

RAVINDRA ISHWARDAS SETHNA AND ANR.

v.

OFFICIAL LIQUIDATOR, HIGH COURT,
BOMBAY AND ANOTHER

August 19, 1983

[D. A. DESAI AND V. BALAKRISHNA ERADI, JJ.]

Companies Act, 1956—Sec. 457(1) (b)—Power of liquidator to carry on business of the Company—Interpretation of.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 as amended in 1973—Secs. 13 and 15—Interpretation of—Statutory tenancy confers rights of possession—Statutory tenant completely prohibited from giving possession on licence, sub-lease or under caretaker's agreement.

The respondent, Official liquidator, after being appointed by the Company Judge of the High Court, as Liquidator of a Company, took possession of the office premises of the Company. The Liquidator sought direction of the Company Judge whether the premises should be let out on lease or licence. The Company Judge gave a direction that the premises be given on caretaker basis. Under that direction the Liquidator entered into an agreement with the second respondent and gave possession of the premises to the second respondent. The appellants, who were the land-lords of the building of which the office premises of the Company formed part, took out Judge's summons praying for a direction to the Liquidator to terminate the caretaker's agreement and to hand over vacant possession of the premises to the appellants. The appellants contended that the so-called caretaker's agreement was in contravention of the various provisions of the Bombay Rents, Hotel, and Lodging House Rates Control Act, 1947 as amended in 1973 ('Rent Act' for short). The Company Judge held that in substance and in form the agreement entered into by the Liquidator with the second respondent was a caretaker's agreement which was permissible. A Division Bench of the High Court dismissed the appeal preferred by the appellants.

Allowing the appeal,

HELD: The Company Judge could not have authorised the Liquidator to enter into caretaker's agreement with the second respondent. The Liquidator does not need the use of the premises for carrying on the winding up activities of the Company because he sought direction for parting with possession. The only course open to the Company Judge was to direct the Liquidator to surrender possession of the premises to the appellants.

[664 F; B-C; H]

A Section 457(1) (b) of the Companies Act, 1956 gives power to the Liquidator in a winding up by the Court, with the sanction of the Court, to carry on the business of the Company so far as may be necessary for the beneficial winding up of the Company. If the Liquidator wanted to exercise power under sec. 457(1) (b) to carry on business of the company so far as necessary for its beneficial winding up, the business which was to be carried on must be the business of the Company. Giving premises on lease, licence or under caretaker's agreement was not the business of the Company. Since the Company's business of floating prize chit schemes came to a stand still, the moment the Company was ordered to be wound up, there was no question of the business of the Company to be carried on by the Liquidator and that too for the beneficial winding up of the Company. [661 H; 663 C-G]

B

C *In re Batey, Ex parte Emmanuel*, [1881] 17 Ch. Division 35 and *Panchmahals Steel Ltd. v. Universal Steel Traders*, [1976] 46 Company Cases 706 at 722, referred to.

D The company was a tenant or a lessee of the premises of which the appellants are the land-lords. The date of the commencement of the lease is not made available, but it is also not claimed on behalf of the Liquidator that there was lease of long duration. If so, the Company was a statutory tenant under the Rent Act. The statutory tenancy confers the right to be in possession but if the tenant does not any more require use of the premises, the provisions of the Rent Act and especially Secs. 13 and 15 completely prohibit giving the possession of the premises on licence or on sub-lease. The Company Judge, therefore, spelt out a third mode of parting with possession of the premises by the Liquidator namely, a caretaker's agreement. This appears to be a facade to wriggle out of the provisions of the Rent Act. The Rent Act is no doubt enacted for protecting the tenants, and indisputably its provisions must receive such interpretation as to advance the protection and thwart the action of the landlord in rendering tenants destitute. But this does not imply that the court should lend its aid to float the provisions of the Rent Act so as to earn money by unfair and impermissible use of the premises. [663 H; 664 A-F]

E

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2609 of 1983.

G Appeal by Special leave from the Judgment and Order dated the 1st July, 1982 of the Bombay High Court in Appeal No. 215 of 1981.

H *D. V. Patel, T. U. Mehta, H. J. Zaveri* for the Appellants.

O. P. Malhotra, P. H. Parekh and *Ms. Indu Malhotra* for Respondent No. 1.

U. R. Lalit V. N. Ganpule and *Mrs. V. D. Khanna* for Respondent No. 2.

The Judgment of the Court was delivered by :

DESAI. J. As the matter brooked no delay, after granting special leave to appeal, we proceeded to hear the appeal on merits. When hearing was over, we pronounced the following order and stated that the reasons would follow. The order reads as under :

“The appeal is allowed and the order made by the learned Single Judge as well as the Division Bench of the Bombay High Court rejecting the Judge’s Summons taken out by the appellants is set aside and the Judge’s Summons is granted to the extent indicated herein.

The appellants shall deposit Rs. 1, 50, 000 by or before March 1, 1983 in this Court. Respondent No. 2—Smt. Sabita V. Adapa shall hand over vacant and peaceful possession of the property being a shop Nos. 8/9 on the ground floor of the building formerly known as ‘Jagmohan Building No. 2’ or as ‘Ayaz Mansion’ and now styled as ‘Ram Kutir’ situated at Station Road, Andheri, Bombay—400058 to the liquidator on or before February 28, 1983 who shall forthwith hand over possession on March 1, 1983 to the appellants, after taking a statement from the appellants that they have deposited the amount Rs. 1, 50, 000 in this Court as herein indicated.

On respondent No. 2 handing over vacant and peaceful possession of the afore-mentioned shops to the liquidator by or before February 28, 1983, the liquidator shall forthwith refund to her the security deposit of Rs. 28,800 deposited by the second respondent with the liquidator.

Respondent No. 2 will be at liberty to remove all furniture and fixtures placed by her in the suit shop without causing damage to the property.

The amount of Rs. 1, 50, 000 to be deposited by the appellants in this Court will with the consent of the appellants be disbursed according to the direction to be given by this Court to the needy and the deserving creditors of the Chit Centre Pvt. Ltd. already ordered to be wound up

A

B

C

D

E

F

G

H

A by the High Court. Neither the liquidator nor the creditors
of Chit Centre Pvt. Ltd. have any right to claim this
amount of Rs. 1, 50, 000 or any part thereof as it is an ex
gratia payment made by the appellants for alleviating the
misery if any of some of the hard hit creditors of Chit
Centre Pvt. Ltd. The distribution of the aforesaid amount
B will be at the absolute discretion of this Court. The
appeal is allowed to the extent herein indicated with no
order as to costs."

These are the reasons.

C On a winding up petition filed under the Companies Act, 1956,
a learned Company Judge of the Bombay High Court made an order
on September 23, 1974 winding up Chit Centre Private Ltd. ('Com-
pany' for short). The Company had its office in shops bearing Nos.
8 and 9 on the ground floor of the building formerly known as
D 'Jagmohan Building No. 2' or as 'Ayaz Mansion' now known as
'Ram Kutir'. On the winding up order being made, the Official
Liquidator who was appointed as Liquidator of the Company while
taking possession of the assets of the Company also took possession
of the office premises of the Company. It is in this manner that the
Liquidator acquired possession of shops Nos. 8 and 9, the premises
E involved in this appeal. Subsequently, the Liquidator sought direction
of the court on April 25, 1979 whether the premises should be let out
on lease or licence or whether the furniture and fixtures in the
premises should be sold? The Court gave a direction that the premi-
ses be given on caretaker basis after obtaining a proper document
on a compensation not less than Rs. 2, 250 per month. Pursuant
F to this direction the Liquidator invited offers from persons willing to
occupy the premises on terms and conditions laid down by the Court.
On July 2, 1980, the Liquidator sought the direction of the Court
whether to accept the offer of M/s Modern Caterers represented by
respondent No. 2 herein, Smt. Sabita V. Adapa. The Company
G Judge by his order dated July 3, 1980 directed the Liquidator to
accept the offer as modified by the Court of the second respondent.
The Liquidator there upon entered into an agreement on July 29, 1980
with the second respondent and gave possession of the premises to
the second respondent on terms and conditions set out in the agree-
H ment.

Appellants herein are the Landlords of the building of which
the premises involved in this appeal formed part. Appellants took

out Judge's summons praying for a direction to the Liquidator to terminate the caretaker's agreement entered into with the 2nd respondent under the directions of the Court, and to hand over vacant and peaceful possession of the premises to the appellants. There were other prayers in the Judge's summons with which we are not concerned in this appeal.

The learned Company Judge repelled the contention of the appellants that the so-called caretakers' agreement entered into by the Liquidator with the 2nd respondent was in contravention of the various provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 as amended in 1973 ('Rent Act' for short) and held that in substance and in form it was a caretaker's agreement which was permissible. Accordingly, the learned Judge rejected the Judge's summons in respect of both the prayers. Appellants preferred an appeal to the Division Bench of the High Court. The Division Bench held that appellants were not entitled to the notice in respect of the report submitted by the Liquidator for directions in respect of the premises and further observed that the appellants had no right to the present possession of the premises, more so, because the appellants had already filed a suit for eviction in the Small Causes Court at Bombay against the Official Liquidator and on this short ground the appeal was dismissed. Hence this appeal by special leave.

The Company is already ordered to be wound up by the order of the Court dated September 23, 1974. The name of the Company clearly spells out the objects for which it was formed. The name of the Company was Chit Centre Pvt. Ltd. The Company had undertaken the business of floating prize chit schemes. The nature of business in modern times is sufficiently well known and does not require elaboration. The Company had set up an office for carrying on this business and the office was set up in premises taken on lease. The business of the Company of floating prize chit schemes came to a stand still, the moment it was ordered to be wound up. It is not the Liquidators' case that he is carrying on business of the Company which is being wound up with the permission of the Court under sec. 457 of the Companies Act.

Sec. 457 enables the Liquidators in a winding-up by the Court, with the sanction of the court, amongst others, to carry on the business of the Company so far as may be necessary for the beneficial

A winding-up of the Company. If the floating of the schemes for prize
chits came to a stand still, the moment the Company was ordered to
be wound up, there was no question of the business of the Company
to be carried on by the Liquidator and that too for the beneficial
winding up of the Company. Whether to carry on the business of
B the Company which is ordered to be wound up is not a matter left to
uncontrolled discretion of the Liquidator. The Liquidator undoubtedly
has the power under sec. 457 to carry on the business of the Com-
pany, if it is necessary for the beneficial winding up of the Company.
And this power can be exercised not at the discretion of the Liquidator
but with the sanction of the court. Reliance was placed on *In re*
C *Batey ; Ex parte Emmanuel*⁽¹⁾ wherein it was observed that the power
to carry on the business can only be exercised for the purpose of the
beneficial winding up of the Company not because the creditors may
think that the business will be a very profitable one and that the
longer it is carried on the better it will, and that they will make a
profit from it. Reliance was also placed on *Panchmahals Steel*
D *Ltd. v. Universal Steel Traders*,⁽²⁾ wherein it was held that amongst
others' the Liquidator with the sanction of the court has the power
to carry on business of the Company so far as may be necessary
for the beneficial winding up of the Company. It is true that the
Liquidator cannot carry on business for any other purpose except
E the purpose for which the power is conferred upon him, namely, for
the beneficial winding up of the Company. He cannot carry on any
business on the ground that it would be beneficial to the creditors or
the contributors. The jurisdictional fact which must be ascertained
and established for the exercise of the power by the Liquidator to
carry on business of a Company, is that carrying on of the business
F of the Company is necessary for the beneficial winding-up of the
Company.' However, the language of the section being unambiguous
and clear, one does not need the assistance of precedents to come to
a conclusion that the Liquidator with the sanction of the court can
carry on the business of the Company only to the extent that such
carrying on of the business is necessary for the beneficial winding-up
G of the Company.

H Let it at once be made clear that there is no order of the Court
brought to our notice which accorded the Court's sanction to the
exercise of the power to carry on the business of the Company by

(1) [1881] 17 Ch. Division 35.

(2) [1976] 46 Company Cases 706 at 722.

the Liquidator, and we posed a question as to which business of the Company was to be carried on by the Liquidator? The business of floating prize chits scheme has come to a stand still, the moment the Company was ordered to be wound up. It is not for a moment suggested that a Liquidator was to float some prize chit schemes or that a pending scheme was to be continued or pursued by him. That is not even the Liquidator's case nor was it so contended before the learned Company Judge.

The Liquidator has adopted a contradictory posture which the learned Company Judge has unfortunately overlooked. If the Liquidator wanted to exercise power under Sec. 457 (1) (b) to carry on business of the Company so far as necessary for its beneficial winding-up, the business which was to be carried on must be the business of the Company. Giving premises on lease, licence or under caretaker's agreement was not the business of the Company. If some other business of the Company was to be carried, the use of the office premises would be necessary for carrying on the business of the Company. If possession of the premises was to be retained for carrying on the business of the Company, the Liquidator could not have sought the direction of the court to hand over possession under any nomenclature such as lease, licence, caretaker's agreement or any other facade to the second respondent. Now if the Liquidator wanted to exercise power under Sec. 457 (1) (b), he ought to have, with reference to the object clause in the Memorandum of Association of the Company, shown that giving on lease or licence or under caretaker's agreement was part of the routine business of the Company. Such is not the case here. In fact, as the business has come to a grinding halt, the office premises are of no use to the Liquidator. He has therefore, devised a scheme by which he can knock out the compensation for the use and occupation of the premises, not necessary for the use of the Company, in contravention of the Rent Act and unfortunately the Court accorded sanction of this venture of the Liquidator disregarding the relevant provisions of the Companies Act.

The Company was a tenant or a lessee of the premises of which the appellants are the landlords. The date of the commencement of the lease is not made available to us, but it is also not claimed on behalf of the Liquidator that there was lease of long duration. If so, the Company was a statutory tenant under the Rent Act. The statutory tenancy confers the right to be in possession but

A if the tenant does not any more require use of the premises, the provisions of the Rent Act and especially Secs. 13 and 15 completely prohibit giving the possession of the premises on licence or on sub-lease. The learned Company Judge therefore spelt out a third way of parting with the possession by the Liquidator, namely, that he may give the premises to the second respondent under a caretaker's agreement. This caretaker's agreement appears to us to be an euphemism for collecting compensation which is nothing else but the charge for use and occupation of the premises exclusively by the second respondent. Whether it is sub-lease or licence does not call for decision. For the purpose of the present proceedings it is enough for us to say that the Company and its Liquidator no more needs the premises for its own use. The Liquidator does not need the use of the premises for carrying on the winding up activities of the Company because he sought direction for parting with possession. We are not impressed by the learned Judge saving that there is some third mode of parting with possession of the premises exclusively in favour of the second respondent, namely, caretaker's agreement which appears to us to be a facade to wriggle out of the provisions of the Rent Act. The Rent Act is no doubt enacted for protecting the tenants, and indisputably its provisions must receive such interpretation as to advance the protection and thwart the action of the landlord in rendering tenants destitutes. But this does not imply that the court should lend its aid to flout the provisions of the Rent Act so as to earn money by unfair and impermissible use of the premises. And that is what the Liquidator sought to do and the Court extended its help to the Liquidator. This, in our opinion, is wholly impermissible. The learned Company Judge could not have authorised the Liquidator to enter into such an agreement and therefore his order is liable to be set aside.

G In the appeal before the Division Bench, this aspect was not at all examined because it is stated that this aspect was not canvassed before the Bench hearing the appeal. The point we have examined goes to the root of the matter and, therefore, we consider it immaterial whether the point was examined at the hearing of the appeal.

H The learned Company Judge could not have permitted holding on to possession of the premises, not needed for efficiently carrying on winding up proceedings. The only course open to him was to direct the Liquidator to surrender possession to landlords and save recurring liability to pay rent. Before we part with this judgment, we must

take note of one submission that was made on behalf of the respondent. It was said that the creditors and members of the Company in liquidation have suffered huge losses and if the Liquidator would have been permitted to enter into an agreement with the second respondent, it would fetch a steady income which would have gone towards mitigating the hardships of the creditors and members of the Company. The accounts of the Company in liquidation were not brought to our notice nor can we permit violation of law howsoever laudable the object of such act may be. However, we must record a statement made on behalf of the appellants when the aforementioned argument was being examined by us. It was said that the second respondent was to pay Rs. 2,500 per month as compensation under the directions of the Court. That would have fetched the Liquidator an income of Rs. 30,000 per year and deducting the costs, expenses and taxes, the Liquidator may have been able to realise at least Rs. 25,000 per year. The learned counsel for the appellants submitted that adopting a multiplier of six, assuming that roughly six years was the period for which the agreement would have been renewed from year to year, the appellants unconditionally offered to deposit Rs. 1,50,000 in the Court to be distributed at the discretion of this Court amongst the creditors of the Company in liquidation. We recorded this offer in our order disposing of the appeal. We are now informed that the amount has been deposited. The Liquidator is accordingly directed to submit the list of the creditors of the Company with the names, addresses and claims admitted by him within 4 weeks from today when the matter will appear again on board for directions.

These are the reasons which persuaded us to allow the appeal and make the order extracted at the commencement of this judgment.

H.S.K.

Appeal allowed.