

vidya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 3830 OF 2016**  
**IN**  
**FIRST APPEAL NO. 141 OF 2015**

Kishor K. Badiani ... Applicant

vs.

Rajesh Kantilal Shah & Ors. ... Respondents

Mr. R.V. Pai a/w. Mr. A.R. Pai i/b. Sonal Doshi & Company. Advocate for the applicant.

Mr. Ramesh Soni i/b. Ram & Co., Advocate for respondent no. 2.

Mr. S. Shamim i/b. Shamim & Co., Advocate for respondent no. 3 (B.C.D.)

CORAM: MRS. MRIDULA BHATKAR, J.

**DATE : AUGUST 24, 2016.**

**(In Chamber)**

**P.C.**

This Application is made for clarification of the order dated 20<sup>th</sup> January, 2016 passed by this Court in Civil Application No. 367 of 2015 by which the plaintiff/DH is allowed to withdraw an amount of Rs.1 crore on usual undertaking.

2. The learned counsel for the applicant has raised points whether the withdrawal of Rs. 1 crore is to be considered as an amount given for repairs as mentioned in the order or not; secondly, whether the point of royalty can

be raised by the parties before the Court Receiver or the Regular Court, as by this order only preference is given to the respondents to run the hotel.

3. The learned counsel for respondent no. 2 opposed the Application and informs that the respondents have given an usual undertaking where they have mentioned that additional withdrawal of Rs.1 crore subject to final result of this litigation. He submits that the point of payment of royalty if raised before the Regular Court or Court Receiver, then both the parties are to be heard.

4. I clarify that the withdrawal of Rs.1 crore is not restricted to the repair work of the hotel and it is to be paid to the respondents after taking usual undertaking by the Court Receiver.

5. The petitioner may file application and may raise the issue of payment of royalty if he wants and the said application may be decided independently.

6. The learned counsel Mr. Pai submits that the order dated 20<sup>th</sup>

January, 2016 of payment of Rs.1 crore be stayed for 6 weeks.

7. This is not the scope of this Application, hence, such order cannot be passed.

8. Civil Application is disposed of.

**(MRIDULA BHATKAR, J.)**