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

COMPANY APPLICATION NO.283 OF 2014
IN
COMPANY PETITION NO.521 OF 1992

Garware Employee Union ….Applicant/Intervener

IN THE MATTER BETWEEN :

Henkal Chemicals India Limited ….Petitioner

V/s.

The Official Liquidator of Garware
Nylons Ltd. (In Liqn.) ….Respondent

And

Shri C.V. Ramachandran & Ors. ….Respondents

Mr. Omkar Gupte i/b. G.P. Law & Associates for the applicant.

Ms. Deepti Panda i/b. Pravin A. Padne for respondent no.6.

Mr. Hemant Sethi a/w. Ms. Nafisa Khandeparkar and Ms. Savita Nangare i/b. ALMT Legal for the respondent no.8.

Mr. Aniket Hirpara, company secretary of respondent no.8.

Ms. Yogini Chauhan, Deputy Official Liquidator present.

CORAM : K.R.SHRIRAM,J
DATE : 24th FEBRUARY, 2016

P.C.:-

1 This application is filed by the Garware Employee Union to recall the order dated 27th February, 2002 passed in company application no. 118 of 2001 granting permission to respondent no.7 to institute a suit pursuant to which the respondent no.7 instituted a suit in the Small Causes Court at Mumbai against the company (in liquidation) and the respondent no.6.

2 The basic purpose of filing this application by the Union is that two office premises, viz., second floor and third floor, ad-measuring to 2462 sq. ft. and 2678 sq. ft., respectively, in the building known as "Chander Mukhi", Nariman Point, Mumbai – 400 021 (the premises) should be considered as the premises that belong to the company (in liquidation) and the Official Liquidator should take charge of the premises, dispose of the same and apply the proceeds to the benefit of the creditors including the workmen.

3 Admittedly, the premises never belonged to the company (in liquidation). Admittedly, the company had taken the premises on Leave and License from one Mr. Raza Husain Mukhi (one office) and one Raza Husain Mukhi Trustee, Mukhi Family Trust and Smt. Gulshanban R. Mukhi (the other office) pursuant to Leave and License Agreements, both dated 23rd October, 1972, for a period of 5 years extendable at the option of the Licensee. The Licensee was the company (in liquidation).

4 It is the case of the applicant that when the Official Liquidator went to the said premises, the company should have handed over the premises to the Official Liquidator and the fact that the Official Liquidator did not take possession of the premises, was incorrect. The counsel for the applicant relied upon a copy of a plaint, that is annexed

to the application, filed by respondent no.7 who at that time were the owners of the premises, in their suit for eviction filed against the company (in liquidation) and a sister company of the company (in liquidation), i.e., respondent no.6. Some time in 1974, the said Mukhi's had sold the premises to respondent no.7.

5 The counsel for the applicant submits that in the suit that was filed by respondent no.7 for eviction against the company (in liquidation) and respondent no.6, the stand taken by the company (in liquidation) and respondent no.6 is that they were owners by adverse possession. The counsel further states that that suit has to be adjudicated.

The counsel for respondent no.6 states that they have vacated the premises and they will not be affected by any order that may be passed in the said suit by the Small Causes Court.

6 The Deputy Official Liquidator states that they have taken possession of only two cabins ad-measuring a total of about 165 sq. ft. and the rest was never taken possession because the premises was not owned by the company (in liquidation). The Deputy Official Liquidator states that they have taken possession of two cabins because the record of the company (in liquidation) was found in those cabins. The counsel for the respondent no.8 states that they have purchased from respondent

no.7 one office out of the premises in 2008 and the other in 2014.

7 It is indisputable that the Official Liquidator can take possession and dispose of only those assets, which are owned by the company. Admittedly, the premises, which is the subject matter of this application, was never owned by the company (in liquidation). Even for a moment, if I go alongwith the applicant and observed that the Liquidator should have taken possession of the entire premises and not just the two cabins, still the owner of the premises would have applied to the Liquidator for return of the premises.

8 Therefore, I see no merit in the application filed. The company application accordingly stands dismissed.

9 The Official Liquidator tenders Official Liquidator's Report No.144 of 2014 and requests order be passed therein. The Official Liquidator's Report is not listed today but with the consent of all the parties is taken up for hearing.

10 The relief being sought is that the Official Liquidator be paid a reasonable and fair monetary compensation, if the owner of the premises wants the Official Liquidator to surrender its tenancy rights in the said

suit premises and to hand over the two cabins that were in the possession of the Official Liquidator.

11 There is nothing on record to show that the Official Liquidator ever had any tenancy rights. Even the company (in liquidation) never had tenancy rights. The Deputy Official Liquidator states that the company (in liquidation) was a tenant. By no stretch of imagination can there be tenancy rights? The agreement that was entered into between the then owner of the premises and the company (in liquidation) expressly mentions that no tenancy rights are being created in favour of the company (in liquidation). Therefore, the question of Official Liquidator having any tenancy rights or surrendering the said rights does not arise.

12 As regards handing over the two cabins in possession of the Official Liquidator and for which the Official Liquidator wants compensation to be paid, Mr. Sethi, on instructions from Mr. Aniket Hirpara, Company Secretary of respondent no.8, who is present in court states that they will pay an ex-gratia amount of Rs.5 lakhs to the Official Liquidator, which money could be used for settling the claim of the creditors. Mr. Sethi also states that this amount will be handed over to the Official Liquidator within one week from today.

13 The Official Liquidator to endeavor to remove all the records and hand over the two cabins to the respondent no.8 within four weeks of receiving the cheque.

14 The Official Liquidator's Report accordingly stands disposed.

(K.R.SHRIRAM,J)