

OD-3

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/10/2021
WITH CP/233/2008
IA NO: ACO/1/2021

SUVINAY KAPOOR
VS.
M/S. DUNLOP INDIA LIMITED [IN LIQN.] AND ANR.

.....

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

AND

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 9th March, 2021.

[VIA VIDEO CONFERENCE]

Mr. Soumya Roy, Mr. Fasiur Rahman, Advs...appear.

Ms. S. Das De, Adv...for O/L.

The Court : We have gone through the affidavit affirmed by Dip Narayan Chowdhury on 26th February, 2021, on behalf of the Official Liquidator. It is quite clear that the Company [In Liquidation] was the tenant of the ground floor together with the back portion and mezzanine floor of premises no.43, Jor Bagh, New Delhi.

When the Company went into liquidation the Official Liquidator took possession of only the ground floor of the said premises and omitted to take possession of the other portion.

In their affidavit in opposition to the application for disclaimer filed by the Official Liquidator under section 535 of the Companies Act, 1956, before the learned single judge the appellant claimed this portion also.

By the impugned judgment and order dated 17th January, 2020 this Court directed the Official Liquidator to disclaim only those portions which he had taken possession of.

Now, when the Company went into liquidation, the Court through the Official Liquidator became custodian of the entire tenancy which the Company [In Liquidation] enjoyed, irrespective of the fact whether the Official Liquidator took possession of the entire demised premises or not. Therefore, when the decision is taken by him to disclaim the property, the whole property has to be disclaimed. Not only the part of which possession has been taken but also the other part of which the Official Liquidator is the custodian and possession of which has not been taken is to be necessarily disclaimed by him.

In those circumstances, we allow this appeal by modifying the impugned order dated 17th January, 2020 by directing that the Official Liquidator shall disclaim the ground floor together with the back portion and mezzanine floor of 43, Jor Bagh, New Delhi in favour of the appellant within three weeks of communication of this order. With regard to the part of which the Official Liquidator is not in possession, the Official Liquidator will disclaim the property as it is with the obligation of the applicant to take steps with regard to its possession etc. in accordance with law.

The appeal and the application are disposed of accordingly.

(I. P. MUKERJI, J.)

(MD. NIZAMUDDIN, J.)

