

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

**COMPANY APPLICATION NO. 189 OF 2017
IN
COMPANY PETITION NO. 319 OF 1993**

S.S. Wagle (since deceased
through its legal heirs)

.. Applicants

In the matter of :

Gujarat Lease & Finance Ltd.

.. Petitioner

Vs.

The Official Liquidator of consolidated
Foundation (India) Ltd.
(In Liquidation)

.. Respondent

Mr. Sanskar Marathe for applicant.

Mr. P. Atchuta Ramaiah, official liquidator present.

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

**CORAM : K.R.SHRIRAM, J.
DATE : 27TH MARCH 2018**

P.C.

1. At the outset, Mr. Marathe appearing for applicant tenders draft amendment to application. Amendment is taken on record and marked 'X' for identification. Copy of the amendment application has been served upon the official liquidator last week itself but no objection is raised. Hence, leave to amend is granted. Amendment to be carried out forthwith. Re-verification dispensed with.

2. The original applicant, after taking out the application, died on 6th March 2017. Hence, application is being continued by the legal heirs. Applicants are seeking to be relieved of the undertakings given by original applicant, as incorporated in the order dated 18th August 2005 in Company Application No.75 of 2004 and in the order dated 13th April 2007 in company application no. 179 of 2007. Prayer clause (b) for confirming possession, cannot be granted by this Court.

3. Prior to the company, viz., Consolidated Foundation (India) Ltd. (the company), going into liquidation, the company had, by an agreement dated 7th December 1989 with the original applicant, taken on Leave and Licence, a premises, viz., 108, Owners Industrial Estate, Gabriel Road, Mahim (West), Mumbai 400 016 (the said premises). The company, in terms of the agreement, deposited a sum of Rs.7,50,000/- as security deposit. Due to various breaches committed by the company, original applicant issued a notice dated 8th October 1991 and called upon the company to quit, vacate and hand over possession of the said premises. As the company failed to vacate and hand over possession, applicant filed a suit for eviction in Small Causes Court being L.E. and C Suit No.83/100 of 1992.

4. On the respondent, viz., the official liquidator being appointed as liquidator of the company in Company Petition No.319 of 1993, applicant

took out company application No.528 of 1999 seeking leave of the Court to continue the suit against the official liquidator. Leave was granted by an order dated 14th February 2000. The suit filed by original applicant in the Small Causes Court came to be dismissed by an order dated 30th June 2001. Against the said order, an appeal was preferred being Appeal No.523 of 2003. By an order and judgement dated 17th April 2003, the appeal was finally heard and allowed decreeing the suit. Respondent in appeal, viz., official liquidator of the company was directed to vacate and hand over vacant and peaceful possession of the said premises.

5. Original Applicant moved company application No.75 of 2004 for leave to execute the decree of eviction against the official liquidator at which time, the official liquidator informed the Court that he intended to make an application before the appellate bench of the Small Causes Court to set aside its order allowing the appeal because it was an ex-parte order. The official liquidator took out an application No.2915 of 2004 before the appellate bench of the Small Causes Court to set aside the order dated 17th April 2003. This application was dismissed by an order dated 2nd July 2005 thereby confirming decree of eviction. When company application No.75 of 2004 taken out by original applicant herein came up for hearing, the official liquidator made a statement to the Court that he intended to file a writ petition against the order dated 2nd July 2005 passed by the appellate

bench of the Small Causes Court. This Court, by an order dated 18th August 2005 (A.M.Khanwilkar, J. as he then was) directed the official liquidator to hand over vacant and peaceful possession of the suit premises to original applicant upon original applicant giving an undertaking not to create third party rights, title or interest in the premises without prior permission of this Court. Applicant was also directed to deposit a sum of Rs.7,50,000/- that he had received as security deposit of the company (in liquidation). Applicant had also claimed a sum of Rs.1,000/- per month payable by the company (in liquidation) for the period 1st June 1999 to 1st February 2004 in terms of the agreement as directed by the appellate bench of the Small Causes Court. In the order of 18th August 2005, this Court, in so far as the claim of applicant towards compensation payable from 1st June 1999 to 1st February 2004 stated that if the proposed writ petition of the official liquidator is dismissed and the direction of the appellate bench of the Small Causes Court is affirmed, the official liquidator will make arrangement to make payment by seeking orders on the report to be filed within four weeks from the decision of this Court in proposed writ petition.

6. The official liquidator filed Writ Petition No.8468 of 2005 in this Court challenging the order dated 2nd July 2005 passed by the appellate bench of the Small Causes Court. It is stated in the affidavit in support of the application that no notice of the said writ petition was served upon

applicant nor copy furnished. When the writ petition was taken up on 8th March 2018, the Court issued rule returnable in four weeks. No interim relief was granted. The petition came to be dismissed for default on 21st July 2014. In the meanwhile, original applicant had taken out another application being company application No.179 of 2007 for permitting applicant's daughter and son-in law to conduct business from the said premises. This application came to be allowed by an order dated 13th April 2007 with a caveat that the original applicant or the daughter/son-in-law or their company shall not create any third party right in the said premises. Applicant and the said company, of which applicant was also a director, gave a separate undertaking to this Court not to create third party rights and hand over vacant and peaceful possession to the official liquidator within 72 hours of any such direction being passed by this Court.

Reading the entire order, it is quite clear that the Court had in mind the writ petition that was filed by the official liquidator, which was admitted on 8th March 2006 and was still pending. Original Applicant has moved this application stating when the writ petition itself has been dismissed, original applicant and others should be relieved of undertakings given to this Court. It has to be noted that the writ petition was dismissed way-back on 21st July 2014 and this application has been lodged on 18th October 2016, i.e., more than two years after the writ petition came to be

dismissed.

7. The official liquidator has filed an affidavit in reply. I have to note that the affidavit has been filed just for the sake of opposing and without proper application of mind. The official liquidator is first stating the official liquidator proposes to take out an application for restoring the writ petition that came to be dismissed on 21st July 2014. There is nothing in the affidavit in reply as to why nobody appeared before the Writ Court and why for almost 3½ years, nobody applied for restoration of the writ petition. I have used the term '*without application of mind*' because in paragraph 13 of the affidavit in reply it is stated "*.....in the interest of general body of Creditors, Middle Class Investors, Widow, Teachers and Labours.....*". I asked the official liquidator does the list of creditors specify any widows or teachers. The answer was negative. When I asked the official liquidator, when the company (in liquidation) was a finance company, where do labourers came in, the answer was there are no labourers.

8. Having considered all the orders passed, copies whereof are annexed to the application, one thing is certain that original applicant was the owner of the said premises and the company (in liquidation) was not. There is an order of eviction against the official liquidator. The company

was never the owner of the said premises and the official liquidator cannot have any right which is more than the right that the company in liquidation had. The undertaking was taken from original applicant pursuant to an order dated 18th August 2005 passed more than 13 years ago. Applicant has also deposited in compliance with the order dated 18th August 2005, the amount of Rs.7,50,000/-. The official liquidator states that the amount has been deposited with the Prothonotary and Senior Master, High Court, Bombay on 5th September 2005. The applicant has strictly complied with all the directions of this Court. The undertaking was directed to be continued by the order dated 13th April 2007 because the writ petition was still pending. The writ petition itself came to be dismissed on 21st July 2014 and the official liquidator, for more than 3 ½ years, has not even applied for restoration. The official liquidator is waking up only now when this application is taken up for hearing.

9. The official liquidator, in opposing the application, has also not given the list as to who are the creditors and how they are going to be prejudiced. The official liquidator has also not explained as to what rights will the creditors have on a property that was not owned by the company but occupied pursuant to leave and licence agreement, which itself came to be terminated and an order of eviction has been passed by the Small Causes Court. Shri Marathe states that applicant No.1A, who is the widow

of the original applicant, herself is 89 years old. The original applicant had terminated the leave and license agreement on 8th October 1991, much before the company went into liquidation, and the order of eviction is dated 17th April 2003. In my view, this is a fit case to release the original applicant and the legal heirs of undertakings given to the Court as recorded in the orders dated 18th August 2005 and 13th April 2007. Applicants are hereby released from the undertakings given to the Court not to create third party rights with respect to the said premises.

10. In the order dated 18th August 2005, at paragraph 6(iv), this Court has, while dealing with the claim of the original applicant for the compensation payable for the period 1st June 1999 to 1st February 2004, which Shri Marathe states works out to Rs.55,000/-, stated that the official liquidator will make arrangement to pay such amount to the applicant by seeking orders on the report to be filed within four weeks from the decision of this Court in the proposed Writ Petition. Therefore, four weeks period would have commenced from 21st July 2014, the day when the writ petition was dismissed. The official liquidator has not filed any report because the dismissal of the writ petition has gone unnoticed until this application was taken up for hearing. Therefore, the official liquidator is directed to file an appropriate report within four weeks from today regarding compensation payable to original applicant.

11. Application disposed accordingly.

(K.R. SHRIRAM, J.)