

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

**COMPANY APPLICATION 276 OF 2018
IN
COMPANY PETITION NO. 417 OF 2015**

MAK Polyplast Private Limited

....Applicant

In the matter between :

MAK Polyplast Private Limited

....Orig. Petitioner

Vs.

Elder Health Care Limited

....Respondent

And

The Official Liquidator,
High Court, Bombay.

....Proposed Respondent

Ms.Deepti Panda I/b Narayanan and Narayanan for applicant/petitioner.

Mr. Mahendhar Aithe, company prosecutor for official liquidator present.

CORAM : K.R.SHRIRAM, J.

DATE : 21ST JUNE, 2018

P.C.:

1 Shri Aithe, company prosecutor states that since the application is to prosecute a summary suit filed before the City Civil Court at Mumbai, the official liquidator should be saved of costs in defending the suit. Shri Aithe further states that the fact that plaintiff has filed a summary suit would mean plaintiff is confident of getting a summary decree and therefore plaintiff should be directed to file an affidavit of proof of debt with the official liquidator and the leave be refused.

2 Ms.Panda appearing for applicant states that the process of

adjudicating the affidavit of proof of debt will take time and if applicant is able to satisfy the City Civil Court, Mumbai that plaintiff is entitled to a summary decree and gets a decree, then the liquidator will have to only look at the decree and not to go through the claim.

3 Shri Aithe submits that if the Court is inclined to grant the leave as prayed for, at the time of adjudicating applicant's claim, the official liquidator should be permitted to deduct the legal costs incurred in defending the suit. Ms.Panda states that they do not expect the legal cost to be very substantial and therefore has no quarrels with the suggestion given.

4 In the circumstances, having considered the application, the same is allowed in terms of prayer clause (a) which reads as under :-

“(a) this Hon'ble Court be pleased to grant leave under Section 446 of the Companies Act, 1956 to proceed further with the claim made by applicant in Summary Suit No.8 of 2016 filed and pending before the Hon'ble Bombay City Civil Court at Mumbai.”

It is clarified that any legal cost that the official liquidator may incur, which would also assumed to be reasonable, the same to be deducted from any claim that may be payable to plaintiff while adjudicating plaintiff's affidavit of proof of debt.

- 5 Application accordingly disposed.
- 6 All concerned to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)