

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

ARBITRATION APPLICATION NO.228 OF 2015

IL and FS Trust Company Ltd. and Anr.Applicants

Vs.

Suyog Realtors Pvt. Ltd. and Ors.Respondents

Mr. Shyam Kapadia a/w. Ms. Jigisha Vadodaria i/b. Negandhi Shah and Himayatullah for applicants.

Mr. Sahil Mahajan for respondent nos.1, 3, 4 and 5.

Mr. S.A. Bhagwat for respondent no.2 (in provisional liquidation).

CORAM : K.R.SHRIRAM, J.

DATE : 31st JULY, 2017

PC.:

1 At the outset, Mr. Kapadia, counsel for applicants seeks leave to amend the prayer clause – (a) to the application to correct the year “**2012**” to “**2008**”. Leave to amend granted. Amendment to be carried out forthwith. Re-verification dispensed with.

2 Provisional Liquidator has been appointed for respondent no.2. Mr. Kapadia, counsel for applicants states that since it is only a Provisional Liquidator and legal proceedings had already been filed before the order appointing the Official Liquidator as Provisional Liquidator of respondent no.2 was passed, no leave under Section 446 (1) of the Companies Act, 1956 is required. Mr. Kapadia relies upon a judgment of this Court in *Olympus Superstructures Pvt. Ltd. vs. Meena Vijay Khetan and Anr.*¹ It will be useful to reproduce the following portion from the said judgment,

1. 2000 Company Cases Vol.101 Page 51

which reads as under :

“On the wording of Section 446 (1) of the Companies Act, 1956, which, in this respect, makes a significant departure from the language of Section 171 of the Act of 1913, the appointment of the provisional liquidator does not affect the continuance of a pending proceeding and leave of the winding up court is required only for commencing a new proceeding. But, once a winding up order is made, even the continuance of a pending proceeding can only be by leave of the court and subject to such terms as the court may impose.

In this case, the winding up order is kept in abeyance. No doubt there is a 'provisional liquidator'. Even so, I am of the view that the fourth respondent was not obliged to obtain the leave of this court to continue the execution proceedings in O. S. No. 1 of 1982 when he brought the property to sale. Section 446 (1) of the Act is not attracted to the instant case. This follows from the decision in B.V. John v. Coir Yarn and Textiles Ltd. [1960] 30 Comp Cas 162, 166. In this view of the matter, there is no infirmity in the execution proceedings taken in O. S. No. 1 of 1972 and O. S. No. 349 of 1979 of the sub-court, Tellicherry, and the applicant cannot have any grievance in this matter.”

3 Therefore, no leave is required.

4 Mr. Mahajan, counsel for respondent nos.1,3,4 and 5 and
Mr. Kapadia, counsel for applicants suggest that Mr. Justice V.C. Daga
(Retd.) former Judge of this Court be appointed as sole Arbitrator.

5 By consent, Mr. Justice V.C. Daga (Retd.) former Judge of this
Court, is appointed as sole Arbitrator to decide on all disputes arising out of
or in connection with and relating to Share Subscription cum Shareholders
Agreement dated 28th March, 2008.

6 Application accordingly stands disposed.

(K.R. SHRIRAM, J.)