



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

No. 206

(January 13, 2025)

Sumati Suresh Hegde & Ors. Vs. Anand Sonbhadra, RP of Champalalji Finance Pvt. Ltd. & Ors.
Comp. App. (AT) (Ins) No. 884 of 2024
Date of NCLAT Judgement: January 09, 2024

Facts of the Case

The present appeal involves Sumati Suresh Hegde & Ors. (hereinafter referred to as 'Appellants') against the Resolution Professional (RP) of Champalalji Finance Pvt. Ltd. and others (hereinafter referred to as 'Respondents'). The appeal arises from the impugned order dated 05.04.2024, passed by the Adjudicating Authority (AA), directing the RP to take possession of the property, Villa Mohindra Outhouse, Khar (W), Mumbai, u/s 60(5) r/w Section 25(2)(a) of the Insolvency and Bankruptcy Code (IBC), 2016.

The Corporate Debtor (CD), M/s Champalalji Finance Pvt. Ltd., entered in CIRP on 17.03.2023 following an application u/s 7 of the IBC by Edelweiss Asset Reconstruction Company Limited. During the first Committee of Creditors (CoC) meeting held on 26.04.2023, the Interim Resolution Professional (IRP) was confirmed as the RP. The property in question Villa Mohindra Outhouse, was occupied by the Appellants, legal heirs of Late Shri Suresh Padmanabha Hegde, who claimed tenancy rights rooted in a decree dated 26.11.2009 by the Small Causes Court. The decree declared Shri Hegde a monthly tenant under the Maharashtra Rent Control Act, 1999, restraining the landlord from dispossessing him without due legal process. The property was later purchased by the CD from its original landlords, Prem Mohindra and Dilip Mohindra, along with the tenancy.

On 23.12.2016, the CD filed RAE Suit No. 149 of 2011 before the Small Causes Court, seeking eviction on grounds of bona fide requirement to demolish the existing structure. This suit was pending when CIRP was initiated but was dismissed for non-prosecution on 16.11.2024. Despite this, the RP filed I.A. No. 4632 of 2023 under Section 60(5) read with Section 25(2)(a) of the IBC, seeking control and custody of the property. The Appellants contested this, arguing their tenancy rights were protected and the AA lacked jurisdiction to order eviction. The Respondent contended that, under Section 18(1)(f) of the IBC, it was his duty to take possession of all assets of the CD, including the property.

The AA, in its order dated 05.04.2024, ruled in favor of the RP, stating that Section 238 of the IBC (non-obstante clause) overrides the Maharashtra Rent Control Act, 1999, and directed eviction. Aggrieved, the Appellants filed the present appeal before the Appellate Tribunal, asserting that their tenancy rights were being disregarded and emphasizing the distinction between tenancy and lease. They argued that their rights were perpetual unless altered through due process of law under the Rent Control Act.



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NCLAT's observations:

The NCLAT observed that the tenancy rights of the Appellants were established through a 26.11.2009 decree by the Small Causes Court, declaring Late Shri Suresh Padmanabha Hegde a monthly tenant under the Maharashtra Rent Control Act, 1999 and restraining eviction without due process of law. The CD acquired the property with the tenancy and filled the RAE Suit No. 149 of 2011 for eviction on bona fide grounds that were dismissed for non-prosecution.

The Appellate Tribunal highlighted the distinction between tenancy and lease, emphasizing that tenancy continues unless altered by contract or law. While the RP is empowered under Section 18(1) (f) and Section 25(2) (a) of the IBC to take possession of CD assets, such powers do not override tenancy protections.

Referring to *Embassy Property Developments Pvt. Ltd. v. State of Karnataka (2020)*, the Appellate Tribunal noted that tenancy disputes fall outside the jurisdiction of the NCLT/NCLAT. In *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (2021)*, the Supreme Court cautioned against overreach by NCLT/NCLAT into non-insolvency matters. It also cited *Vishal N. Kalsaria v. Bank of India (2016)*, which held that tenancy rights under rent control laws cannot be overridden by non-obstante clauses and also placed reliance on *K. L Jute Products Pvt. Ltd. vs Tirupati Jute Industries Ltd. (2020)* and said that the AA is not empowered to pass an eviction and it is for an aggrieved party to move the appropriate forum for redressal of its grievances in accordance with law.”

The Appellate Tribunal further relied on *Raj Builders v. Raj Oil Mills Ltd. (2018)*, stating that eviction orders must follow due legal process, and on *Devendra Padamchand Jain v. Sandhya Prakash (2018)*, affirming that the RP cannot evict tenants without approaching the proper forum.

Order/Judgement: The Appellate Tribunal set aside the impugned order dated 05.04.24 passed by the AA deeming it legally erroneous and held that, the RP cannot evict tenants under IBC without pursuing the appropriate legal process under tenancy laws and the tenancy rights of the Appellants remain valid, and eviction is permissible only through due legal procedure as per the Maharashtra Rent Control Act.

Case Review: The appeal was *allowed*, with no order as to costs.