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

APPEAL (L) NO.307 OF 2018

Rakesh Satyaprakash Kapoor … Appellant.
V/s.
Maharashtra Industrial Development Corporation and Ors. … Respondents.

Mr. Mayur Khandeparkar a/w Ms. Indrayani Deshmukh, Mrs. Amruta Sawant I/b. Sonal Doshi & Co. for the Appellant.
Mr. G.S. Hegde, Mr. C.M. Lokesh, Ms. J. Pandey I/b. A.R. Bhole & Co. for the Respondent No.1.
Mr. L.T. Satelkar for the Official Liquidator.
Mr. Jagdish Khanna, Director of Cosmos Fibre & Fashion P. Ltd. - Respondent No.2 in person.

CORAM : A.S.OKA AND M.S. SONAK, JJ.

DATE : 24th SEPTEMBER 2018.

P.C. :

1 Heard the learned counsel appearing for the appellant who is the petitioner in a petition for winding up. It is not in dispute that the Maharashtra Industrial Development Corporation (MIDC), a statutory Corporation incorporated by the State Government under the Maharashtra Industrial Development Corporation Act, 1961 is the lessor of the subject plot. The first respondent – Company is under liquidation. By order dated 17th June 2011, the learned Company Judge admitted the company petition by appointing Official Liquidator as the Provisional Liquidator and by directing the Official Liquidator to take charge of the assets of the

Company. By the impugned order, the learned Company Judge permitted MIDC to intervene and restrained the Official Liquidator from taking the possession of the subject plot.

2 The Company under liquidation (Cosmos Fibre 2 Fashion Pvt. Limited) claimed rights in respect of the subject plot on the basis of the deed of assignment dated 14th November 2006 executed in its favour by the State Industrial and Investment Corporation of Maharashtra Limited. It is not in dispute that as per the records of the MIDC, Libra Polymers Private Limited is the lessee. As of today, admittedly, MIDC has not granted consent for transferring the lease in favour of the company under liquidation. The documents on record show that certain compliances were required to be made for transferring lease in the name of the company under liquidation. Whether these compliances are made or not is not the controversy in the appeal. The fact remains that as of today, the company under liquidation is not the lessee. On Company Petition for winding up, in the order of admission dated 17th June 2011, the learned Company Judge held thus :-

> "6. According to the petitioner after the incorporation of the Company in order to commence its business, by a deed of assignment dated 14th November, 2006 the Company purchased from SICOM land bearing plot No.N-69 in Tarapore Industrial area of the MIDC admeasuring 1800 sq.mtr. together with the building and structure standing thereon and also the machinery lying therein at a fixed price of Rs.85 lacs. Out of the said consideration of Rs.85 lacs the company paid an amount of Rs.58 lacs i.e. the petitioner and respondent No.2 equally contributed by advancing a loan of Rs.29 lacs each which was treated by

> the respondent Company as unsecured loans from the Directors. The balance amount of Rs.27 lacs was procured by selling off the old machinery to a scrap dealer during the bid itself who made direct payment to SICOM Ltd."

3 The contention of the appellant is that he will make necessary compliance and will ensure that MIDC transfers the lease in the name of the company under liquidation.

4 What happens between the appellant and the MIDC is irrelevant and we are concerned with the merits of the order impugned in this appeal. Before the Company Judge, the Official Liquidator claimed that he has taken over possession of the subject plot as it forms part of the assets of the company under liquidation. Admittedly, MIDC has not accepted the company under liquidation as its lessee, even as of today. The company under liquidation is claiming to be a lessee under the deed of assignment to which admittedly the lessor (MIDC) is not a party and therefore, the learned Company Judge is absolutely right when he held that the Official Liquidator cannot take possession of the said plot on the footing that it is the asset of the company. Before the learned Company Judge, the Official Liquidator claimed that he had taken over possession by affixing seal on the lock which was already put on the factory premises. The learned Company Judge has directed the Official Liquidator to remove the seal inasmuch as admittedly, the Company under liquidation is not the lessee of the plot in question. Obviously, the impugned order does not authorise MIDC to take possession of the subject plot. The prayer made by the MIDC was for restraining the Official Liquidator from taking

possession of the subject plot on the footing that the company under liquidation is the lessee. Obviously, the impugned order does not authorise MIDC to take possession of the subject plot. If MIDC wants to take possession of the subject plot, it will have to adopt due process of law.

5 In this appeal, we are not concerned with the question whether MIDC can transfer the subject plot in the name of the company under liquidation. It is the matter to be decided by the MIDC.

6 Virtually, it is an admitted position that the company under liquidation, even as of today, is not the lessee of the MIDC. Hence, the Official Liquidator could not have claimed right to take possession on the footing that the said plot is the asset of the company under liquidation.

7 Needless to add that if in future the said plot becomes a part of the asset of the company under liquidation, the Official Liquidator can take possession of the said plot in accordance with law. Subject to what is observed above, we find no merit in the appeal and the same is dismissed.

(M.S. SONAK, J.) (A.S.OKA, J.)