



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

## IBC Case Law Capsule

Number 233

(July 21, 2025)

**M/s Mohota Industries Ltd. vs. Smt. Vibha w/o Mayank Agrawal**  
**Civil Revision Application No.42/2024**

**Date of Bombay High Court (Nagpur Bench) Judgement: 09<sup>th</sup> June 2025**

### Facts of the Case: -

The Civil Revision Application No. 42/2024 was filed by M/s Mohota Industries Ltd.(hereinafter referred as 'Applicant') against Smt. Vibha Agarwal (hereinafter referred as 'Respondent') challenging the order dated 23.11.23 passed by the Joint Civil Judge, Junior Division, whereby the trial court rejected the Applicant's application at Exh. 24 seeking rejection of plaint under Order 7 Rule 11 read with Section 151 of the Civil Procedure Code.

The Respondent had leased out a property measuring 42,000 sq. meters situated at Survey No.14/2 (kh), Mouza Burkoni, District Wardha to the Applicant company via a lease deed dated 28.03.07. The lease was subsequently terminated by notice dated 01.06.21, and the Applicant was asked to vacate the suit property. The Respondent instituted Regular Civil Suit before the Civil Judge Junior Division, seeking declaration, recovery of possession, eviction, permanent injunction, and arrears of rent with regards to the property. The applicant-company was undergoing the CIRP u/s 9 of the IBC 2016, admitted by the Adjudicating Authority vide order dated 30.08.21, which imposed a moratorium under Section 14 of the Code. The order explicitly barred institution or continuation of any suits or proceedings, including recovery of possession of any property occupied by the CD. Despite the subsistence of moratorium, the Respondent filed the civil suit on 21.01.22. The Applicant contended that only 145 days had passed from the CIRP commencement when the suit was instituted and hence, the suit was barred by Section 14(1)(a) of the Code. The moratorium was in effect until the Resolution Plan was approved by AA on 19.05.23.

The trial court rejected the Applicant's application on the ground that the CIRP period of 180 days had lapsed before the filing of the suit. It concluded that since the moratorium was no longer in effect, the suit was not barred and could be adjudicated. The Applicant however argued that the very institution of the suit during the subsistence of the moratorium rendered it non-est, and thus the plaint was liable to be rejected. The Applicant further submitted that the claim relating to the lease ought to have been raised before the RP during the insolvency process as an operational debt, and civil courts had no jurisdiction to entertain such claims under Section 63 of the IBC.



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## High Court's Observations:

The Hon'ble high court held that the institution of the suit during the moratorium period was void ab initio under Section 14(1)(a) of the IBC. The Hon'ble high Court further noted that the AA's order initiating CIRP on 30.08.21 explicitly imposed a moratorium against institution or continuation of proceedings against the CD, including any suit for recovery or possession by a landlord. The suit filed by the respondent on 21.01.22 clearly fell within this prohibited period. The Hon'ble high Court emphasized the overriding effect of the IBC under Section 238 and the exclusive jurisdiction of the AA under Section 63 for matters relating to CIRP.

Relying on several Supreme Court decisions, including *Alchemist Asset Reconstruction Co. v. Hotel Gaudavan Pvt. Ltd.*, *Anand Rao Korada v. Varsha Fabrics Pvt. Ltd.*, *Electrosteel Steels Ltd. v. ISPAT Carrier Pvt. Ltd.*, and Appellate Tribunal's decisions like *Jaipur Trade Expocentre Pvt. Ltd. v. Metro Jet Airways Training Pvt. Ltd.*, the Court reiterated that any claim, including those relating to rent or possession, if not submitted to the RP as per the CIRP timeline, cannot be pursued separately. The Respondent should have filed a claim with the RP as an operational creditor. The Hon'ble Court also clarified that the plaint cannot be saved merely because a part of the claim sought declaration or arrears of rent, as the moratorium applied to all such proceedings. The Respondent's reliance on decisions like *Embassy Property Development* was held to be misplaced, as the present case involved no public law element.

**Order/Judgement:** The High Court allowed the Civil Revision Application, quashing and setting aside the impugned order dated 23.11.23. The plaint in Regular Civil Suit No. 23 of 2022 was rejected under Order 7 Rule 11 read with Section 151 CPC, holding it barred by Section 14(1) (a) of the IBC.

**Case Review:** The Revision Application is disposed of, and the plaint was rejected. No order as to costs.