

1. By this appeal, the present appellant has taken an exception to the order dated 7th August, 2018 passed by the learned Single Judge on the report submitted by the Official Assignee bearing No.19 of 2016. Before passing the impugned order, the learned Single Judge had heard the appellant as the appellant had sought intervention.

2. On 17th June, 2003, the partners of a partnership firm M/s Sigma Fashions were declared insolvent in Insolvency Petition Nos.95 and 96 of 2001 filed by the third respondent. The first and second respondents are the partners of M/s Sigma Fashions. As far as this appeal is concerned, the subject matter is Gala No.18 in J.K. Industrial Estate at Andheri (E), Mumbai. By the impugned order, the learned Single Judge directed the Official Assignee to take forcible possession of the said Gala No.18. Paragraph No. 2 of the impugned order reads thus :

“Ms.Bahulayan states that her client- M/s. Kiran Trading Company is in possession. I have to note that in the site report dated 27th September, 2017 in Paragraph 3 of Page 2 it is stated that Mr. Palan, Chairman of the Society informed that as per the record of the Society M/s. Kiran Trading Company is the tenant of the Gala No. 18, but presently M/s. Kiran Trading Company, is not in occupation/possession of the said Gala No.18 and they have subletted this Gala No. 18 to Mr. Jimit R. shah for three years, i.e. from 8th February 2016. Mr.Palan checked the record of the society and informed that Rs.39,46,960/- is the society's dues against M/s. Kiran Trading Company in respect of Gala

No.18.”

(underline supplies)

3. The learned counsel appearing for the appellant submitted that under a Tenancy Agreement of 1st April, 1997, M/s Sigma Fashions inducted the appellant in Gala No.18 as a tenant. He invited our attention to the Judgment and decree dated 18th June, 2008 passed by the Court of Small Causes, at Bandra. He pointed out that in the said suit filed by the appellant against M/s Sigma Fashions, a declaratory decree has been passed by the Small Causes Court, declaring the appellant as the tenant of the said gala. He submitted that the appellant has executed a Leave and License Agreement dated 8th February, 2016 in favour of one Jimit Rajesh Shah, the Proprietor of M/s Catalog Bazar. By a notice dated 1st March, 2017, the appellant terminated the said Leave and License Agreement and that the appellant has taken back the possession of the said gala from the licensee on 3rd May, 2017. He submitted that when the impugned order was passed by the learned Single Judge, the appellant was in possession. He stated that on the basis of the impugned order, the possession of the said gala has been already taken over by the Official Assignee. He submits that when the possession was taken over,

the appellant was very much in possession. When we invited attention of the learned counsel appearing for the appellant to the report dated 14th August, 2018 submitted by the Assistant in the office of the Official Assignee which records that at the time of taking possession, one Shri Achal Gupt (Mangali) of M/s Frickson was present and he claimed that M/s Frickson was using the said premises on contract basis and the present appellant is the owner. The learned counsel appearing for the appellant stated that Shri Achal Gupt is a contractor appointed by the appellant. The learned counsel relied upon a well known decision of the Apex Court in the case of **Anthony C. Leo Vs. Nandlal Bal Krishnan and others**¹. He relied upon the observations made by the Apex Court in Paragraph Nos.28 and 31. He submitted that in view of the decree of the Court of Small Causes, the appellant is a protected tenant under the Maharashtra Rent Control Act, 1999 and therefore, the Official Assignee had no right to dispossess the present appellant. His submission in the light of the said decision, at highest, the Official Assignee ought to have filed the suit for dispossessing the appellant. He would, therefore,

1 (1996) 11 Supreme Court Cases 376

submit that the impugned order directing dispossession of the appellant is illegal and the consequential action taken by the Official Assignee is illegal.

4. We have considered the submissions. The appellant is claiming through M/s Sigma Fashions on the basis of the Agreement of Tenancy executed by the said firm on 1st April, 1997. It is not in dispute that the first and second respondents in this appeal who are the partners of M/s Sigma Fashions were declared and adjudged as insolvent on 17th June, 2003. Therefore, in view of Section 17 of the Presidency Insolvency Act, on 17th June, 2003 the assets of the first and second respondents who are partners of M/s Sigma Fashions vested the Official Assignee. We find from the copy of the judgment dated 18th June, 2008 passed by the learned judge of the Small Causes Court that even after 17th June, 2003, the present appellant continued to prosecute the suit against M/s Sigma Fashions. Admittedly Official Assignee was not given a notice of pendency of the said suit by the present appellant. On 17th June, 2003, the assets of M/s Sigma Fashions vested in Official Assignee. Therefore, the said decree will not bind the Official Assignee in whom property

and assets of partners of M/s Sigma Fashions (first and second respondents herein) vested on 17th June, 2003.

5. Therefore, we are not impressed by the arguments of the appellant based on the decree of the Court of the Small Causes especially when the said decree is not binding on the Official Assignee.

6. The other issue is of the possession of the appellant. The appellant himself is relying upon a Leave and License Agreement dated 8th February, 2016 executed by and between the appellant and one Jimit Rajesh Shah. The said agreement is duly registered under the Indian Registration Act, 1908. On 1st March, 2017, appellant issued a notice of termination. The notice of termination calls upon the said Jimit Shah to vacate the said gala within 60 days, failing which the appellant will be forced to take steps for taking possession of the gala. When we made query to the learned counsel appearing from the appellant as to whether the possession of said gala was taken over by the appellant under a possession receipt executed by the Licensee, the learned counsel appearing for the appellant stated that there is no such possession receipt. In the letter dated 13th May, 2017, the

appellant stated that the possession of the premises is taken back from said licensee on 3rd May, 2017. There is an affidavit of Shri Jimit Shah dated 5th October, 2017 which makes a categorical statement that he continued to be in possession of the said gala to the knowledge of the society formed by the purchasers of the gala. The Leave and License Agreement produced by the appellant shows that possession of the said gala was parted with to the said Jimit Shah and admittedly, there is no document on record to show that the said Jimit Shah on his own handed over possession of the said gala to the appellant.

7. The learned Single Judge has referred to the report submitted by the Official Assignee of 27th September, 2017 in which a statement of the Secretary of the society is recorded that the appellant had sub-let the said gala to the said Jimit Rajesh Shah. Going by the stand taken by the appellant regarding induction of Shri Jimit Shah as a licensee, it is not possible to accept the case of the appellant that on 27th September, 2017 the appellant was in possession and even when the impugned order was passed, he continued to be in possession.

8. The law laid down by the Apex Court in the case of

Anthony C. Leo (supra) is of no assistance to the appellant in view of the above discussion. As observed earlier, the appellant neither served a notice of the pendency of the suit in the Court of Small Causes on the Official Assignee nor the Official Assignee was made a party to the suit. Therefore, the decree of the Court of Small Causes does not bind the Official Assignee in whom the assets of the partners of the M/s Sigma Fashions vested on 17th June 2003.

9. As stated earlier, even when the possession was taken over by Official Assignee of the said gala, a third party was in possession. According to the appellant, the third party is a contractor appointed by the appellant. However, there is no documentary evidence in support of the said contention placed on record. We, therefore, find absolutely no error in the view taken by the learned Single Judge. There is no merit in the appeal and the appeal is dismissed.

10. Pending notice of motion does not survive and the same is disposed of.

(M.S.SONAK, J.)

(A.S.OKA, J.)