**IN THE HIGH COURT AT CALCUTTA**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**ORIGINAL SIDE**

**Present:**
**The Hon'ble Justice Sugato Majumdar**

CS/251/2011
IA NO: GA/2/2013(Old No:GA/180/2013),
GA/3/2014(Old No:GA/588/2014)

SUBRATA DHAR & ANR.
VS
B.C.NAWAN & BROS. (P) LTD (IN LIQN ) REP. BY THE O/L,
HIGH COURT, CALCUTTA

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| For the Plaintiff | : | Mr. Debdatta Sen, Adv.<br>Ms. Suchishmita Ghosh Chatterjee, Adv.<br>Ms. Ledia Dasgupta, Adv. |
| For the Official Liquidator | : | Ms. Smita Das De, Adv. |
| Hearing concluded on | : | 19/06/2024 |
| **Judgment on** | : | **25/06/2024** |

**<u>Sugato Majumdar, J.:</u>**

The instant suit was filed by the original Plaintiff Radha Kanta Dhar against his tenant B.C. Nawan & Brothers Pvt. Ltd. for recovery of possession of two go-downs described in Schedule 'A' of the plaint. On death of the original Plaintiff on 05/12/2013, the present Plaintiffs were substituted.

The original tenant M/s. B.C. Nawan & Brothers Pvt. Ltd. defaulted in payment of rent and also become defunct. Liquidation proceeding was initiated by the Plaintiff under Companies Act, 1956. Official Liquidator of this Court was appointed and is the present Defendant.

Following winding up of the original tenant M/s. B.C. Nawan & Brothers Pvt. Ltd. and in view of the fact that the premises are indisputably onerous property, the original Plaintiffs duly applied for a direction on the Defendant to disclaim the premises.

Three persons, namely, Ashok Kumar Bansali, Nanda Kishore Parekh and Shyam Khaitan had been carrying on business under the name and style of M/s. Ashok Kumar & Brothers, M/s. East India Trading Company and M/s. Khaitan Pressure Cooker Pvt. Ltd. and were in occupation of one go-down each as sub-tenant. They filed disclaimer application. In course of the proceeding Ashok Kumar Bansali became direct tenant of the original Plaintiff in terms of Order of this Court dated 4th May, 2010. The said Ashok Kumar Bansali deposited rent and continued to pay the same from time to time to the Official Liquidator.

Pursuant to the leave granted to the original Plaintiffs the instant suit was instituted against B.C. Nawan & Brothers Pvt. Ltd. (in liquidation). Praying for recovery of possession of the tenanted premises which are in occupation of the three occupants as aforesaid. The suit is instituted against the tenant M/s. B.C. Nawan & Brothers Pvt. Ltd. through the Official Liquidator. The Defendant, namely, the Official Liquidator contested the suit by filing written statement initially.

Subsequently, the Official Liquidator submitted a report bearing date 18th January, 2024. It is in the report that this Court, in terms of the Order dated

07/01/2010 was pleased to direct the Official Liquidator to take possession of the go-downs in question with police help. On 8th January, 2010, out of three go-downs, Mr. Ashok Kumar Bansali handed over the possession of the go-down to the Official Liquidator. But M/s. East India Trading Company and M/s. Khaitan Pressure Cooker Pvt. Ltd. refused to hand over the possession of the go-down to the Official Liquidator.

In nutshell, Nanda Kishore Parekh and Shyam Khaitan resisted the representatives of the Official Liquidator to take possession of the go-downs. Another attempt was made on 22/01/2010 to take possession of the go-downs but because of resistance made by Shyam Khaitan and Nand Kishore Parekh possession could not be taken. Subsequently, as stated in the report dated 18th January, 2024 the go-down which is under possession of the Official Liquidator was handed over to the landlord/Plaintiffs. A sum of Rs.2,49,600/- was paid to the Plaintiffs on 26/04/2017 in terms of the order of this Court dated 01/03/2017.

A supplementary report was filed on 29th May, 2024 by the Official Liquidator. It is contained that possession of the go-down in question could not be taken over by the Official Receiver because of strong resistance. The Official Liquidator is only a custodial legis without having any physical possession of the scheduled premises and go-down. In the supplementary affidavit, it is contended that Official Receiver has no objection if the order for recovery of possession is passed and the decree, as prayed for, may be allowed for recovery of possession, to the Plaintiffs. In other words, the Official Liquidator has no objection if decree for recovery of possession of the scheduled property is passed in favour of the Plaintiff. In other words the Official Liquidator admitted that decree for recovery of possession of the scheduled premises may be passed.

In view of the report of the Official Receiver dated 29th May, 2024 containing admission for passing a decree of possession of Schedule 'A' property, decree may be passed. Since Official Receiver has already handed over the sum of Rs.2, 49,600/- prayer (c) of the plaint has become redundant. There is no admission in respect of prayer (b) and (d) of the plaint. The learned Counsel for the Plaintiffs submitted that the prayer (a) may be allowed. Therefore, judgment may be passed on admission in respect of the prayer (a).

Hence, it is ordered that the Plaintiffs do get possession of the two go-downs described in Schedule 'A' by recovering the possession from the occupiers therein.

Let the decree be drawn up accordingly.

The instant suit stands disposed of along with all pending applications.

**(Sugato Majumdar, J.)**