction. The Appeal is dismissed accordingly.

7) At this stage, Mr. Nedumpara states that our order should be stayed so as to enable the Appellant/Applicant to approach the Civil Court and make an appropriate application therein. This request is opposed by Mr. Jagtiani.

8) All that we have done is to decline to interfere in the appellate jurisdiction with a tentative and *prima facie* finding of the learned Single Judge. He was exercising powers as a Company Judge or Company Court. Having found that the learned Single Judge has clarified in his order as noted extensively above, we do not see any reason to grant the request of Mr. Nedumpara. The request is refused.

9) All concerned to act upon an authenticated copy of this order.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)