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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO. 369 OF 2017

IN

COMPANY PETITION NO. 229 OF 1992

Shree Vishnu Holdings & Consultants Pvt. Ltd. ...Applicant

In the matter between:

Reserve Bank of India ...Petitioner

Versus

Official Liquidator, Bank of Karad ...Respondent

Mr. Ashish Kamat, Senior Advocate a/w. Mr. Aseem Naphade, Ms. Shreya Bhagnari, Ms. Lulania and Ms. Reeta Patil i/b. Negandhi Shah & Himayatullah for Applicant.

Mr. Rohaan Cama a/w. Mr. Shakib Dhorajiwala and Mr. Indrajeet Deshmukh i/b. Vidhi Partners for Respondent.

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 5th MARCH 2026

PRONOUNCED ON : 15th APRIL 2026

P.C.

1. This is the second application filed by the Applicant under the provisions of Section 457 of the Companies Act, 1956 ("**Companies Act**"), in which the Applicant has sought the following relief, viz.

“a) That this Hon’ble Court be pleased to direct the Respondent to vacate and hand over quiet, vacant and peaceful possession of the premises belonging to the Applicant (Landlord) namely the Office premises situated on the ground floor of the Applicant’s building known as Commonwealth Building situated at 82, Nagindas Master Road, Fort, Mumbai - 400 023;

b) for costs of this Company Application and orders thereon; ”.

2. However, before advertng to the rival contentions, it is useful for context

to set out the following facts:

i. The Applicant is the owner and landlord of a flat measuring 1,100 square

feet situated on the ground floor of a building known as Jayshree

Chambers, 82 Nagindas Master Road, Fort, Mumbai 400 023 (“**the said**

premises”).

ii. It is not in dispute that the Bank of Karad (“**the Bank**”) has been the

tenant of the said premises since 1962 and that in the year 1985, a Suit

for eviction was filed by the original owner of the said premises, i.e.,

one Smt Devi Narendra and others, against the Bank. The Applicant

subsequently acquired the right, title, and interest in the said premises

from Smt Devi Narendra in the year 1962 and is now admittedly the

Plaintiff in the said eviction Suit which is pending in the Small Cause

Court, Bombay.

- iii. Pursuant to the Orders dated 27th May 1992 and 20th July 1994 passed by this Court, the Bank was directed to be wound up, and the Respondent was appointed as Liquidator of the Bank. The Respondent therefore took charge of the affairs and assets of the Bank in July 1994, including the said premises.
- iv. The Applicant thereafter, on 7th July 1999, filed Company Application No. 429 of 1999 (“**the First Application**”) seeking possession of the said premises. The First Application was, however, dismissed by an Order dated 23rd March 2001 (“**the First Order**”) in which this Court has, at page 9 thereof, *inter alia*, observed as follows:

“In these circumstances, I am of the view that no case for the return of the premises is made out. The Learned Counsel appearing on behalf of the applicant submitted that applicant would make efforts to make available to the Liquidator alternative premises. It is always open to the applicant to do so and the learned Counsel appearing behalf of the Liquidator has not expressed any objection thereto, save and except, that it is for the Liquidator, if any premises are forthcoming to determine their suitability with reference to his requirements. In these circumstances, the Application is rejected.” (emphasis supplied)

- v. The Applicant has filed the present Application citing changed circumstances. The Applicant has also, during the course of arguments,

made the following offer (i) to make available to the Respondent, an alternate premises on a leave and licence basis for such area and for such duration as this Court may deem fit; (ii) furnish an undertaking, if necessary, to renew such leave and licence or provide suitable alternate premises in the event the liquidation proceedings are not completed despite bona fide efforts; and (iii) to digitise, at the Applicant's cost, the records stored at the said premises to conserve space. For ease of reference (i) to (iii) shall be referred to as “**the Applicant's offer**”.

Submissions on behalf of the Applicant:

3. Mr. Kamat, Learned Senior Counsel appearing on behalf of the Applicant, made the following submissions in support of his contention that the Applicant was entitled to the return of the said premises.

I. Changed circumstances:

4. Mr. Kamat, at the outset, submitted that the present application has been filed after a period of almost sixteen years from the date of dismissal of the First Application. He, however, pointed out that the position as on the date of hearing was that (i) the Bank does not have any ongoing business

activity; (ii) the Respondent is not carrying out any other activity for the benefit of the winding up of the Bank; and (iii) the premises were not required for any other activity in connection with the Bank. He thus submitted that the circumstances that exist today are materially different from those that existed when the First Application was filed and when the First Order was passed. He submitted that these changed circumstances showed that the Respondent did not need the said premises or, at least, the entirety of the said premises.

5. Mr. Kamat then pointed out that when the First Application was filed, there were seventy-five pending cases concerning the Bank, however, the Respondent had, in the Affidavit dated 18th July 2024, set out the current status of the litigation, which was a list of only twenty cases. He pointed out that, out of those twenty cases, only eleven were pending. He, therefore, submitted that, on the Respondent's own showing, the number of cases had considerably reduced and, therefore, even the need to store the papers relating to those cases would have reduced. He then submitted that over a year had elapsed since the Affidavit-in-Reply was filed by the

Respondent, and if anything, the number of the pending cases would only have reduced.

6. Mr. Kamat then pointed out that the Respondent, despite being obliged to do so, had failed to place on record the present status of the liquidation proceedings, which would enable this Court to assess the Respondent's need for the said premises. He submitted that it was incumbent upon the Respondent to have disclosed the steps taken for discarding the records of the disposed-of cases; the records which were still required after the disposal of the cases; and the details of the records stored in the said premises, which were sensitive in nature and/or needed to be stored in a safe as of date. He submitted that since the Respondent had not done so, an adverse inference must be drawn against the Respondent. In support of his contention, he placed reliance upon the decisions of the Hon'ble Supreme Court in *Gopal Krishnaji Ketkar v. Mohamed Haji Latif*¹ and *Union of India v. Ibrahim Uddin & Anr.*²

¹ 1968 SCC OnLine SC 63.

² (2012) 8 SCC 148.

7. Mr. Kamat additionally pointed out that the Bank had been wound up since 1992 and the affairs of the Bank, which had come to an end upon liquidation, were all facts which were within the exclusive knowledge of the Respondent. He, therefore, submitted that it was only the Respondent who had exclusive knowledge and access to the documents pertaining to the Bank's affairs and ought to have disclosed the status of the same. He pointed out that though the Respondent had, in the Affidavits filed, stated that there were other documents stored in the said premises apart from the pending cases, no details of the same were given so as to demonstrate what these documents were.
8. Mr. Kamat also pointed out from the response received by the Applicant to the notice to admit dated 12th February 2026 that it was clear that only copies of the sensitive documents were being stored at the said premises and not the actual sensitive documents. He also pointed out that the only documents in the said premises were the Term Deposit Receipts, files of various claims of Bank and farmers, the Register of shareholders, documents pertaining to matters which were disposed of with no details of

the same and the papers pertaining to the ongoing proceedings of which no originals were stored in the said premises, but only copies of such proceedings were stored.

9. Mr. Kamat submitted that the response of the Respondent to the Applicant's notice to admit was, to say the least, evasive and lacking in any detail. He therefore submitted that the Reply was entirely self-serving, and it was clear that the Respondent was treating the premises as a dumping ground, having taken no steps to digitise or appropriately store stale, dead, or disposed-of records. He reiterated that the Respondent was deliberately not doing so only to create a false justification to perpetually retain possession of the premises. He thus submitted that Respondent's requirement of the premises was not genuine or bona fide.

10. He then placed reliance upon the decision of this Court in *Jaikishan Narang HUF v. Surendra Engineering Corporation Ltd.*³ to point out that the Liquidator's need for the premises is to be strictly construed and the

³ [Bombay High Court] Order dated 12th March 2025 in Company Application No. 332 of 2015.

genuineness of such a requirement must be examined by the Court. He submitted that if on examination it was found that the said premises were not needed by the Liquidator, the same would have to be surrendered or returned, as the case may be.

11. Mr. Kamat also submitted that the Respondent was an officer of the Court and therefore cannot act like an ordinary litigant, especially when it comes to holding on to property. In support of this contention, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Sudarshan Chits (I) Ltd. v. O. Sukumaran Pillai*⁴ to submit that the Respondent was under an obligation to complete the liquidation process expeditiously and cannot be permitted to drag on the liquidation process for decades with no end in sight.

12. Mr. Kamat also pointed out that the Respondent had taken divergent stands in the present Application. He pointed out that the Respondent had, in the Affidavit dated 18th July 2024 and the Rejoinder, claimed that the said

⁴ (1984) 4 SCC 657.

premises were needed for protecting the sensitive documents stored in the fireproof safe, whereas no such contention was taken in the letter dated 12th February 2026. He therefore pointed out that the sensitive documents pertaining to the 1992 scam were seized by the CBI way back in 1992, and hence, the need for the said premises could not be for storing any sensitive documents. Moreover, he submitted that the original documents of most of the proceedings were either submitted to the Court and formed a part of the Court's record or were with the Reserve Bank of India (“**RBI**”).

13. He thus submitted that the Respondent had not only failed to substantiate its claim made in the Affidavit dated 18th July 2024 and the Rejoinder Affidavit, but had also failed to truthfully disclose the true and material facts before this Court, all of which had only come to light in the letter dated 12th February 2026.

II. The Respondent is seeking to wrongly retain the said premises for reasons not related to the requirement for winding up of the Bank:

14. Mr. Kamat further pointed out that the Respondent had, in the Rejoinder Affidavit, sought to justify retention of the said premises on the grounds

that (i) the premises constituted an asset of the Bank which could, upon final liquidation, be sold either on a slump sale or standalone basis with the proceeds forming part of the distributable fund for creditors and shareholders; (ii) the Bank could not be relegated from the status of a tenant to that of a mere licensee, nor could the Applicant, through the present summary proceedings, sever the landlord-tenant relationship; and (iii) rent had in fact been duly tendered, though not accepted, and therefore the legal relationship between the parties remained unchanged. Mr. Kamat submitted that this stand of the Respondent was clearly an attempt to improve upon the case pleaded by the Respondent in the First Application since the Respondent was now attempting to assert perpetual rights over the said premises and monetise the same. He submitted that this stand now taken by the Respondent was not only an afterthought but also wholly untenable in law and unbecoming of a Liquidator.

15. Mr. Kamat submitted that the Respondent's contention that the said premises could be retained and monetised for inclusion in the liquidation process was contrary to, and in clear violation of, Sections 26 and 56 of the

Maharashtra Rent Control Act, 1999 (“**Rent Control Act**”). He pointed out that Section 26 expressly prohibits a tenant from assigning or transferring its tenancy in the absence of a contract to the contrary, thereby imposing a clear statutory bar. He then placed reliance upon Section 56(ii) of the said Rent Control Act to point out that a transfer of tenancy was permitted only with the prior consent of the landlord. In the present case, he submitted that, admittedly, no such consent had been obtained from the Applicant and hence the stand of the Respondent, which was premised on retaining the said premises for eventual sale and/or monetisation, would amount to a transfer of tenancy without consent, which was impermissible in law. He thus submitted that the stand taken by the Respondent was not only legally untenable but also in complete disregard of the relevant and binding statutory provisions.

16. Mr. Kamat then placed reliance upon the decision of the Hon’ble Supreme Court in *Parasram Harnand Rao v. Shanti Parsad Narinder Kumar*

Jain,⁵ to point out that the Liquidator merely steps into the shoes of the tenant, and sale by the tenant or the Liquidator of the tenanted premises cannot be permitted without the consent of the landlord. He also placed reliance upon the decision of the Division Bench of this Court in *Saraswat Co-operative Bank Ltd. v. Chandrakant Maganlal Shah*⁶ to point out that tenancy rights are not capable of being attached and/or sold in liquidation. He therefore submitted that the Respondent being a mere tenant, cannot retain the said premises to either transfer or monetise the same.

17. Mr. Kamat then placed reliance upon the decision of the Hon'ble Supreme Court in *Ravindra Ishwardas Sethna v. Official Liquidator*⁷, to point out that if the premises of the company are not required for the business of the company in liquidation, the Official Liquidator cannot use the premises for any other purpose for deriving revenue. Mr. Kamat also submitted that the Respondent cannot oppose the present application on the ground that the Applicant has other remedies to terminate the landlord-tenant relationship.

⁵ (1980) 3 SCC 565.

⁶ 2002(1) Mh. L. J. 581.

⁷ (1983) 4 SCC 269.

In support of this contention, he placed reliance upon the decision in the case of *Patel Engineering Co. Ltd. v. Official Liquidator*⁸, to point out that this Court had held that merely because a landlord had instituted a suit for eviction would not disentitle a landlord from opting the remedy under Section 457 of the Companies Act.

III. The Respondent's reliance on the principles of *res judicata* and/or *issue estoppel* is misconceived:

18. Mr. Kamat submitted that neither the principles of *res judicata* nor *issue estoppel* would apply in the present case, particularly as the earlier order expressly granted liberty to the Applicant. He submitted that the present application was filed pursuant to such liberty, especially in light of the changed circumstances now prevailing as compared to those existing at the time of the First Order. He also submitted that, during the hearing of the First Application, the Respondent had led both this Court and the Applicant to believe that the original and sensitive documents were stored at the said premises to justify the Respondent's need to retain the same. He submitted

⁸ 2004 SCC OnLine Bom 171.

that given what had been disclosed in the letter dated 12th February 2026, it was now evident that the original documents relating to the 1992 scam, as well as other sensitive records, had in fact been seized by the CBI as far back as 1992 itself. He reiterated that the information had not been disclosed to this Court during the earlier proceedings. In these circumstances, Mr. Kamat submitted that the Respondent cannot be permitted to invoke the doctrine of *res judicata* or *issue estoppel*, particularly when the present application is founded on material facts that were either suppressed or have subsequently come to light.

IV. This Court ought to balance the rights of the landlord, the company under liquidation, and third parties:

19. Mr. Kamat then submitted that the case put up by the Respondent was baseless, and it was clear that the Respondent was not forthcoming in furnishing full particulars because the Respondent lacked a genuine need for the said premises or at least the entirety of the said premises. He thus submitted that the Applicant cannot be deprived of its property in perpetuity. He submitted that this Court exercising its wide jurisdiction

under Section 457 of the Companies Act, ought to balance the rights of both the Bank and the Applicant and allow the present application.

20. Mr. Kamat submitted that in view of the Applicant's offer so as to determine the Respondent's need for the said premises, this Court could also exercise its powers under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908, to direct an appropriate investigation for identifying the records which were capable of digitisation and disposal of physical copies. In support of his contention, he placed reliance upon the following decisions, viz., *Vasant Tukaram Prabhu v. Xalinibai Borcar*⁹, *Sri Shadaksharappa v. Kumari Vijayalaxmi*¹⁰, *Mohd. Taher Quershi v. Syed Abdul Saleem Pasha*¹¹, and *Sk. Sekharuddin Mahammad v. Nuri Bibi & Ors.*¹².

21. Mr. Kamat therefore submitted that for the aforesaid reasons, the present Application be allowed.

⁹ 2014 SCC OnLine Bom 2883.

¹⁰ 2023 SCC OnLine Kar 53.

¹¹ 2020 SCC OnLine TS 3378.

¹² [Orissa High Court] Order dated 8th May 2025 in CMP 594 of 2025 of 2020.

Submissions on behalf of the Respondent:

22. Mr. Cama, Learned Counsel appearing on behalf of the Respondent, submitted that the present application was nothing but old wine in a new bottle. He submitted that aside from the fact that the number of cases had reduced, none of the other material facts which existed when the First Application was filed and which weighed with the Court when the First Order was passed had changed. He then tendered a tabular comparison of the grounds taken in the First Application and the present Application to point out that they were virtually the same with no material change.
23. Mr. Cama submitted that the Applicant, being conscious that the grounds urged in the present Application were virtually identical to those raised in the First Application, had therefore sought leave to file an Additional Affidavit to demonstrate the alleged change in circumstances. He, however, pointed out that the Additional Affidavit also merely reiterated the same grounds taken in the First Application without any significant addition. He then submitted that it was clear that there had been no

substantive change in circumstances since the passing of the First Order, save and except a reduction in the number of cases.

24. Mr. Cama then from the order dated 23rd March 2001, pointed out that this Court had noted that (i) the premises were being used for the purposes of liquidation; (ii) there existed a genuine need for storage of records and material; (iii) the premises served as an official correspondence address with statutory authorities; (iv) it was primarily for the Respondent to determine the necessity of retaining the premises; and (v) the Court ought not to substitute its own assessment so long as the reasons furnished by the Respondent were reasonable. He submitted that since there had been no change in any of these other material factors which weighed with this Court when the First Order was passed the principles of *res judicata* and *issue estoppel* would squarely apply. In support of his contention, he placed reliance upon the following decisions. ***Satyendra Kumar and Ors v. Raj Nath Dubey and Ors.***¹³, ***Abdul Kuddus v. Union of India & Ors.***¹⁴ and

¹³ (2016) 14 SCC 49.

¹⁴ (2019) 6 SCC 604.

*Faime Makers Pvt. Ltd. v. District Deputy Registrar, Co-operatives Societies, Mumbai & Ors.*¹⁵.

25. Mr. Cama then submitted that the issues which had arisen for consideration in the present Application were also squarely covered by the decision of the Hon'ble Supreme Court in the case of *Nirmala R. Bafna v. Khandesh Spinning and Weaving Mills Co. Ltd.*¹⁶ which this Court had, in fact, placed reliance upon in the First Order dated 23rd March, 2001. He then pointed out that the Hon'ble Supreme Court had, in the case of *Nirmala R. Bafna* held as follows:

“24. The appellant-petitioner is a Trust which owns the flat in question. On December 22, 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 subtenancy 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 v. Official Liquidator, High Court, Bombay’. The official

¹⁵ (2025) 5 SCC 722.

¹⁶ (1992) 2 SCC 322.

liquidator opposed the application. The learned Single Judge dismissed the application by his order dated August 9, 1989. The learned Judge was of the opinion that the decision in *Sethna* has no application to the facts herein and that moreover 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 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.

25. That the official liquidator requires the portion of the flat (now in his actual possession) for storing the company books, is certainly a relevant 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. Maybe, 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 of 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 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 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."

(Emphasis Supplied)

26. Mr. Cama then took pains to point out that the judgements in the case of ***Parasram Harnand Rao, Saraswat Co-operative Bank Ltd., Ravindra Ishwardas Sethna and Patel Engineering Co. Ltd.*** upon which reliance

was placed by the Applicant, were all cases in which the Liquidator had either admitted that the Liquidator does not require the premises in question or had conceded to the position that the premises may be returned.

He submitted that in the present case, the Respondent was very much using the said premises and that the need of the Respondent for retaining the said premises had already found favour with this Hon'ble Court in the Order dated 23rd March 2001. He reiterated that the need subsisted even today.

He thus submitted that there being no change in circumstances, there was no question of this Court entertaining the present Application.

The factual position as on date:

27. Mr. Cama submitted that even though the number of cases may have reduced, there were still various litigations which were ongoing before this Court, the Debt Recovery Tribunal, and the Hon'ble Supreme Court. He submitted that the records of the various proceedings were stored at the said premises, and the said premises were being utilised for the storage of various sensitive data and material for the purpose of liquidation. He also pointed out that the Respondent was using the premises for its

correspondence address with various statutory authorities, including the RBI, investigation authorities, banks, etc., and for completing the liquidation process from the said premises.

28. Mr. Cama then, while denying the allegation that the Respondent was not acting in an efficient manner, submitted that it was imperative to keep in mind the fact that the Respondent had been appointed by this Court under the provisions of the Banking Regulations Act, 1949, and was therefore duty-bound to file a report before the RBI as well as various other authorities.

Re: Use of the Premises:

29. Mr. Cama submitted that the Respondent's use and occupation of the said premises was clearly established from the fact that the Respondent has been paying the electricity bills in respect of the premises and continues to occupy the same; the Respondent's postal address is the address of the said premises; the premises are reflected as the Respondent's address in the income tax returns filed by the Bank; the Respondent has its material, computers, cupboards, storage and other office infrastructure at the

premises and is actively using the same, as is evident from the photographs placed on record; and the Respondent has been paying rent for the said premises even after the First Application was dismissed in 2001.

The Respondent's position as a tenant:

30. Mr. Cama submitted that the Respondent is admittedly a tenant of the said premises and was therefore entitled to protection as a tenant from eviction and the other rights enuring to the benefit of a tenant, including the right under Section 56 of the Maharashtra Rent Control Act, which included the surrender of the tenancy or transfer the same for receipt of monetary consideration. He thus submitted that there was a vested statutory right in a tenant to potentially monetise the tenancy. In support of this contention, he placed reliance upon the following decisions: *M/s. Veertag Investments and Finance Co. v. M/s. Premier Brass and Metal Works Ltd.*¹⁷, *Tangerine Electronics System Ltd. v. Indian Chemicals & Ors.*¹⁸, *Re:*

¹⁷ AIR 2003 Bom 217.

¹⁸ 2004 (2) ALL MR 551.

*Kailash Financiers (Calcutta) Pvt. Ltd.*¹⁹ and *Kanubhai H. Prajapati v. Official Liquidator & Ors.*²⁰.

31. Mr. Cama then submitted that the Respondent, being the Liquidator of the Bank, had a bounden duty in law to distribute the assets of the Bank among the various claimants/creditors subject to the final liquidation order. He also submitted that the Respondent was under the supervision and control of the RBI and therefore had a statutory duty to ensure that the assets of the Bank were appropriately liquidated/monetised. He thus submitted that there was no question of the Respondent being simply made to give up its tenancy rights and to take alternate accommodation as a licensee.

32. Mr. Cama submitted that even otherwise, the question that arises for consideration is whether the Respondent can simply be evicted from tenanted premises by a summary procedure under Section 457 of the Companies Act. He, however, did not dispute that the Company Court had the power to direct eviction if the premises were not being used by the

¹⁹ (1982) 1 Comp LJ 100 (Cal).

²⁰ (1999) 1 GLR 429.

Liquidator but submitted that such a question did not arise in the facts of the present case. Mr. Cama submitted that in the facts of the present case, where the said premises are being actively used, the summary eviction procedure ought not to be resorted to circumvent appropriate proceedings under the Rent Control Act.

33. Mr. Cama then, without prejudice to the foregoing, submitted that if the Court was inclined to grant the relief which was prayed for, it would only be in the fitness of things if the Suit that was filed for eviction in the Small Causes Courts was transferred to this Court. He submitted that before granting the relief prayed for, it would be necessary for this Court to assess whether, infact, the Applicant had made out a case of bona fide requirement since there were various premises in the said building which were vacant and could be used by the Applicant. He submitted that since the Applicant was aware that it would be unable to fulfil this requirement, the Applicant had resorted to the present summary procedure. He also submitted that the question of equities ought not to come into play, as the Respondent in the present case is not a private litigant who is seeking to squat on properties

but is a statutory appointee who is required to carry out a statutory duty under the provisions of the Banking Regulations Act, 1949.

34. Mr. Cama submitted that the Applicant's reliance upon the decision of this Court in *Jaikishan Narang* was also entirely misplaced. He pointed out that in the case of *Jaikishan Narang*, the Liquidator had not even commenced using the flats in question and had taken possession of the flats only two years before the said order was passed. He pointed out that in the present case, the Bank had been the tenant of the said premises since 1962, and the fact that the Respondent was using the said premises was clearly noted in the First Order. He also took pains to point out that this Court had in the case of *Jaikishan Narang* specifically referred to and distinguished the First Order passed by this Court in the First Application. He thus submitted that the decision in the case of *Jaikishan Narang* would therefore not apply.

35. Mr. Cama thus summed up by reiterating that (i) the issue stands covered by the judgment and order dated 23rd March 2001, and no new or changed circumstances exist as would warrant taking a different view (ii) the

premises are still being used by the Respondent and are very much required *inter alia* for the reasons set out above and in the earlier proceedings, which found favour with this Court when rejecting the First Application (iii) the reasons taken in the present Application were identical to those taken in the First Application and (iv) the Applicant had not been able to demonstrate a single changed circumstance despite an opportunity being given, as recorded in the order passed on 12th June 2018, to file an Affidavit.

36. Mr Cama, therefore, prayed that the present Company Application be dismissed, with costs.

Reasons and Conclusions:

37. Having heard Learned Counsel for the Parties and having considered the rival contentions, the pleadings and the case law upon which reliance has been placed, I have no hesitation in holding that the present Application would have to be dismissed with costs. I say so for the following reasons, viz.

A. Having carefully considered the grounds taken in the First

Application and those taken in the present Application, I find that there is much merit in the contention of the Respondent that the present Application is barred by the principles of *res judicata* and *issue estoppel*. A perusal of the grounds taken in the First Application and the present Application leaves no manner of doubt that the grounds taken in the present Application are virtually identical to those taken in the First Application. Hence, the decisions in *Satyendra Kumar and Ors.*, *Abdul Kuddus*, and *Faime Makers Pvt. Ltd.* upon which reliance was placed by the Respondent would squarely apply.

B. Equally misconceived is the Applicant's contention that the First Order granted liberty to the Applicant to file a fresh Application for the same reliefs that were sought for in the First Application. A plain reading of the First Order makes it clear that this Court, while disposing of the First Application, only recorded that it would be open for the Applicant to “*make available to the Liquidator an alternative premise*”. The First Order specifically clarified that “*it is*

for the Liquidator, if any premises are forthcoming to determine their suitability with reference to his requirements". The First Order, therefore, did not in any manner reserve any liberty to the Applicant to once again approach this Court on the same grounds as were taken in the First Application and which were rejected by the First Order.

C. Furthermore, even accepting the Applicant's case of changed circumstances, I find that the Applicant would still not be entitled to the relief sought for in light of the decision of the Hon'ble Supreme Court in the case of *Nirmala Bafna*. The Hon'ble Supreme Court has in paragraph 25 of the decision in the case of *Nirmala Bafna* specifically held that what is to be considered when considering an application of the present nature is whether the reason furnished by the Liquidator for continuing the possession is a relevant reason and nothing more. Therefore, it is through this lens that the present Application must be viewed.

D. In the present case, though the number of cases has undeniably reduced, it is not even the Applicant's case that the liquidation

proceedings have come to an end. The reasoning adopted by this Court while dismissing the First Application was anchored in the context of the ongoing liquidation proceedings, as is plain from a reading of the First Order. Thus, the very circumstances that weighed with this Court while passing the First Order, continue to exist in material measure even today, despite the passage of considerable time. Furthermore and *crucially*, the Applicant has also, by making an offer to provide alternate premises to the Respondent, conceded to the fact that the Respondent is in need of and is making use of said premises. This in my view would itself warrant dismissal of the present Application. I must note that it would have been a different thing altogether if the liquidation proceedings had, infact, come to an end. However, this is admittedly not so.

- E. The decision of the Hon'ble Supreme Court in the case of ***Ravindra Ishwardas Sethna*** is wholly inapplicable to the facts of the present case. *Firstly*, this decision was specifically dealt with in the First

Order, which, as already noted above in (B) binds the Parties.

Secondly, the said decision is entirely distinguishable on facts since the Liquidator in that case was attempting to give the subject premises on leave and license and profit from the same, unlike the present case, where the said premises are very much being used by the Respondent.

F. Equally misplaced is the Applicant's reliance upon the decision of this Court in the case of *Jai Kisan Narang*. A perusal of the said decision makes clear that the Liquidator in that case had not even commenced use of the flats in question, whereas in the facts of the present case it is not in dispute that the Bank has been in occupation of the said premises as a tenant since 1962 and that the said premises have been being used by the Respondent since 1992. *Secondly*, and *crucially*, this Court, in paragraph 19 of the decision in *Jai Kisan Narang* has expressly taken note of the order passed in the First Application and has distinguished the same on the ground that the facts therein were materially different.

- G. Moreover, the Applicant's reliance upon the decisions in *Parasram Harnand Rao, Saraswat Co-operative Bank Ltd.*, and *Patel Engineering Co. Ltd.* is misplaced since, in each of the said cases, the question of whether the Liquidator required the premises for the purposes of the liquidation, did not arise. A perusal of the said decisions makes clear that the premises in question in each of those cases were either unused or the Liquidator had conceded that they were no longer required, and it was in that context that the said orders were passed and the Court had exercised its summary jurisdiction under Section 457 of the Companies Act. As already noted in (D) above, it is not even the Applicant's case that the said premises are lying unused or that the liquidation proceedings have come to an end. Hence, clearly, none of these decisions would apply.
- H. Furthermore, it is not in dispute that the Respondent is in occupation of the said premises as a tenant. The proposal made by the Applicant is to provide alternate premises on a leave and licence basis. This would, in effect, require the Respondent to relinquish its vested

tenancy rights and accept occupation under a materially different and less secure legal arrangement. In my view, this Court cannot, in the exercise of its summary jurisdiction, compel the Respondent to do so. As already noted in (C) above, the test in these summary proceedings, as held by the Hon'ble Supreme Court in the case of *Nirmala Bafna*, is to assess whether the reason furnished by the Liquidator for continuing in possession is a relevant reason and nothing more. The scope of these summary proceedings cannot, therefore, be enlarged beyond anything but that.

- I. Also, for the reasons set out in (A), (D) & (G) above, I do not find that this is a fit case for this Court to exercise its powers under Order XXVI Rule 9 read with Section 151 of the Civil Procedure Code, 1908, for the purpose of directing an appropriate investigation to identify bank records that are capable of being digitized. Hence, in the facts of the present case, the decisions in the case of *Vasant Tukaram Prabhu, Sri Shadaksharappa, Mohd. Taher Quershi* and *Sk. Sekharuddin Mahammad* would be of no assistance to the

Applicant.

J. Furthermore, it is not in dispute that the Respondent, as Liquidator, is under the supervision and control of the RBI and has a statutory obligation to act with due diligence in the discharge of its duties. Though the main thrust of the contentions of the Applicant was that the Respondent was not acting with the necessary diligence and dispatch required, in my view, it would not be appropriate for this Court in these summary proceedings to embark upon an inquiry into whether the Respondent is discharging its functions in the manner required. Any grievance in this regard must be pursued before the appropriate forum in properly constituted proceedings and not in these summary proceedings. Again, the position might have been different if the liquidation proceedings had come to an end, which they admittedly have not. Hence, the reliance placed by the Applicant on the decision of the Hon'ble Supreme Court in the case of *Sudarshan Chits* is entirely misconceived in the facts of the present case.

K. Hence, for the reasons set out in (A) and (B) above, I find that an order of costs must follow since the Applicant has wasted precious judicial time. Furthermore, it must be noted that the Applicant has taken no steps to proceed with the Suit, which is pending before the Small Causes Court.

38. Hence, for the aforesaid reasons, I pass the following order:

- i. The captioned company application is dismissed.
- ii. The Applicant shall pay a cost of Rs. 1,00,000/- (Rupees One Lakh only) to the Respondent.

[ARIF S. DOCTOR, J.]