

**In Re: Bharat Steel Tubes Pvt. Ltd.**

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**Court :** Delhi

**Decided On :** Apr-19-2005

**Reported in :** 121(2005)DLT65

**Judge :** A.K. Sikri, J.

**Acts :** Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 20(1) and 22(1); Delhi Rent Control Act, 1959 - Sections 13, 14, 15 and 50; [Companies Act, 1956](#) - Sections 391, 446, 446(1), 446(2), 468 and 537(2); Companies (Amendment) Act, 1960; [Life Insurance Corporation Act, 1956](#) - Sections 15, 17 and 41; Life Insurance (Emergency) Provisions Ordinance, 1956; Public Premises (Eviction of Unauthorised Occupants) Act, 1971; Madras Buildings (Lease and Rent Control) Act; Indian Companies Act, 1913 - Sections 171; Bombay Rents (Hotel and Lodging House Rates Control) Act, 1947; Income Tax Act; Sales Tax Act; Excise Act; Companies (Court) Rules, 1959 - Rule 9

**Appeal No. :** CA Nos. 1168/2002 and 50/2004 in CP No. 55 of 2000

**Appellant :** In Re: Bharat Steel Tubes Pvt. Ltd.

**Advocate for Pet/Ap. :** H.L Tiku, Sr. Adv. and; Yashmeet, Adv; D.K. Malhotra an

**Judgement :**

**A.K. Sikri, J.**

1. CA No. 1168/2002 is filed by the three applicants who claim that they are the owners of the property bearing Municipal No. 16, Friends Colony (West), New Delhi (hereinafter referred to as 'the demised property'). Smt. Ram Pyari Sethi, their mother and predecessor-in-interest of this property, had granted lease of this property to Bharat Steel Tubes Pvt. Ltd. (now in liquidation) (hereinafter called as 'the company') vide written deed dated 11th June, 1965. The property was meant for personal office of the Managing Director Mr. Raunaq Singh and a guest house. The tenancy commenced from 1st April, 1964 for a period of five years ending on 31st March, 1969. Rent of the demised premises was fixed at Rs. 2,000/- per month. The demised premises were, however, not vacated by the company after the expiry of the contractual period of tenancy.

2. Some time in the year 1990, the company became sick and consequently it made reference before the Board for Industrial and Financial Reconstruction (BIFR). Proceedings in that reference being Case No. 57/1990 went on for years together. Ultimately, the BIFR forwarded its opinion dated 23rd February, 2000 recommending winding up of the company under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The operative portion of this order reads as under:

'On consideration of the facts of the case and the submission made at today's hearing, the Bench came to the conclusion that the promoters were not serious in rehabilitating the company nor were they resourceful enough to mobilize the funds required for this purpose and were only enjoying the protection under the Act unduly. As such there was no rehabilitation proposal with means of finance fully tied up, for consideration of the Board despite ample opportunities having been given to all concerned. Under the circumstances, the Bench confirmed its prima facie opinion that the Sick Industrial Company M/s. B.S.T. . (now known as M/s. Bharat Steel Tubes Ltd. was not likely to make its net worth exceed its accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof was not likely to become viable in future and hence it was just, equitable and in public interest that it should be wound up under Section 20(1) of the Act. This opinion may be forwarded to the concerned High Court along with copies of all earlier orders/proceedings, for

necessary action according to law.'

3. On the basis of aforesaid reference, the company petition was registered as CP No. 55/2000. It may be noted that in the meantime appeal was filed by the company against the order of the BIFR which was also dismissed by the AAIFR. The company petition was still opposed by the company and after hearing the matter at length, detailed order dated 14th August, 2003 was passed dismissing the objections of the company and passing the order of winding up. The Official Liquidator attached to this Court was appointed as the Liquidator in the winding up proceedings with direction to take over assets and records of the company immediately and prepare an inventory of the assets of the company as a first step while sealing the property.

4. During the pendency of the above proceedings and before order dated 14th August, 2003 was passed, the applicants filed CA No. 1168/2002 seeking a direction against the company to hand over the applicants vacant and peaceful possession of the demised premises. After stating the background of creation of tenancy and BIFR proceedings, etc., it is averred that the company does not require the demised premises; the demised premises were in any case for the personal office of the Managing Director who has since expired and keeping in view the company's financial condition it should not be held on to the premises illegally and unjustifiably more particularly when it has not used the demised premises for years and has virtually abandoned the same in a most dilapidated condition. Prayer is also made in CA No. 1168/2002 to direct the company to clear all arrears of charges for use and occupation of the tenanted premises, including the electricity and water charges.

5. During the pendency of this application, the applicants filed another application, i.e. CA No. 50/2004. In this application it is pointed out that the company has been Wound up vide order dated 14th August, 2003. It is also stated that after his appointment when the Official Liquidator went to take possession of the demised premises, being Ground Floor and 9 servant quarters of the property, he took possession of the Ground Floor and 3 servant quarters leaving 6 servant quarters, which had, by then, been occupied by a few persons claiming themselves to be

the workmen of the company (in liquidation). In spite of repeated efforts, those persons have not handed over the possession of 6 servant quarters to the Official Liquidator. It is also stated that the applicants are in dire need of the accommodation and as the residential house is not of any use or otherwise required by the company, this Court should direct the Official Liquidator to remove the workers from 6 servant quarters immediately with the aid of police authorities and give possession of the entire demised premises to the applicants.

6. Mr. H.L. Tiku, learned Senior Counsel appearing for the applicants, after highlighting the aforesaid facts, submitted that the company had not paid rent since 1997; Managing Director of the company Mr. Raunaq Singh, for whose personal use the demised premises were let out, died in the year 2000 and it was a sick company which has gone into liquidation. therefore, it was crystal clear that the company did not require the demised premises. The demised premises were also not required by the Official Liquidator in liquidation proceedings and going by the nature of these demised premises order should be passed for restoration of possession of these demised premises to the applicants.

7. These applicants are contested by the ex-directors and reply is also filed. Primarily the defense is that these applications are not maintainable inasmuch as the demised premises are covered by the provisions of the Delhi Rent Control Act, 1959 (for short 'the Act') which is a special statute and protects the tenant. A tenant can be evicted only on the ground specified in Section 14 of the Act and, that too, when the landlord is able to establish existence of that particular grounds before the Rent Controller. It being a special statute, the applications filed before the Company Court would not be maintainable and only remedy of the applicants would be to file appropriate case before the Rent Controller under the Act. In support of this proposition, reliance is placed as the following judgments:

(i) Smt. Nirmala R. Bafna v. Khandesh Spinning & Weaving Mills Co. Ltd. : AIR 1993 SC1380 .

(ii) Dr. S.P. Bhargava v. Haryana Electric Steel Company Limited, New Delhi and Anr. (1994) 2 PLR 406.

(iii) Joshi Trading Co. (P) Ltd. v. Essa Ismail Sait 1980 50 Comp.Cas. 801.

8. This plea of the ex-directors was refuted by the learned Senior Counsel for the applicants submitting that after the winding up orders were passed in respect of the company and possession of the demised premises was taken over by the Official Liquidator, it is competent for any landlord who had given the premises on rent to the company which goes into liquidation to move application before the Company Court seeking possession of such premises and the only question which was required to be seen was as to whether the demised premises are needed to facilitate liquidation process. He referred to the Full Bench judgment of this Court in the case of Life Insurance Corporation of India v. Asia Udyog (P) Ltd. and Ors., reported as (1984) 55 Comp.Cas. 187. He also relied upon the following judgments:

(i) Ravindra Ishwardas Sethna and Anr. v. Official Liquidator, High Court, Bombay and Anr. 1983 (54) Comp.Cas. 702.

(ii) Britannia Engineering Company Ltd., In re: (In liquidation) 1983 (54) Comp.Cas. 277.

(iii) In re Osier Electric Lamp . (In liquidation) 1967 (37) Comp.Cas. 306.

(iv) Faizabad Distillers Pvt. Ltd. (in liquidation) v. Salim Tailor. 1993 (76) Comp.Cas. 127.

(v) Sudarsan Chits (P) Ltd. O. Sukumaran Pillai and Ors. 1985 (58) Comp.Cas. 633.

(vi) Dr. S.P. Bhargava v. Haryana Electric Steel Company Limited, New Delhi and Anr. (supra).

(vii) Joshi Trading Co. (P) Ltd. v. Essa Ismail Sait (supra).

9. The first question which requires determination is the maintainability of such an application before the Company Court. Admitted legal position is that once the company is ordered to be wound up, all the proceedings against such a company are to be stayed unless leave of the Company Court is specifically obtained.

Likewise, no fresh proceedings can be filed in any Court of Law against the company unless permission of the Company Court is secured. That is the mandate of Section 446 of the [Companies Act, 1956](#) which is couched in the following language:

'446: Suits stayed on winding up order.--(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the [Tribunal] and subject to such terms as the [Tribunal] may impose.

(2) [Tribunal] shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of--

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under Section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or rise in course of the winding up of the company,

Whether such suit or proceedings has been instituted or is instituted or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.

[(4) Nothing in Sub-section (1) or Sub-section (3) shall apply to any proceedings pending in appeal before the Supreme Court or a High Court.]'

10. The object of Section 446 of the Companies Act, is to save the company, which is being wound up from unnecessary litigation and to protect its assets for equitable distribution among its creditors and its shareholders. This being the object of Section 446, it is apparent that all those matters where the claim is of such a nature which can be investigated by the winding up Court would be within

the purview of Section 446. The only effect of Sub-section (2) of Section 537, therefore, is that the completed transaction whether by way of sale or in execution proceedings do not become void. But if any further proceedings are to be continued after the winding up order has been passed, Section 446 will have to be complied with. Under Section 446 when a winding up order has been made no suit or other legal proceeding can be initiated against the company except by leave of Court. The expression 'or other legal proceedings' occurring in Section 446 is given very wide interpretation [See *Sudarsan Chits (P) Ltd. v. O. Sukumaran Pillai and Ors.* 1985 (58) Comp.Cas. 633.

11. It is for this reason that when a landlord is to recover the possession of the premises which were let out to the winding up company and possession whereof is taken by the Liquidator, the applications are filed in the Company Court. While dealing with such applications, approach of the Court would be to examine as to whether the Liquidator needs the premises for liquidation proceedings. If not, the Company Court directs the Official Liquidator to hand over the possession to the landlord. Even the need of the Official Liquidator has to be strictly construed. Merely on his ipsi dixit that he requires the premises, the Court would not treat the said need as gospel truth but would go into the aspect as to whether the demised premises are genuinely needed by the Official Liquidator. In the case of *Ravindra Ishwardas Sethna and Anr. v. Official Liquidator, High Court, Bombay and Anr.* (supra), the Supreme Court repelled the argument of the Liquidator that premises let out to the company were needed to carry on business and for the beneficial winding up of the company and the direction was given to hand over the premises to the landlord. In the case of *Faizabad Distillers Pvt. Ltd. (in liquidation) v. Salim Tailor* (supra), the Allahabad High Court took the view that when the proceedings were filed by the landlord against the company which was ordered to be wound up and arrears of rent and seeking eviction the Company Court itself was competent to dispose of those proceedings and pass a decree of eviction.

12. The legal position up to this stage is beyond any controversy. However, what would be the position when there is special enactment for filing such cases. Certain tenancies are given statutory protection and eviction of a tenant can be only by invoking the provision of such a special statute. In the instant case, this

legislation is Delhi Rent Control Act. The ex-management has, therefore, opposed the applications, challenging the maintainability. It is submitted that the landlord can evict a tenant only under the provisions of the Delhi Rent Control Act and when the demised premises are covered by special statute, Section 446 of the Companies Act will not come into play and proceedings can be instituted only under the Special Act. It may be stated at the outset that precisely this is the view taken by the Punjab & Haryana High Court in the case of Dr. S.P. Bhargava v. Haryana Electric Steel Company Limited, New Delhi and Anr. (supra). That was also a case where the premises were let out to the company which had gone into liquidation and the premises were covered by the Act. Holding that since the provision of Section 50 of the Act bars the jurisdiction of Civil Courts the Rent Controller obviously has the exclusive jurisdiction to decide all matters between the landlord and the tenant, therefore, such matters do not come under the purview of Section 446 of the Companies Act. While coming to this conclusion, the Court took shelter of the judgments of the Supreme Court in the case of Damji Waliji Shah v. Life Insurance Corporation of India, reported as : [1965]3SCR665 and in the case of S.V. Kondaskar, Official Liquidator v. V.M. Deshpande, Income Tax Officer, reported as : [1972]83ITR685(SC) . The discussion in this behalf is contained in following paragraphs:

'Para 11: In Damji Waliji Shah v. Life Insurance Corporation of India (supra), an insurance company which was a composite insurer transferred a sum of Rs. 82,000/- from its life insurance fund to the general department. This was done anticipating the takeover of the life insurance business by the Life Insurance Corporation. The Life Insurance (Emergency) Provisions Ordinance, 1956 was promulgated which was followed by the [Life Insurance Corporation Act, 1956](#) and the life insurance business was taken over by the Corporation. A special Tribunal was constituted under Section 17/15 there of provided that the Tribunal could decide whether a particular transfer from the life insurance fund to the general department was without consideration and the transfer was not reasonably necessary for the purposes of the controlled business of the company. Life insurance Corporation after the take over filed an application after the takeover filed an application before the Tribunal that the transfer by the company was without consideration and was not reasonably necessary for the purpose of

controlled business. While the proceedings were pending before the Tribunal the company was ordered to be wound up by the Bombay High Court. The Tribunal negated the contention that leave of Bombay High Court was necessary under Section 446 of the Act and decreed the claim of the Corporation against the company and its Directors, when the matter was taken to the Supreme Court, Their Lordships held that in view of the provisions of Section 41 of the Life Insurance Corporation Act which barred the jurisdiction of the Civil Courts, the Tribunal alone under Section 15 of the said Act had the exclusive jurisdiction to decide the dispute which, therefore, did not fall within the purview of Section 446 of the Act and so, no leave was necessary.

Para 12: Again, in *S.V. Kondaskar, Official Liquidator v. V.M. Deshpande, Income Tax Officer (supra)* when the winding up proceedings against the company were pending, the Income Tax Officer issued notices proposing to reopen the assessments of the company and to reassess it in respect of a period prior to the winding up. The question arose whether notices of assessments were 'legal proceedings' within the meaning of Section 446 of the Act and whether Income Tax Officer had the exclusive jurisdiction to make the assessment and further whether leave of the company Court was necessary. The learned Judges of the Apex Court held that expression 'other legal proceedings' in Sub-section (1) and the expression 'legal proceedings' in Sub-section (2) of Section 446 of the Act conveyed the same meaning and the proceedings contemplated by these sub-sections must be such as can appropriately be dealt with by the winding up Court. It was further held that the Company Court could not perform the functions of the Income Tax Officer while assessing the amount of tax payable by the assessed even if it be a company that was being wound up by the Court. It was, however, open to the liquidation Court to scrutinize the claim of the revenue after the income tax had been determined and its payment had been demanded from the Liquidator.

Para 13: A similar view has been taken in *B.V. Josh v. Coir Yarn and Textiles Ltd.* 30 Comp.Cas.162; *Official Liquidator, Swaraj Motors Ltd. v. I.T.O.* 42 Comp.Cas. 96 and *Joshi Trading Co. (P) Ltd. v. Essa Ismail Sail* 50 Comp.Cas. 801.'

13. It also cannot be disputed that the Kerala High Court holds the same view [See: Joshi Trading Co. (P) Ltd. (supra). In fact judgment of the Kerala High Court is taken note of by the Punjab & Haryana High Court in the aforesaid judgments. However, the Allahabad High Court in the case of Faizabad Distillers Pvt. Ltd. (In liquidation) (supra), has taken the view that the proceedings against the tenant for arrears of rent or seeking eviction can be disposed of by the Company Court.

14. However, learned Senior Counsel for the applicants submitted that this Court should not accept the view taken by the Punjab & Haryana High Court and the Kerala High Court in the aforesaid judgments as the Full Bench of this Court has held otherwise in the case of Life Insurance Corporation of India (supra), which would be binding on me. therefore, let me first scan through this judgment extensively.

15. The facts which can be deciphered from the Full Bench judgment are these:

M/s. Asia Udyog Pvt. Ltd. was ordered to be wound up on 2nd February, 1978 and winding up proceedings were pending before the Company Court. The company was tenant of the premises at 8, Darya Ganj, Delhi which belonged to the LIC. These premises were 'Public premises under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. (for short 'the PP Act'). The case of the LIC was that because of various unlawful acts done by the company, its possession was unauthorised and it was entitled to seek possession of the premises in dispute and also on the ground that these premises were required for its own use. Request was made to the Official Liquidator to surrender the premises failing which threat was given to initiate proceedings under the PP Act. The LIC in these circumstances filed an application under Section 446(1) of the Companies Act seeking permission of the Company Court which was resisted by the Official Liquidator. At that stage, the LIC took the plea that although such an application was moved by the LIC, in fact it did not require any permission under Section 446(1) of the Companies Act as the said provision was inapplicable to proceedings under the P.P. Act. It was, in these circumstances, a question arose as to whether such a permission was required or whether the P.P. Act being a special and self contained statute, the LIC had right to proceed under that Act, notwithstanding the

provisions of Section 446(1) of the Companies Act. The Court took into consideration the provisions of the P.P. Act, including the provisions that Section 15 provides a bar of jurisdiction of Civil Courts to entertain any suit in respect of eviction of any person who is in unauthorised occupation of the public premises, or recovery of rent or damages thereof and the P.P. Act was the only procedure available for eviction of a person in unauthorised occupation of the public premises. The Court nevertheless came to the conclusion that Section 446 would be applicable as the expression 'legal proceedings' is not to receive narrow construction which was the opinion expressed in various judgments, note whereof was taken. While coming to this conclusion, the Court clarified that the P.P. Act did not confer any new set of rights and liabilities which were not existing before. The relevant portion reads as under:

'In order to remove this discrimination and arbitrariness, the 1971 Act was brought into force and Section 15 provides a bar of jurisdiction of Civil Courts to entertain any suit in respect of eviction of any person who is unauthorised occupation of any public premises, or recovery of rent or damages thereof. Thus, under the 1971 Act there is only one procedure available for eviction of a person in unauthorised occupation of public premises and that procedure is to be found in the 1971 Act. The other Courts have no jurisdiction in these matters vide Hari Singh v. Military Estate Officer, Delhi : [1973]1SCR515 . It will be immediately clear that the 1971 Act deals with a very limited objective. It only means that if the Act of 1971 was not there, the LIC would have to file a civil suit or go before the Rent Controller for recovery of possession of premises or recovery of rent/damages. What is important to be emphasised is that the Act of 1971 is not a distinct Code which has created its own liabilities and rights and has brought forth a new set of rights and liabilities under the said Act not existing before. The 1971 Act deals with the rights and liabilities of the parties under ordinary law but only a new forum and a remedy has been created in respect of public premises. It is this limited nature of coverage by the 1971 Act which must be borne in mind when answering the poser raised before us.'

16. While deciding the issue, the Court also took into consideration judgment of the Madras High Court in the case of T.V. Purushottam & Co. v. Provisional

Liquidator, Sobhodaya Publications Ltd. (1955) 25 Comp Cas 49. It was a case under the Rent Control Act. It would be appropriate to reproduce this discussion as well:

'No doubt the learned Judge observed that proceedings for a fair rent under the Madras Buildings (Lease and Rent Control) Act are within the exclusive jurisdiction of the Rent Controller, and no such order could be passed by the winding up Court, but he nevertheless held the legal proceedings before the Rent Controller to be within meaning of Section 171 of the Indian Companies Act, 1913. It is important to make a difference between the proceedings for recovery of possession or recovery of damages which are normally within the purview of ordinary Civil Courts but are now by a Special Act included within the purview of rent legislation and the right to have a standard rent fixed which is a right created only because of the rent laws and is not a right available under ordinary laws available to the tenant. It is because the right to have a fair rent determined is a special right created by a statute that it has to be held that these are not proceedings appropriate for a winding up Court. The right of a landlord, however, to recover damages in winding up proceedings if the lease had been determined earlier has been recognised in *In re McEwan* (1879) II Ch D 572, and *J.K. (Bombay) P. Ltd. v. New Kaiser-I-Hind Spg. & Wvg. Co. Ltd.* (1970) 40 Comp Cas 689, in which the company was in possession of the leased premises, it was held that the question of restoration of possession to the Lesser was a matter which could be decided in summary manner without resort to the protracted procedure of a regular suit. But because of certain other litigation the order was not passed. But what is important is that it was recognised that even proceedings for restoration of possession are appropriate proceedings to be dealt with under Section 446(2) of the Companies Act. *In re: Osier Electric Lamp Mfg. Co. Ltd.* : 69CWN628 , it was held that notwithstanding the exclusive jurisdiction conferred on Small Causes Court under the Bombay Rent Control Act, 1947, the owner of the premises would have to seek leave under Section 446(1) of the Companies Act before proceeding against the company. Thus, there is no logical reason why the Company Judge cannot entertain a matter for the realisation of arrears of rent or for the recovery of the premises. There is thus nothing peculiar or special about the nature of proceedings in the present case which would suggest that these proceedings and

claim against the company should not be entertainable by the winding up Court. But the Counsel for the LIC, Mr. Gupta, contends that whatever be the position when a suit has to be filed for this purpose, the position is different when proceedings are to be initiated under the 1971 Act, the validity of the argument depends on the answer to two questions --whether the proceedings for the recovery of premises and the recovery of arrears of rent can be considered to be legal proceedings within Section 446(1) of the Companies Act; and, secondly, whether the provisions of the 1971 Act confer sole and exclusive jurisdiction on the authorities under the said Act to deal with 'public premises' even in the case of a company which is under winding up. In other words, does the provisions of the 1971 Act override the provisions of the Companies Act insofar as the latter provide for the rights and consequences flowing from the winding up order.'

17. To decide this question, as posed in the last three lines of the afore-quoted paragraph, the Court discussed the matter at length and also took into consideration various other judgments and concluded:

'It is not, therefore, correct to say that if any proceedings are to take place before other than ordinary Courts the same will be immune from the rigour of Section 446 of the Companies Act. It is no doubt true that in view of these decisions it is possible that a part of the proceedings may be outside the purview of Section 446 of the Companies Act like the assessment proceedings under the I.T. Act, but still proceedings for recovery of tax would fall within Section 446 of the Companies Act. As first blush it may seem that this dichotomy shows an unsatisfactory state of affairs and such an interpretation should be avoided. Now it is true that if the interpretation inevitably leads to such an oddity it will be no reason not to give full effect to the statute if that is its plain meaning. But, as it is, we do not find that there is any anomaly in the situation. The reason is that the Legislature intended that the assets of the company in liquidation should be dealt with at one place by the Company Judge, who would, on an overall view of the matter, be in the best position to distribute the funds of the companies equitably so that there is no unseemly scramble of the various creditors to realise their dues from the company. For this purpose, in cases like the proceedings under the I.T. Act and some other analogous Acts, the proceedings for determination of the rights and liabilities of the

companies and the other persons may have to be determined initially by authorities which have been specially created under the specific statute; this is because the proceedings are such which are not normally appropriate for determination by ordinary Courts. It is for this reason that such like proceedings for example income tax, sales tax, excise, etc., may in the first instance have to be decided by the authorities under the special Acts. As the said matters cannot be determined in the first instance by the winding up Court, it is self-evident that there is no need to obtain prior leave to proceed before the said authorities. However, when the time comes for realisation of dues from the company in liquidation the Court dealing with the winding up comes into the picture and prior leave will have to be obtained for starting proceedings for recovery.'

18. Immediately, thereafter, the Full Bench formulated the test in the following words:

'The test, therefore, according to us is whether the proceedings are such which can normally and appropriately be the subject matter of decision of ordinary Courts. If they are not, leave need not be obtained excepting of course, when recovery is to be made against the funds of the company. However, in matters in which proceeding even though before a different forum than the ordinary Courts, are contemplated like under the Act of 1971 or even under the Rent Control Act, these proceedings, which are for recovery of possession or for recovery of damages, are normally and appropriately such which can be determined by the winding up Courts. It is evident that but for the creation of a separate forum the proceedings are of such a nature which would ordinarily be dealt with by the ordinary Courts of law. In such a case leave will have to be obtained even to initiate proceedings against the company.'

19. While laying down this test, the Full Bench not only examined the issue in the context of the P.P. Act but specifically referred to the Delhi Rent Control Act as well and held that for recovery of possession or recovery of damages proceedings can be appropriately determined by the winding up Courts.

20. The reading of this judgment would, therefore, reveal two things:

(a) The Court, while dealing with the case of P.P. Act vis-a-vis Section 446 of the Companies Act clearly stipulated that P.P. Act laid down the procedure only for recovery of possession and did not create any liabilities or rights which were not existing before. But for this normal remedy was to file civil suit or go before the Rent Controller for recovery of possession and, therefore, these proceedings would also be 'legal proceedings' contemplated under Section 446 of the Companies Act and the said provision was applicable and leave of the Court was required.

In the process Court also took note of the judgment of the Madras High Court in the case of T.V. Purushottam (supra) and held that insofar as matter of fixation of standard rent is concerned, such right is created only because of rent laws and not a right available to a tenant under the ordinary course.

Insofar as the Rent Act is concerned, it also created certain special rights in favor of the tenant. In case of those premises where the Act is applicable, the landlord cannot recover the possession simply on the ground that the contractual period of tenancy has elapsed. Such a tenant is still given protection of the Act which is clear from the opening words of Section 14 of the said Act reading as follows:

'14. Protection of tenant against eviction--(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or Controller in favor of the landlord against a tenant: Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds, namely:

(b) At the same time, the Full Bench specifically held that in respect of recovery of possession of the premises under the P.P. Act or even under the Act, proceedings can be appropriately dealt with by the winding up Courts. Not only this observation was made while laying the test which is to be applied as is clear from the portion quoted above in this behalf, this proposition was distilled from the reading of judgment of Madras High Court in T. Purushottam (supra) observing, but what is important is that it was recognised that even proceedings for restoration of possession are appropriate proceedings to be dealt with under Section 446(2) of

the Companies Act.'

21. Reading both the propositions conjointly, as laid down by the Full Bench, it can be concluded that the Full Bench held that once the company is ordered to be wound up and possession of the assets of the company is taken over by the Liquidator (or the provisional liquidator as the case may be) including the tenanted premises, the application for recovery of possession of such tenanted premises can be dealt with by the Company Court. However, while dealing with such an application, the Court shall consider as to whether any case under Section 14 of the Act is made out to pass the eviction order.

22. In view of the aforesaid understanding of the Full Bench decision of this Court, which is binding on me, I with respect, do not subscribe to the view taken by the Punjab & Haryana High Court or Kerala High Court which is contrary to the Full Bench decision of this Court. It may also be pointed out that the Punjab & Haryana High Court in Dr. S.P. Bhargava (supra) had taken support of judgments of the Supreme Court dealing with income tax assessments which are specifically dealt with by the Full Bench of this Court in Life Insurance Corporation of India (supra) and fine distinction is drawn between the proceedings in determination of the rights and liabilities of the companies under the Income Tax Act, Sales Tax Act as well as Excise Act, etc. where no permission is required under Section 446 and cases where such authorities have to realise the dues from the companies (in liquidation) where prior leave of the winding up Court is to be obtained for starting proceedings for recovery. The eviction proceedings under the Act are treated by the Full Bench as recovery proceedings, i.e. proceedings for recovery of possession and, therefore, jurisdiction is given to the winding up Courts to determine such applications.

23. The Supreme Court in the case of Smt. Nirmala R. Bafna (supra) relied upon by the respondent would not come to the respondent's rescue. That was a case where the premises let out to the company (which ultimately went into liquidation) were sub-let by the company to a sub-tenant. On the winding up of the company, the question arose about the rights of such sub-tenant under the Bombay Rents (Hotel and Lodging House Rates Control) Act, 1947. therefore, it was not a case

implicate where the landlord wanted possession of the premises from the company which had gone into liquidation but the landlord wanted sub-tenant to be evicted who was having protection of the said Act and entire case was looked into from that angle.

24. Coming to the facts of this case, it is clear as noted above, the premises were meant for personal use of Mr. Raunaq Singh who expired in the year 2000. The company has also not paid rent since 1997. The company has been ordered to be wound up. No doubt vide order dated 9th February, 2005 passed on application made by the ex-directors, winding up orders are stayed after taking note of the fact that the ex-management has reached settlement with all the secured creditors/financial institutions and made substantial payments and have also paid the Government dues in full and most of the claims of the workers have also been settled. However, in that order it was also directed that the ex-management shall file a detailed scheme of revival under Section 391 of the Companies Act within two months. No such scheme has been filed till date. Be as it may, it is clear that the company would not be needing these premises even after its revival. Even if it is presumed that the company may be needing such premises, it is not denied that the premises were given for the personal use of Mr. Raunaq Singh and guest house. Mr. Raunaq Singh has died. The premises were not in use for number of years even before the Official Liquidator took the possession. Rent is also not paid since 1997. The Supreme Court has held in the cases of *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI Cinod Secretariat, Madras*, reported as : [1992]2SCR999 and *Gujarat Steel Tube Co. Ltd. v. Virchandbhai B. Shah and Ors.* reported as : AIR 1999 SC3839 that the interest of a company, which is a statutory tenant, cannot be regarded as property of the company for the purpose of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. All those cases were under SICA, as noted above, in the present case the company petition was registered on the basis of reference sent by the BIFR under SICA.

25. Keeping in view these facts, I am of the view that the applicants have made out a case which entitles them to get an order for recovery of possession of the premises even if the yardsticks contained in the Delhi Rent Control Act are

applied.

26. At this stage, I may also add that when the Company Court is convinced that the premises would not be required by the company or the Official Liquidator, it would not be appropriate to allow the company to remain in possession of the premises. Following observations of the Supreme Court in the case of Ravindra Ishwardas Sethna (*supra*) would be apposite at this juncture:

'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 a 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 the use of the premises, the provision of the Rent Act, and especially Sections 13 and 15, completely prohibit giving the possession of the premises on license 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 license 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 saying that there is some third mode of parting with possession of the premises exclusively in favor 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.'

27. It would also be of benefit to take note of the approach suggested by the Calcutta High Court in *Britannia Engineering Co. Ltd.* (supra), wherein emphasising that the law of procedure is a handmaid of justice and not its mistress and the Court can always make an order which is just and proper in the facts and circumstances of the case and it is immaterial as to what the prayers are in the application and particularly in a winding up proceeding, the Court observed:

'In an application, by the landlord of the premises under the tenancy of the company, under Section 446 for leave to institute suit and legal proceeding against the Official Liquidator representing the company in liquidation, it would be too technical a plea that no relief by way of vacating the unauthorised ex-employee occupant is asked for in the application and that, therefore, the ex-employee cannot be evicted. Since the Court is to administer justice and to prevent multiplicity of proceeding, when the fact of unauthorised occupation of the company's asset or property by a person is clearly proved before the Court, the Court has ample power under Sections 446(2)(a), (b), (d) and 468 read with Rule 9 of the Companies (Court) Rules, 1959, to pass such order as it may think proper, which the facts and circumstances of the case demand, for determining the rights of the parties.'

28. The prayers made in these applications are accordingly allowed. The Official Liquidator shall de-seal the premises and hand over possession thereof to the applicants. Insofar as six servant quarters in occupation of the alleged workers are concerned, possession thereof shall also be handed over by evicting them. As regards arrears of rent, it would be open to the applicants to lodge proper claim with the Official Liquidator as and when that stage for this arises. If in the meantime a scheme is to be propounded by the ex-management/ provision for payment of arrears of rent to the applicants, treating them as creditors, shall be made.

29. These applications stand disposed of in aforesaid terms.

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