

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.5 OF 2015

IN

ARBITRATION APPEAL NO.42 OF 2013

IN

ARBITRATION APPLICATION NO.65 OF 2013

...

Mr.Kobad Dorabji Davierwalla

...Applicant

v/s.

Mrs.Perin Hoshang Davierwalla & ors.

...Respondents

...

Ms.Sonal with Ms.Kainaz Irani and Mr.Nilesh Ukey i/b Nilesh Ukey for the Applicant.

Mr.D.J.Khambatta, Sr.Advocate with Mr.Akshay Patil, Mr.Vishal Malviya and Ms.Ajuja Abhyankar i/b Federal & Rashmikan for the original Appellants.

Mr.B.K.Bati for Respondent No.3.

Ms.Priyanka Vegad for Respondent No.2.

Mr.K.K.Trivedi, 1st Asst.to Court Receiver is present.

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CORAM : A.A. SAYED, J.**DATED : 20 MARCH 2015****P.C.:**

This Civil Application has been moved by the Applicant/original Respondent No.1 for the following reliefs:

- a) *This Hon'ble Court be pleased to declare that by virtue of the final order dated 31 October 2014 read with the ad-interim order dated 7 May 2014, the Court Receiver, High Court, Bombay stands discharged with regard to the assets and business of the partnership firm of Hotel Il Palazzo constituted under the partnership deed dated 6 March 1992 and that the properties and the asserts and business of the partnership firm of Hotel Il Palazzo revert back to their pre-Court Receiver state;*

- b) *This Hon'ble Court be pleased to reinstate the Applicant herein in the Hotel business and that the assets and business of the partnership firm of Hotel Il Palzzo constituted under the partnership deed dated 6 March 1992 be handed over to the Applicant along with his two rooms being Room Nos. 12-A and 12-B*
- c) *That the cost of this Civil Application be awarded in favour of the Applicant.*

2. Against the ad-interim order of refusal of the prayer for appointment of Court Receiver by the District Court, the Appellants had moved this Court and by an order dated 23 April 2014 this Court appointed a Court Receiver in respect of assets and business of the partnership firm.

3. The sole submission made on behalf of the Applicant is that, the aforementioned order of High Court dated 23 April 2014 was an ad-interim measure and the District Court while dismissing the Application finally under section 9 of the Arbitration & Conciliation Act, 1996 has not confirmed the appointment of the Court Receiver. In these circumstances, it is contended that the Court Receiver stands discharged and the Applicant would be entitled to the reliefs as prayed in the Civil Application.

4. I am unable to accept this contention. The Trial Court while

referring to the order dated 23 April 2014 passed by this Court has made the following observations in the impugned order:

“ Therefore the entire purpose of this application moved by applicant has already been served as per the order passed by Hon'ble High Court in Arbitration Appeal No.42/2013.”

...

“ I have already pointed out that in view the order passed by the Hon'ble High Court in Arbitration Appeal No.42 of 2013, the entire purpose of Exh.A has already been served, still the Applicant is insisting to keep this matter pending for the purpose of deciding the preliminary issue framed by my learned predecessor vide his order below Exh.46”.

...

“ I have already observed that the purpose of filing this Application has already been served as the Application has been moved for the limited purpose under section 9 of the Arbitration & Conciliation Act, 1996 for interim relief and the said interim relief has already been issued by the Hon'ble High Court in Arbitration Appeal No.42 of 2013. Therefore, there is no purpose of keeping this matter pending before this Court. Therefore, by reviewing order passed by me learned predecessor below Exh.46, the Application below Exh.46 is rejected and proceeding stands disposed of.”

5. From the aforesaid observations, it would be apparent that the District Judge has, as a matter of fact, confirmed the order passed by the High Court dated 23 April 2014 while disposing of the Application. There is no direction discharging the Court Receiver in the impugned order. The Applicant cannot be allowed to take advantage of the fact that the District Court has not specifically stated in the impugned order that the Application is disposed of in terms of the order passed by the High Court dated 23 April 2014. In my view the order of the District Court dated 31 October 2014 is to be read and understood accordingly viz. the Application is disposed of in terms of the order of the High Court dated 23 April 2014. Needless to say that the appointment of the Court Receiver continues.

6. For the aforesaid reasons, I find no merit in the Civil Application. The Civil Application is dismissed. No costs.

(A.A. SAYED, J.)

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