SMT. NIRMALA R. BAFNA/KERSHI SHIVAX CAMBATTA AND ORS. A

v.

KHANDESH SPINNING AND WEAVING MILLS CO. LTD. AND ANR./OFFICIAL LIQUIDATOR AND ORS.

B

FEBRUARY 25, 1992

[M.N. VENKATACHALIAH, A.M. AHMADI AND B.P. JEEVAN REDDY, JJ.]

C

Landlord and Tenant :

Tenant-Company under liquidation—Official Liquidator took possession of premises—Suit by appellant claiming sub-tenancy pending—In appeal arising out of an application under s. 446 of Companies Act, appellant allowed to be in occupation as agent of official liquidator—Directions of High Court—Whether amounted to dispossession and altered status of appellant; Whether warranted at interlocutory stage. D

The respondent company was the tenant of the flat in dispute. Consequent upon a winding up order in respect of the Company in Company Petition No. 59 of 1984 the official liquidator took possession of the flat and sealed it. The appellant in C.A.No. 886/92 before this Court, who is the sister of one of the Directors of the Company claimed on the basis of an agreement dated 15.7.79 said to have been entered into between her and the Company, to be the sub-tenant of the flat except a small portion thereof and that with the consent of the landlord she was in possession of the premises since the date of the agreement. The official liquidator delivered the possession of the premises to her, but later he threatened to dispossess her, whereupon the appellant filed a suit against the company in the court of Small Causes for injunction and for a declaration that she was the lawful tenant and/or a protected sub-tenant of the flat in dispute (excluding the portion reserved for the Company). E F G

On an objection raised by the official liquidator the appellant applied under s. 446 of the Companies Act to the High Court for grant of leave to proceed with the suit. The Company Judge rejected the application holding the suit as collusive. H

A On appeal, the Division Bench transferred the suit to the High Court granting leave with the conditions that the official liquidator would take possession of the entire premises and would allow the appellant to occupy the area in the premises, which at the relevant time was in her possession, as an agent of the official liquidator pending the disposal of the suit, on payment of a monthly compensation of Rs. 7,500 besides depositing Rs. 15,000. Aggrieved the appellant preferred the appeal by special leave to this Court.

The landlord-Trust filed a company application in Company Petition No. 59 of 1984 for possession of the flat including symbolic possession of C the premises in occupation of the appellant on the ground that the Company no more required the portion in their possession. The Single Judge dismissed the application holding that the liquidator required the said portion for storing the company records at Bombay. Dismissing the consequent appeal the Division Bench of the High Court held that a proposal from Rashtriya Girni Kamgar Sangh for revival the Company was under D consideration. The said order is the subject matter of C.A.No. 887 of 1992.

It was contended on behalf of the appellant that the tenancy interest of the company in the flat was not an asset of the Company in liquidation and the liquidator could not trade in the said right; that the appellant had E a right to be in possession of the premises in her own right as a sub-tenant; and in view of the Bombay Rent Act, the High Court erred in converting the appellant into an agent of the official liquidator and in imposing the conditions and enhancing the rent.

The official liquidator contended that the landlord Trust acted F beyond the authority in consenting, if at all, to the said sub-tenancy.

Counsel for the landlord-trust accepted the fact of oral consent to the sub-tenancy.

G Against an order dated 9.8.1989 passed by the Company Judge, the landlord Trust - filed S.L.P No. 16368 of 1990 before this Court as also an appeal before the Division Bench of the High Court. Since the appeal had been dismissed by the High Court, this court dismissed the special leave petition as infructuous.

H Disposing of the appellant's appeal (C.A.No. 886/92) and dismissing

the appeal of the landlord -Trust (C.A.No. 887/92), this Court, A

HELD : 1. Merely because a company goes in liquidation and a liquidator/official liquidator is appointed, the rights of the company viz a-viz its landlord and/or its tenant do not undergo any change. [p. 994C-D]

2. The tenancy rights the company had in the flat in dispute may B not be an asset for the purpose of liquidation proceedings. [p. 994B-C]

3. Having regard to the facts – the admission of official liquidator of a special resolution passed by the Board of Directors of the Company affirming the sub-tenancy, and the consent of the landlord-Trust to the said sub-tenancy (a fact not present before the High Court) and C appellant's possession over a major portion of the said flat on the date of appointment of the official liquidator on a monthly rent of Rs. 600 payable by the appellant to the Company as against the monthly rent of Rs. 900 payable by the Company - the appellant's plea of sub-tenancy is, *prima facie*, established; and in the circumstances, *prima facie* speaking, her D claim of protection of Bombay Rent Control Act cannot be rejected.

[pp. 993C-D; GH; 994A-B]

4. The rights of the appellant and the questions whether the sub-tenancy is true, whether it is valid in law and whether the consent of the landlord is true and valid would be decided in the suit. [p. 993E-F] E

5.1 The directions made by the Division Bench of the High Court have the effect of dispossessing the appellant from the premises in dispute and were not warranted at the interlocutory stage when the rights of the appellant are yet to be adjudicated upon. The character of her possession has also wrongly been altered as she is permitted to be in occupation of a F portion of the flat as an agent of the liquidator. [p. 994D-F]

5.2. Having regard to the particular facts and circumstances of the case and with a view to safeguard the rights of the company in the event of dismissal of the suit, the appellant should furnish security in a sum of rupees five lakh by way of bank guarantee to the satisfaction of the G Company Judge. The amount already deposited shall continue to lie in Court. The instant arrangement is an interim one pending the suit and shall not reflect upon the merits of the the suit. [pp. 994 G-H; 995A-B]

6. The official liquidator's requirement of the portion of the flat (which is in his actual possession) for storing the company books, and H

the proposal of the Rashtriya Girni Kamgar Sangh who are said to have formed an action committee of the Khandesh Mill Employees Industrial Production Co-operative Society for revival of the said company are relevant factors; and the High Court rightly dismissed the application and the appeal filed by the landlord Trust. [p. 996B-E]

Ravindra Ishwardas Sethna & Anr. v. *Official Liquidator, High Court, Bombay & Anr.,* **[1983] 4 SCC 269, cited.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 886-887 of 1992.

From the Judgments and Orders dated 2.9.1986 & 12.11.1990 of the Bombay High Court in Appeal Nos. 777/86 and 1038 of 1990.

With

Special Leave Petition (C) No. 16368 of 1990.

B.A. Masodkar, B.K.Mehta, G.L.Sanghi, A.M.Khanwilkar, Vimal Dave, V.D. Khanna, R.F. Nariman, R.N. Karanjawala, Ms. Manik Karanjawala and Sanjay Singh for the appearing parties.

Nitin Thakkar for the intervenor.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. *In S.L.P. No. 12199 of 1986*

1. Leave granted.

2. The appeal is directed against the Judgment of a Division Bench of the Bombay High Court in Appeal No. 777 of 1986 disposing of the appeal preferred by the appellant with certain directions.

3. Khandesh Spinning and Weaving Mills Pvt. Ltd. went into liquidation at the instance of a creditor. The order of winding up was passed on September 19, 1984 in company petition No.59 of 1984. The official liquidator was appointed as the liquidator for the company.

4. The company was the tenant of a flat situated at Church-gate, Bombay. It is a fairly big flat having an area of 3500 sq. ft. The company had its registered office in the said flat until it was shifted to Jalgaon

sometime prior to July, 1979. A

5. The appellant is the sister of one of the directors of the company. Her husband was the Manager of the company. According to her, she entered into an agreement with the company on July 15, 1979 whereunder a sub-tenancy was created in her favour in respect of the said flat except for a small area of 150 sq. ft. which was retained by the company. According to her, the landlord had orally consented to the creation of sub-tenancy in her favour. The rent of the flat payable to the landlord was Rs. 900 per month. Under the said agreement, the appellant was to pay Rs. 600 every month to the company. She says further that she was put in possession of the said portion on the date of agreement and has continued in possession ever since. B C

6. The liquidator appointed by court for the company took possession of the entire flat in October, 1984. He sealed it. Against the order of winding up dated September 19, 1984, an appeal was preferred and the operation of the order including the appointment of the liquidator stayed on October 29, 1984. Soon thereupon, the appellant wrote to the official liquidator (on October 30, 1984) calling-upon him to allow her to use the premises in her occupation without any hindrance or disturbance from him. In this letter, she referred to the agreement of sub-tenancy arrived at with the company in or about March, 1979 and stated that the agreement is lying in the said premises sealed by official liquidator and that the exact portion given to her is delineated in the plan annexed to the agreement. She asserted that since the date of agreement, she has been in possession of the premises, paying the agreed rent to the company without any default. The premises were sealed, she said, during her absence and that she discovered the same only on her return from Indore on October 29, 1984. D E F

7. The official liquidator delivered possession of the premises to the appellant.

8. In the appeal preferred against the order of winding up, a Division Bench of the Bombay High Court, by its order dated January 31, 1985, appointed a provisional liquidator. The appeal was dismissed later on September 9, 1985. G

9. In November, 1984 the appellant filed a suit, being suit No. 4873 of 1984, in the court of Small Causes for a declaration that she is the lawful H

A tenant and/or protected sub-tenant of the said flat (excluding the portion reserved for the company) and for an injunction restraining the defendant from interfering with her possession and enjoyment. The sole defendant to the suit was "Khandesh Spinning and Weaving Mills Pvt. Ltd. having its registered office at Station Road, Jalgaon (Maharashtra State)". The B appellant also applied for and obtained a temporary injunction against the defendant-company. Sometime in October, 1985, the official liquidator appeared in the suit on behalf of the defendant and raised an objection that without the leave of the company-court, the suit cannot proceed. Evidently to meet this objection the appellant applied to the company Judge (High Court of Bombay) on March 12, 1986 for grant of leave to C proceed with the suit under section 446 of the Companies Act. The application was registered as Company Application No. 38 of 1986. The official liquidator filed an application under Sub-section (3) of Section 446 for transfer of the said suit to the High Court to be tried by the Company-Judge, which application was registered as Company Application No. 141 D of 1986. Both these applications came up before the Company Judge on August 20, 1986. In a short order the learned Judge dismissed the Company Application No. 38 of 1986 observing that :

> "the suit instituted by the applicant after the winding up order is collusive and claim is dishonest. The appellant is a sister of E one of the directors and claims to have tenancy right in respect of a portion of a company's office. I am not satisfied that a claim even required an investigation. P.C. Judges summons dismissed."

10. No orders were passed on Company Application No. 141 of F 1986, presumably because Company Application No. 38 of 1986 was dismissed.

11. On August 22, 1986, the official liquidator called upon the appellant to deliver possession of the premises in her possession. Upon G the appellant's failure to comply with the said demand, the official liquidator obtained an order from the Company-Court, on August 27, 1986, empowering him to take possession of the said premises. The appellant says that in pursuance of the said order the official liquidator again put a seal on the said premises.

H 12. On August 28, 1986 the appellant filed an appeal against the

order of the Company Judge dated 20th August, 1986, which was disposed of on September 1, 1986. At this stage, it would be appropriate to notice the reasoning of, and the directions given in the said Judgment (impugned herein). After referring to the appellant's plea of Sub-tenancy and oral consent of the landlord thereto, the Bench observed, "It is extremely difficult to believe that such consent would be given by the landlord looking into the conditions relating to availability of premises prevailing in Bombay." The Bench observed that for a similar premises, the rent would not be less than Rs. 20,000 per month and that the alleged agreement of sub-tenancy "appears to be bogus and/ or at any rate of extremely doubtful legal validity." The Bench then opined: "however, bogus or fraudulent the agreement between the company and the appellant may appear to be, the claim of the appellant will have to be adjusted (adjudicated?) upon" and that, therefore, leave is to be granted. Accordingly, it granted leave and transferred it, with the consent of both the parties, to High Court. The Bench took notice of the fact that there are several liabilities outstanding against the company including the claim of workers for salary and provident fund amounts and further that the official liquidator requires a portion of the said flat for storing the books of the company. Having regard to all the said circumstances, grant of leave was made subjected to certain conditions which conditions alone constitute the subject matter of this appeal. They run as follows:

> "Further the official liquidator is directed to take possession of the said entire premises in which the company's office was originally situated, including the portion of the premises in the occupation of the appellant. The official liquidator, however, will allow the appellant to occupy the area in the said premises which is at present in her possession, save and except for room No. 2 as marked in Exhibit 'A', as shown in the plan which is put on record by consent of parties .... She will however, remain in occupation as agent of the official liquidator pending the disposal of the suit which is transferred to this court, on payment of a monthly compensation of Rs. 7500 per month. She will also deposit a sum of Rs. 15,000 with the official liquidator as security deposit. She will pay the monthly amounts on or before date 10th day of each month, starting from 10th September, 1986. She will deposit the sum of Rs.15,000 on or before 10th October 1986. In the event of her committing any

default in the payment of the security amount or any two monthly amounts, the official liquidator to take possession of the premises in her occupation forthwith".

13. It was made clear that "this order is without prejudice to the rights and contentions of the parties in the said suit and is subject to the result of the said suit. It will also be open to the learned Judge hearing the said suit to vary this order in the event of any change of circumstances or to pass any other appropriate interim orders, as may be required."

14. Sri Masodkar, learned cousel for the appellant submitted that the Division Bench was in error in rejecting, on a mere presumption, the appellant's case that the landlord had consented to the sub-tenancy in her favour. The landlord himself has come forward with certain applications of his own wherein he has affirmed his oral consent to the sub-tenancy in favour of the appellant. Counsel submitted that the conditions imposed by the Division Bench are contrary to law inasmuch as the protection of Bombay Rent Control Act. Act available to the appellant cannot be ignored or undone merely because the company has gone into liquidation. He submitted that the appellant can be evicted only by an authority under the Rent Control Act on the grounds specified in the Act. The enhancement of rent from Rs. 600 to Rs. 7, 500 is equally incompetent for the same reason. He submitted further that the tenancy interest the company had in the said flat is not an asset of the company in liquidation and that, at any rate, the liquidator cannot trade in the said right. He complained that the appellant had a right to be in possession of the said premises in her own right as a sub-tenant, and that the Division Bench acted illegally in converting the appellant into an agent of the official liquidator. The company court had no jurisdiction to direct the official liquidator to take possession of the entire flat including the portion in possession of the appellant, he submitted.

15. Sir Mehta, learned counsel for the official liquidator supported the reasoning and directions given by the Division Bench. He submitted that the story of sub-tenancy is untrue besides being invalid. The story of consent of landlord to the alleged sub-tenancy agreement is equally untrue. The trustee (representing the landlord-trust) acted beyond the authority in consenting to the said sub-tenancy, assuming that there was such a consent. Having regard to the close relationship of the appellant with one of the

directors of the company (and the Manager of the company), and in all the facts and circumstances of the case, the directions made by the Division Bench are perfectly just and that this court ought not to interfere with the same. He submitted that the directions made by the Division Bench are discretionary in nature and have been made without prejudice to the rights and contentions of the parties in the said suit. The Bench has further empowered the company Judge to vary the said directions at any time he thinks proper. Having regard to the prevailing rents in Bombay, the location of the flat and all the circumstances of the case, the monthly compensation fixed by the Division Bench is in fact on the lower side, submitted the counsel.

16. At this stage, we must refer to the stand taken by the counsel for the landlord-trust. The two SLPs filed by the landlord trust were posted and heard alongwith this SLP. Sri G.L.Sanghi, learned counsel for the landlord trust stated before us that the trustees have indeed consented orally to the sub-tenancy agreement between the company and the appellants. We must say that this circumstance was not present before the Division Bench and evidently for this reason that the Bench appears to have rejected the theory of consent of the landlord. We cannot however refuse to take notice of the said statement of the counsel. We do so for the limited purpose of this appeal.

17. From the facts narrated above, it would be evident that the rights of the appellant have to be adjudicated in the suit filed by her which is now transferred to the High Court with the consent of both the parties. Whether the sub-tenancy is true, whether it is valid in law and whether the consent of the landlord is true and valid, are all questions which arise for decision in the suit. We cannot pronounce upon them at this stage. The only question for our consideration is whether the directions given by the Division Bench, extracted hereinabove, are justified in the circumstances of the case and in law?

18. It is admitted by the official liquidator that the Board of directors of the company had indeed passed a special resolution affirming the agreement of sub-tenancy in favour of the appellant. (In her plaint in Suit No. 4873 of 1984 the appellant has referred to the said special resolution of the Board of directors.) This fact coupled with the statement of the learned counsel for the landlord-trust establishes, *prima facie,* the

A appellant's plea of sub-tenancy. That she was in possession of a major portion of the said flat on the date of appointment of liquidator is also not in dispute. According to the sub-tenancy agreement, the rent payable by the appellant is Rs. 600 per month as against Rs. 900 per month payable by the company to the landlord for the entire flat. In the above circumstances, we cannot reject, *prima facie* speaking, the appellant's claim of protection of Bombay Rent Control Act. In addition to this factual situation, there are two other circumstances which must be taken into consideration, viz.,

a. The tenancy rights the company had in the said flat may not be an asset for the purpose of liquidation proceedings and

b. merely because a company goes in liquidation and a liquidator/official liquidator is appointed, the rights of the company viz-a-viz its landlord and /or its tenants do not undergo any change.

19. In view of the above facts and circumstances, we are of the opinion that the directions made by the Division Bench were not really warranted at this stage. The said directions have the effect of dispossessing the appellant from the said premises at an interlocutory stage. The character of her possession has also been altered – she is now permitted to be in occupation of a portion of the flat as the agent of the liquidator. These directions, in our opinion, were not really warranted, at any rate, at this stage of the proceedings, when the rights of the appellant are yet to be adjudicated upon. One important circumstance, which was not present before the Division Bench and which has been brought to our notice is the consent of the landlord to the sub-tenancy in her favour. In the light of all the circumstances, we are of the opinion that the directions extracted hereinbefore in para were really not called for, at the interlocutory stage. However, having regard to the particular facts and circumstances of this case, and with a view to safeguard the rights of the Company in the event of dismissal of the aforesaid suit, we direct the appellant to furnish security in a sum of Rupees 5 lakhs by way of a Bank guarantee to the satisfaction of the learned company Judge of the Bombay High Court, within two months from today. The amount already deposited by the appellant in pursuance of the order under appeal shall continue to lie in court. The

said amount and the security furnished by her in pursuance of this order shall be subject to the decision in the appellant's suit, now transferred to the Bombay High Court. A

20. We make it clear that this is only an interim arrangement pending the suit and shall not reflect upon or affect the merits of the suit or any of the rights and contentions of the parties. In case the appellant fails to furnish the security as directed herein, within the time prescribed, the directions of the Division Bench will revive and come into operation forthwith. B

21. The Appeal is disposed of accordingly. C

S.L.P.(C) NOS. 15678 of 1990 and 16368 of 1990

S.L.P. No. 16368 of 1990 is directed against the order dated 9.8.1990 passed by a learned Single Judge of the Bombay High Court in Company Application No. 43 of 1989 in Company Petition No. 59 of 1984. Pending the said S.L.P., the appeal preferred by the petitioner-appellant against the aforsaid order of the learned Single Judge was dismissed by a Division Bench on 12.11.1990 (Appeal No. 1028 of 1990). S.L.P. No. 15678 of 1990 is preferred against the order of the Division Bench. For this reason, S.L.P. No. 16368 of 1990 has become infructuous and is, accordingly, dismissed. D E

Leave granted in the S.L.P. No. 15678 of 1990.

The appellant- petitioner is a Trust which owns the flat in question. On 22.12.1988, the appellant filed an application (Company Application No. 48 of 1989) in Company Petition No. 59 of 1984 for a direction to the official liquidator to surrender possession of the said flat to the appellant including symbolic possession of the portion in possession of Smt. Nirmala R.Bafna. According to the appellant, the sub-tenancy in favour of Smt. Nirmala R. Bafna was created with their consent. The ground on which vacant possession of the remaining portion was asked for was that the official liquidator, or the Company, does no more require the said portion for their purpose. Reliance was placed upon the decision of this Court in *Ravindra Ishwardas Sethna & Anr.* v. *Official Liquidator, High Court, Bombay and Anr.*, [1983] 4 S.C.C.269. The official liquidator opposed the application. The learned Single Judge dismissed the application by his F G H

A order dated 9.8.1989. The learned Judge was of the opinion that the decision in *Sethna* has no application to the facts herein and that more-over the liquidator requires the said portion (of the flat in his possession) for storing the company records at Bombay. The Appeal Court, while affirming the relevance of the reason given by the learned Single Judge, gave an
B additional reason in support of their order viz., that a proposal received from the Rashtriya Girni Kamgar Sangh for revival of the said Company is under consideration. The order of the Division Bench is challenged herein.

That the official liquidator requires the portion of the flat (now in his actual possession) for storing the company books, is certainly a relevant
C consideration. Mr. Sanghi, learned counsel for the appellant, argued that the official liquidator does not require the said premises for storing the books and that he can store the books in his office or anywhere else. May be, the liquidator can do so, but we cannot force him to do so, so long as the reason given by him for continuing in possession is a relevant one. Secondly, the fact that the proposal of the Rashtriya Girni Kamgar Sangh,
D who are said to have formed an action Committee of the Khandesh Mill Employees Industrial Production Co-operative Society, for revival of the said Company was an equally relevant factor. Mr. Sanghi states that the said proposal has come to nought. We do not know. Suffice it to say that the reasons for which the application filed by the appellant-landlord (and
E his appeal) have been dismissed cannot said to be irrelevant. We cannot, therefore, interfere with the said orders. The appeal is, accordingly dismissed. No costs.

It is, however, made clear that if there is any change in the circumstances, it is always open to the landlord-appellant to approach the
F Company Court for such directions as they think appropriate in the circumstances of the case.

R.P. CA No. 886/92 disposed of and CA No. 887/92 dismissed.