In a case of this type, which is serious, the contemner cannot be allowed to get away by simply feeling sorry by way of apology as the easiest way. In the special circumstances of this case, and the principle laid down in *Asharam M. Jain's case* (supra), we do not accept the apology tendered by Sarvshri Ajit Singh and N. D. Rahi, Advocates.

26. For the foregoing reasons, Sarvshri Ajit Singh, N. D. Rahi, Advocates and R. K. Sachdeva, Advocate have been proved guilty for committing the contempt of Court under section 2(c)(i) of the Act. They are convicted for this offence accordingly. Each of them is sentenced to pay Rs. 2,000 as fine. In case of default in payment of fine, each of them, that is, Sarvshri Ajit Singh, N. D. Rahi and R. K. Sachdeva shall undergo simple imprisonment for fitteen days. The fine shall be deposited within three weeks from today.

N.K.S.

Before S. P. Goyal, J.

M. M. SEHGAL,—*Petitioner*

versus

SEHGAL PAPERS LIMITED,—*Respondents.*

Company Application No. 200 *of* 1983 *in Company Petition No.* 97 *of* 1983

August 23, 1985

Companies Act (1 *of* 1956)—*Sections* 391, 392 *and* 394—*Companies Court Rules*, 1959—*Company ordered to be wound up under orders of the Court—Former Chairman of the Board of Directors filing petition under Section* 391, 392 *and* 394 *for a direction to hold a meeting of the share-holders and creditors to consider the scheme to revive the company—Scheme approved by all except the secured creditors—Petitioner making application under rule* 79 *for sanction of the proposed scheme—Such application—Whether maintainable—Allegations of* malafide *and arbitrary action against the secured creditors—Company Judge—Whether has the jurisdiction to go into this matter.*

Held, that a reading of rule 79 of the Companies Court Rules, 1959, would show that an application for sanction of the proposed compromise or arrangement is maintainable only if it has been

approved by a requisite majority under sub-section (2) of Section 391 of the Companies Act, 1956. This section further makes it clear that the approval of the proposed arrangement or compromise is a condition precedent before any application for its sanction can be moved. The position has been further made clear by clause 4 of Rule 79 which provides that where no petition for confirmation of the compromise or arrangement is presented or where the compromise or arrangement has not been approved by the requisite majority under Section 391(2) and consequently no petition for confirmation could be presented, the report of the chairman as to the result of the meeting made under the preceding rule shall be placed for consideration before the Company Judge for such orders as may be necessary. Unless the scheme brought before the Court was so approved, the court will have no jurisdiction to entertain an application under rule 79 of the Rules for its sanction or to pass any order in this regard even if the scheme is found to be fairly reasonable and beneficial to the creditors who have withheld their consent.

... (Para 4).

Held, that the jurisdiction of the Company Judge is well defined and circumscribed by the provisions of the Companies Act and the rules made thereunder. There is no provision either in the Companies Act or in the Rules to authorise the Company Judge to probe into the matter of the withholding of the consent by the secured creditors and to hold that the same has been done *malafide* or arbitrarily. Further, even if it is found that the consent has been withheld *malafide* or arbitrarily it would be wholly beyond the jurisdiction of the Company Judge either to sanction the scheme in spite of its disapproval by the secured creditors or to issue a mandate to them to reconsider the same and to accord sanction. To invoke the jurisdiction under Section 391 of the Act to sanction the proposed arrangement, it is a condition precedent that the same must have been approved by the requisite majority as laid down in Section 391(2). The Company Judge has no jurisdiction to sanction the scheme unless the same is approved by the requisite majority as provided in Section 391(2).

(Para 6).

Petition under Rule 79 of the Company Court Rules praying that :—

(i) *the said scheme of compromise or arrangement be sanctioned by all the preferred creditors the Unsecured Creditors, the Shareholders and Secured Creditors of M/s Sehgal Papers Ltd. Dharuhera, district Mohindergarh (Haryana);*

(ii) *or such other order may be made in the circumstances of the petition as court may deem fit.*

H. L. Sibal, Sr. Advocate with J. K. Sibal, Advocate, *for the Applicant.*

A. C. Jain, Advocate *for the Official Liquidator.*

Ghosh,. Sr. Advocate Gopal Subramanian, Advocate, with Cyril Shroff, Advocate.

B. R. Mahajan, Advocate.
L. M. Suri, Advocate with Ravinder Arora, Advocate.
Ashok Aggarwal, Advocate.
R. N. Narula, Advocate with P. S. Saini, Advocate.
J. S. Narang, Advocate R. M. Suri, Advocate.
R. S. Mongia, Advocate.

all for the objectors.

JUDGMENT

S. P. Goyal, J.

(1) Messrs Sehgal Papers (for short, the Company), a public limited company, was ordered to be wound up,—*vide* orders, dated April 8, 1983 in C.P. No. 64 of 1981 and the Official Liquidator was directed to take over and manage the affairs of the Company. About six months thereafter on September 15, 1983, M. M. Sehgal, former Chairman of the Board of Directors of the Company, moved Company Petition No. 97 of 1983 under sections 391, 392 and 394 of the Companies Act for a direction to hold meeting of the various creditors and share-holders to consider the arrangement detailed in the petition itself. The learned Company Judge,—*vide* orders, dated September 27, 1983 appointed Shri B. R. Tuli to act as Chairman to hold the meeting who after doing the needful forwarded four reports to this Court of the meeting of the secured creditors, preferred creditors, unsecured creditors and all the shareholders held separately on the same date, i.e., December 7, 1983. The scheme was approved by all others except the secured creditors who rejected the same. In spite of the rejection of the scheme by the secured creditors, the petitioner moved this application under rule 79 of the Companies (Court) Rules (hereinafter referred to as the Rules) for its sanction. A notice was ordered to be issued to the Union of India and a citation published in the newspapers inviting objections. Only Industrial Finance Corporation of India filed objections within the prescribed period. Thereafter, the Industrial Credit and Investment Corporation of India moved two applications, C.A. Nos. 36 and 37 of 1984 for condonation of delay and for permission to place

on record the objections to the proposed scheme. Similarly, the Life Insurance Corporation of India, Punjab National Bank, State Bank of Patiala, Industrial Development Bank of India, Smt. Janak Kapur and the Official Liquidator also moved Company Applications No. 27, 46, 50, 51, 53 and 151 of 1984 for permission to file objections to the said scheme. All these applications were ordered to be heard with the main application. As no objection was raised to oppose them at the final hearing, all these applications were allowed and the objection petitions ordered to be placed on the record.

(2) A rejoinder was filed by M. M. Sehgal to the objection petition filed by the Industrial Finance Corporation of India which necessitated the filing of Company Application No. 168 of 1984 by the Industrial Finance Corporation of India. There being no opposition, this application too was allowed. M. M. Sehgal also moved Company Application No. 10 of 1984 for a direction to the Official Liquidator to take over the charge. With the disposal of the main application, this application would become infructuous and is ordered to be dismissed accordingly. Still another application, C.A. No. 186 of 1984, was filed by M. M. Sehgal for permission to lead evidence which shall also be disposed of by this order.

(3) Mr. Ghosh, learned counsel for respondent No. 1, raised a preliminary objection that the Company being in liquidation an application under Section 391 of the Companies Act for holding of the meeting to consider the proposed compromise or arrangement would be competent only by the Official Liquidator. In support of his contention, he relied on the following observations of the Supreme Court in *S. K. Gupta and another* v. *K. P. Jain and another*, (1):—

"* * * *

> Further, section 391(1) itself by a specific and positive provision prescribes who can move an application under it. Only the creditor or member of that company or a liquidator in the case of a company being wound up, is enitled to move an application proposing a compromise or arrangement. By necessary implication any one other than those specified in the section would not be entitled to move such an application.

(1) (1979) 49 Camp Cas. 342.

The argument is wholly misconceived and the quotation from the Supreme Court judgment when read in its context does not support the same. The provisions of section 391 (1) were quoted and the above observations made to clarify that the limitation contained in the section as to a person who can move an application were not applicable so far as application under section 392 was concerned and no question as to whether who can make the application under section 391(1) in case of a company in liquidation was under consideration before the Supreme Court. The words, "or in the case of a company which is being wound up, by the Liquidator" did not signify that in case of such company, the Liquidator alone can move the applicaiion and instead contain an enabling provision authorising the Liquidator as well to move the Court, apart from any creditor or member of the Company. A similar view was expressed by a Division Bench of Travancore Cochin High Court in *Mohammed Abdulla and others* v. *Gopala Pillai and others*, (2) relying on a decision of the Madras High Court *Re : Travancore National & Quilon Bank Ltd.* (3), in the following words :—

> "The introduction of the words, 'in the case of a company being wound up, of the liquidator' is intended to provide an additional and not an exclusive person who could make the application. If a company, or a member, or a creditor may make the application under section 153(1) proposing a compromise or arrangement in the case of a company which is not under liquidation, there is no reason why any of them should not be competent to make the application in the case of a company which is being wound up."

The preliminary objection raised is, therefore, overruled.

(4) Application under rule 79 for sanction of proposed compromise or arrangement can be made if it has been approved by a requisite majority under sub-section (2) of section 391 of the Companies Act which reads as under :—

> "If a majority in number representing three fourths in value of the crediors, or class of creditors, or members, or class of members as the case may be, present and voting either

(2) A.I.R. 1952 Tr. Cochin 243.
(3) A.I.R. 1939 Mad. 318.

in person or, where proxies are allowed under the rules made under section 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or, in the case of a company which is being wound up, on the liquidator and contributories of the company:

Provided that no order sanctioning any compromise or arrangement shall be made by the court unless the court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251 and the like."

A bare perusal of the above sub-section makes it clear that the approval of the proposed arrangement or compromise is a condition precedent before any application for its sanction can be moved. The position has been further made clear by clause 4 of Rule 79 of the Rules which provides that where no petition for confirmation of the compromise or arrangement is presented or where the compromise or arrangement has not been approved by the requisite majority under section 391(2) and consequently no petition for confirmation could be presented, the report of the chairman as to the result of the meeting made under the preceding rule shall be placed for consideration before the Judge for such orders as may be necessary.

(5) Mr. H. L. Sibal, the learned counsel for the applicant, did not dispute this proposition nor the fact that the proposed arrangement had not been approved by the requisite majority of all the creditors as required under section 391(2) but sought to raise two contentions. Firstly, that the representatives of the secured creditors were not duly authorised to take part in the meeting with the result that their rejection of the scheme cannot be said to be an act of secured creditors. So, it was contended that the scheme having been never opposed by the secured creditors, would be deemed to have been consented to by them. I do appreciate the

ingenuity of the argument of the learned counsel but there is no scope of pleading an implied approval of the proposed agreement or compromise under section 391(2) of the Act. Instead the said sub-section lays down in categorical terms that the proposed arrangement or compromise has to be approved by a conscious act by the requisite majority of creditors. If it is held that the secured creditors which are financial institutions were not represented by properly authorised agents, the result would be that there was no approval of the proposed arrangement or compromise and not that the same had been impliedly agreed to by them. I have, therefore, no hesitation in rejecting the first contention.

(6) The real stress was laid by Mr. Sibal on his second contention that the consent was withheld by the Financial Institutions *mala fide* and arbitrarily. The secured creditors being public institutions and instrumentality of the State are bound to act rationally and if they fail to perform their statutory functions in a rational manner the Court would be fully competent to sanction the scheme or in the alternative to issue a mandate to them to reconsider the matter and accord requisite sanction. Support was sought for this contention from a recent decision of the Bombay High Court in the well-known case of *Escorts Ltd. and another* v. *Union of India and others,* (4). Elaborating his arguments, he further argued that all the secured creditors who are either statutory corporations or banking institutions could take their decision in the meeting of the Board of Directors and it was at that time that the reasons were to be given for withholding their consent. Consequently, the reasons supplied by them in their objection petitions can be of no avail and reliance in support, thereof was placed on the following passage of the Supreme Court in *Mohinder Singh Gill and another* v. *The Chief Election Commissioner, New Delhi and others,* (5):—

> "When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

(4) (1985) 57 Camp Case 241.
(5) A.I.R. 1978, S.C. 851.

It is rather difficult to accede to the course proposed by Mr. Sibal in these proceedings even if it may be presumed for the sake of argument that the consent of the proposed arrangement has been arbitrarily withheld by the secured creditors. The jurisdiction of the Company Judge is well defined and circumscribed by the provisions of the Companies Act and the rules made thereunder. No provision either in the Companies Act or in the Rules could be pointed out by Mr. Sibal which authorises the Company Judge to probe into the matter of the withholding of the consent by the secured creditors and hold that the same has been done *mala fide* or arbitrarily. Further even if it is found that the consent has been withheld *mala fide* or arbitrarily it would be wholly beyond the jurisdiction of the Company Judge either to sanction the scheme in spite of its disapproval by the secured creditors or to issue a mandate to them to reconsider the scheme and accord their sanction. Mr. Sibal, however, argued that the power would be implicit in the functions which a Company Judge has to perform and the court would be fully competent to sanction a scheme without the consent of the secured creditors or issue a mandate to them to reconsider the same and accord their sanction if the scheme is found to be fairly reasonable and for the benefit of the parties concerned. In my view the contention is wholly devoid of any merit. As already discussed above to invoke the jurisdiction under section 391 of the Act to sanction the proposed arrangement, it is a condition precedent that the same must have been approved by the requisite majority as laid down in section 391(2). Unless the scheme brought before the Court was so approved, it will have no jurisdiction to entertain an application under rule 79 of the Rules for its sanction or to pass any order in this regard even if the scheme is found to be fairly reasonable and beneficial to the creditors who have withheld their consent. A similar view was expressed by the Madras High Court in re. *Coimbatore Cotton Mills Ltd. and Lakshmi Mills Co. Ltd.*, (6), wherein it was held that if a class whose interest are affected by a scheme does not assent or approve it at a meeting convened in accordance with the provisions of section 391, the court will have no jurisdiction to confirm it even if it considers that the class concerned is being fairly dealt with or to issue a mandate to them to approve the scheme. Though I have no doubt in my mind that this Court has no jurisdiction to sanction the scheme unless the same is approved by the requisite majority

(6) (1980) 50 Camp Case 623.

as provided in section 391(2) of the Act or to issue any direction to the secured creditors to reconsider the matter and accord their sanction to the scheme yet if at all such a remedy can be sought it would be possible only under Article 226 of the Constitution. The decision in *Escort Ltd's case* (supra) was also rendered by the Bombay High Court in exercise of its jurisdiction under Article 226 of the Constitution and not in exercise of its jurisdiction under the Companies Act. Even the rule laid down in that case that the court would have supervisory powers over the exercise of its jurisdiction by a public sector corporation is also a highly doubtful proposition and the operation of the said judgment has already been stayed by the Supreme Court in Special Leave. I, therefore, find no merit in this contention as well which is accordingly rejected.

(7) That apart, even on merits it cannot be said in the present case that the financial institutions have refused to agree to the proposed arrangement *mala fide* or arbitrarily. Initially the loan advanced by the Financial Institutions and the Banks was about Rs. 15 crores. By now this amount has risen to about 28 crores. In the proposed scheme an amount of Rs. 15 crores is to be paid by the year 1998-99 through an annual instalment of Rs. 1.26 crore. The amount due to the Financial Institutions and the Banks by the year 1998-99 would be to the tune of Rs. 140 crores. The payment of Rs. 15 crores to them would be almost negligible. The total assets of the Company would be far less than its liabilities to the said Institutions alone. If the scheme is sanctioned it would necessarily mean that the whole of the public money belonging to the Financial Institutions and Banks would also become a bad debt and a total loss to those institutions. The proposal of payment to the Financial Institutions thus being wholly inadequate, they could not possibly agree to such a scheme. Even if the Financial Institutions for some reason or the other would have agreed to such a scheme no court would have approved the same. The other provisions of the scheme are also highly disadvantageous to the secured creditors but need not be discussed in detail as the above reason alone would be sufficient for them to reject the proposed arrangement. The argument of the learned counsel that the secured creditors have withheld the sanction to the proposed scheme *mala fide* or arbitrarily, therefore, has no basis and is wholly imaginary.

(8) Faced with this situation, Mr. Sibal urged that the court has ample power under section 392 of the Act to modify the scheme to make it workable and in exercise of that power, the scheme may

be approved after suitable modification. I am afraid, it is not permissible for this Court to adopt any such measure. As is apparent from the opening words of section 392 powers under the said section can be exercised only when a compromise or arrangement is sanctioned under section 391. If there is no valid arrangement before the Court because of the non-satisfaction of the requirements of section 391(2) of the Act it can never be sanctioned by the Court and the question of coming into play of section 392 does not arise. It will, therefore, be beyond the competence of this Court to order any modification in the proposed compromise or arrangement.

(9) For the reasons recorded above, this application must fail and is hereby dismissed with costs.

H. S. B.

Before J. V. Gupta, J.

KARAM CHAND AND ANOTHER,—*Petitioners.*

versus

KEWAL KRISHAN AND OTHERS,—*Respondents.*

Civil Revision No. 1019 *of* 1985

August 24, 1985

Punjab (Security of Land Tenures) Act (X of 1953)—Section 8(b)—Code of Civil Procedure (V of 1908)—Order 22 Rule 5—Suit for pre-emption filed by the tenant—Said tenant died during the pendency of the suit without leaving any descendants as contmnlated by Section 8(b)—Application filed by other persons under Order 22 Rule 5 claiming the tenancy right on the basis of a will—Such application—Whether maintainable.

Held, that the suit could be continued by the legal representatives of the tenant if he leaves behind any male lineal descendant or mother or widow as contemplated under Section 8(b) of the Punjab Security of Land Tenures Act, 1953. If the tenant does not leave behind any such descendant the continuity of tenancy comes to an end on the death of the tenant. In this view of the matter the application under Order 22, Rule 5 of the Code of Civil Procedure, 1908, filed by the applicants is not maintainable.

... (Para 4).