

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****REVIEW PETITION (L) NO. 4 OF 2015****IN****COMPANY APPLICATION NO. 369 OF 2015****IN****OFFICIAL LIQUIDATOR'S REPORT NO. 347/2014/Liqn.-IV****IN****COMPANY PETITION NO.452 OF 2010**

Carl Advertising Pvt.Ltd.

...Review Petitioner
(Orig.Applicant / Intervener)**In the matter between**

Carl Advertising Pvt.Ltd.

...Petitioner

vs.

R-Tec Systems India Pvt.Ltd. & Ors.

...Respondents /Orig.Respondents

Mr.Mathew Nedumpara with Nishant Sangle i/b. Navneetha Krishnan for
Petitioner.

Mr.Sharan Jagtiani for Official Liquidator.

CORAM : S.C. GUPTE, J.**7 DECEMBER 2015****P.C. :**

This application seeks review of an order passed by this Court on 13 August 2015. That order was passed on an application of the Review Petitioner herein for a declaration that the order passed by this Court on 20 March 2015 was void, as the Applicant, who was in occupation of the premises, was not a party to the proceedings when the order was passed and that the order was, accordingly, in violation of principles of natural justice.

2 The jurisdiction of the Court to review its own order is to be found in Order 47 Rule 1 of the Civil Procedure Code. The application can be on the footing of discovery of new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of the review petitioner or

could not be produced by him at the time when the order was passed. It can also be on the footing that on account of some mistake or error apparent on the face of the record or for any other sufficient reason, the order needs to be reviewed. The present application is on the footing that there is a mistake or error apparent on the face of the record. What is submitted is that the order enabling the Official Liquidator to take possession of the property, of which the Review Petitioner claims to be in occupation, is passed by Company Court, when, under sub-section (1A) of Section 456 of the Companies Act, the jurisdiction to order possession of the property rests with the Chief Presidency Magistrate or the District Magistrate. Secondly, it is submitted that in the present case, though the Company Court has permitted the Official Liquidator to take possession of the property, there is no final finding rendered by the Company Court as to the rights claimed by the Review Petitioner.

3 The ground under sub-section (1A) of Section 456 was urged before this Court when it passed the order under review. This Court, after hearing the parties and considering the law cited at the bar, came to a conclusion that the order of the Company Court of 20 March 2015 could not be varied on the ground of non-compliance with any provision of law. Particularly, this Court noted that Section 456 gives an option to the Official Liquidator to apply to the Chief Presidency Magistrate or District Magistrate, as the case may be, for seeking possession of the property. This was a matter of option to the Official Liquidator, which he may or may not follow. The Judgment in the case of **Indo Burma Wood Products**¹ was also considered in this light and this Court found that there was no merit in the application. The same ground cannot be urged in the review petition.

4 As far as the *prima facie* nature of the conclusion drawn by the Company Court in its order dated 13 August 2015 is concerned, the Company Court, on the basis of the *prima facie* conclusion, merely found that there was no case made out by the Review Petitioner for restraining the Liquidator from taking possession of the property in accordance with the order passed by this Court on

1 AIR 1968 Cal 198

20 March 2015. The Review Petitioner had to make out at least a *prima facie* case before this Court that the Liquidator would have to approach the civil court for seeking possession of the property and that the Company Court, in the premises, ought not to permit the Official Liquidator to take possession of the property. It is, in this context, that this Court came to a conclusion that no such *prima facie* case is made out by the Review Petitioner. This Court also does not find mistake or error apparent on the face of the record in this respect, which calls for review of the order.

5 Besides, the Petitioner has already challenged the order under review before a Division Bench of this Court. The Division Bench, by its order dated 26 August 2015, has dismissed the Petitioner's appeal and confirmed the order under review. The SLP preferred from the appellate order was withdrawn by the Petitioner upon statement that the Petitioner would like to pursue its review petition.

6 As discussed above, the review petition has no merit.

7 The review petition is, accordingly, dismissed. The Petitioner is directed to pay costs of this review petition quantified at Rs.50,000/- to the Official Liquidator.

(S.C. Gupte, J.)