

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
OFFICIAL ASSIGNEE'S REPORT NO. 1 OF 2013
IN
INSOLVENCY PETITION NO. 17 OF 2006

Ravishankar Kailash Rai	...Insolvent
M/s.Jethmal Manrupji & Co.	...Petitioning Creditor
and	
The Official Assignee of Bombay	...Petitioner

Mr.Ramesh Jain for Petitioning Creditor.
Mr.R.A. Shaikh for Insolvent.
Mr.M.D.Narvekar, Official Assignee.

CORAM : S.C. GUPTE, J.

7 JULY 2015

P.C. :

The report seeks four directions. The first direction relates to a confirmation sought from the Petitioning Creditor and the Insolvent regarding the identity of the shop premises of the Insolvent. It is submitted in the report that there is only one premises owned by the Insolvent in the shopping centre, namely, Room / Shop No.2 of S.K. Enterprises at S.K. Shopping Centre on the ground floor at 103/5, Blackie House, W.H. Road, Ballard Estate, Mumbai – 400 001. It is this premises, which was originally tenanted by the Insolvent. After the adjudication order, the Official Assignee has carried out an inventory at this premises and made an inventory report dated 20 June 2008. Having regard to this position, the clarification sought by the Official Assignee in terms of prayer clause (a) of the report ought to be granted.

2 The other prayers in the report, namely, prayer clauses (b) and (c), relate to the subject premises (as clarified in terms of prayer clause (a) above). It is the case of the Official Assignee that in the private examination of the Insolvent

conducted on 19 October 2011, the Insolvent has deposed that the Insolvent had vacated the premises in the year 2004 and surrendered the same to one Mr. Anup Saxena and that as on date, one Raju Lakhdiva is carrying on business at the premises. It appears that in terms of an order passed by this Court on 27 August 2008 in Summary Suit No.505/2008 between Mr. Raju Lakhdiva (the Plaintiff) and the Insolvent (the Defendant), Consent Terms have been filed between Mr. Lakhdiva and the Insolvent that the Insolvent has handed over free, vacant and peaceful possession of the subject premises to Mr. Lakhdiva and that the Insolvent undertook not to stake any claim to the premises. These Consent Terms have obviously been signed between the parties and filed before the Court, respectively on 26 August 2008 and 27 August 2008, i.e. after the date of adjudication. It is apparent that the Consent Terms have been filed without seeking the leave of the Insolvency Court. The Official Assignee, in the premises, has sought directions to the Petitioning Creditor to take out appropriate proceedings in Summary Suit No.505/2008 for review and setting aside of the order passed on 27 August 2008 in terms of the Consent Terms referred to above. Having regard to the facts of the case, this prayer also will have to be allowed. Appropriate orders will have to be sought from the suit court in respect of the order passed in Summary Suit No.505/2008. The contentions of Mr. Raju Lakhdiva and Mr. Anup Saxena, who purportedly came on the scene as a tenant in terms of the deposition of the Insolvent in the private examination, in this behalf are kept open.

3 Prayer clauses (c) and (d) will have to be considered after the appropriate orders are obtained from the suit court as indicated above.

4 The Official Assignee's report, in the premises, is allowed by granting prayer clauses (a) and (b). As far as prayer clauses (c) and (d) are concerned, the Official Assignee is permitted to file a fresh report after appropriate orders are passed in Summary Suit No.505/2008.

5 Until appropriate directions are sought from this Court in Summary Suit No.505/2008, all parties shall maintain status quo in respect of the subject

premises or tenancy rights in respect thereof.

6 The Official Assignee's Report is disposed of accordingly.

(S.C. Gupta, J.)