IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 395 OF 2012
IN
SUIT NO. 461 OF 2010
WITH
NOTICE OF MOTION NO. 543 OF 2010
WITH
NOTICE OF MOTION NO. 964 OF 2010
WITH
NOTICE OF MOTION NO. 2538 OF 2011
WITH
NOTICE OF MOTION (L) NO. 2659 OF 2014

M/s Edit II Productions ...Plaintiff
vs.
Standard Chartered Bank & Ors. ....Defendants

WITH
NOTICE OF MOTION NO. 1348 OF 2013
IN
SUIT NO. 461 OF 2010

Mr.Shoeb Mohammed Taj Mohammed Shaikh & Ors. ...Applicants / Orig.Deft.Nos.2 to 4

In the matter between

M/s Edit II Productions ...Plaintiff
vs.
Standard Chartered Bank & Ors. ....Defendants

WITH
CONTEMPT PETITION NO. 25 OF 2012
IN
NOTICE OF MOTION NO. 543 OF 2010
IN
SUIT NO. 461 OF 2010

M/s Edit II Productions ...Petitioner / Plaintiff
vs.
Mrs.Mumtaz Shoeb Shaikh ....Respondent / Defendant

Mr. Rohaan Cama I/b Law Juris for Plaintiff.
Mr. Hiren MeHta a/w Ms. Anisha Balse & Parikshit Desai for Defendant No. 1
Ms. KrantI Anand for Defendant Nos. 2, 3 & 4
Ms. Rajlaxmi Punjabi for Respondent No. 2 in NMSL 2659/14.

CORAM : S.C. GUPTE, J.

RESERVED ON : 15 DECEMBER 2015
PRONOUNCED ON : 13 APRIL 2016

ORDER :

This Notice of Motion is taken out in a suit alleging breach of trust and forgery against an employee of the Plaintiff (Defendant No. 2) in connivance with other Defendants (Defendant Nos. 3 and 4) by forging cheques drawn on the Plaintiff's account with Defendant No. 1 Bank, against whom a deficiency of service has been alleged. The Plaintiff seeks a money decree in respect of the defalcated amounts jointly and severally against all Defendants and also a decree for sale of various properties purchased or acquired in the names of Defendant Nos. 2 to 4 or any of them from out of those amounts. The Notice of Motion seeks appointment of a receiver in respect of the properties described in the affidavit in support of the Motion with a direction to the receiver to hand over the possession of the properties to the Plaintiff.

2. The case of the Plaintiff may be briefly set out as follows:

The Plaintiff, a registered partnership firm of Mrs. Binaifer Sanjay Kohli ('Binaifer') and her husband Mr. Sanjay Kohli ('Sanjay'), is in the business of film and television entertainment production. Till the financial year 2006–07, the firm was a proprietorship of Binaifer under the name and style of M/s Edit-II Productions. It was maintaining a bank account with Defendant No. 1. Sanjay was the authorized signatory of that account along with Binaifer. In the financial year 2006-07, the firm was converted into partnership and has since been carrying on the business under the same name. All assets and effects including the balance in the bank account as well as the staff were transferred to the partnership as a going concern. Defendant No. 2, who had been working as a Chief Accountant with the firm when it was a proprietorship also continued to work with the partnership after the former's conversion into the latter. In the month of November 2008, the Income Tax Department carried out investigations of the Plaintiff's books of account. Since the earlier auditor along with Defendant No. 2 could not satisfactorily answer several querries and doubts, new auditers were appointed by the Plaintiff who thoroughly went through various transactions and noticed discrepancies and fraudulent entries. Defendant No. 2 could not satisfactorily explain the same and instead stopped attending the Plaintiff's office and went missing. As a result, Binaifer lodged an FIR with the Khar Police Station in Mumbai. Defendant No. 2 was arrested by the Police. During police investigations, it came to light that Defendant No. 2 had siphoned away a large amount of over Rs. 3 crores from the Plaintiff's account during 2005 and 2008, by forging the signatures of Sanjay. In all, Defendant No. 2 was found to have forged 363 bearer cheques and 70 account payee cheques, all of which were negligently honoured by Defendant No. 1. Several direct payments were made through these cheques to Defendant No. 3, wife of Defendant No. 2 as also to third parties on her behalf, against which 16 properties were purchased in the name of Defendant No. 3 for a total consideration of over Rs. 1.50 crores. (Out of these, 4 properties were subsequently sold for about Rs. 28.94 lacs.) Defendant No. 2 also bought two properties in his own name for a consideration of Rs. 5.09 lacs. (Out of these, one property of the purchase value of Rs. 2.25 lacs was subsequently sold.) Defendant No. 2 also bought two properties in the name of Defendant No. 4 for a consideration of Rs. 9.80 lacs. (Out of these, one property of the purchase value of Rs. 3.62 lacs was subsequently sold.) As of the date of the plaint, as many as fourteen properties were still held in the name/s of Defendant Nos. 2 to 4. These are described in the plaint. Pending the suit, the Plaintiff also prosecuted criminal proceedings against the Defendants for criminal breach of trust and forgery. The police seized all these properties under the provisions of Criminal Procedure Code ('Code'). The Plaintiff filed an application under Section 105 E of the Code for return of the property. The application, rejected by the learned

Metropolitan Magistrate, was allowed in revision by the Sessions Court. The order, however, could not be fully implemented, since in the meantime the properties were given by the Defendants on licence to third parties. In the premises, after carrying out appropriate amendments to the suit, the plaintiff has taken out the present Notice of Motion for appointment of Court Receiver and possessions of 11 properties described in the affidavit in support of the Notice of Motion.

3. There is overwhelming *prima facie* evidence on record to show that these properties have been acquired from out of funds fraudulently siphoned off from the account of the plaintiff by breach of trust and forgery. The details of payment of purchase money towards the properties have been placed on record. The entire payment (total of over Rs. 1.30 crores) has been traced in police investigations save and except a sum of about Rs. 16.20 lacs. These payments have been made partly directly by cheques drawn on the Plaintiff's account to the accounts of Defendant No. 3, partly in cash and partly by direct payments from the plaintiff's account to the accounts of vendors. Direct cash withdrawal by forged cheques from the plaintiff's account and corresponding deposit of over Rs. 66 lacs in the account of Defendant No. 3, who has no Independent source of income, has been p*rime facie* established. So also, by 34 forged cheques, an amount of over Rs. 4.40 lacs was deposited into the account of Defendant No. 3, after creating a creditor's account in her name, though no services were in fact rendered by her to the plaintiff. The police investigations have also revealed that excess payments were made to certain employees by showing excess expenditure, against which kickbacks were received by Defendant No. 2. An amount of over Rs. 1.12 crores has been traced by the police as having flown into the various bank accounts of Defendant No. 3. These details including the various abnormal transactions reflected in these accounts have been placed on record with particulars of cheques, amounts, etc.

14. There is hardly any adequate explanation for all this material in the pleadings of Defendant Nos. 2 to 4 except to say that these cheques have been issued by the authorized signatory, i.e. Sanjay himself. That is against the weight of the evidence on record. There is no reason why Sanjay should have issued all those cheques to Defendant No. 3 or third parties on her account. Besides, it leaves unexplained several cash deposits into the account of Defendant No. 3, which match with cash withdrawals from the plaintiff's account. At the hearing of the Motion, points were made on behalf of the Defendants on (i) the locus of the Plaintiff to seek reliefs, (ii) the leave & licence agreements under which third parties are in occupation of the properties and licence fees received, (iii) personal occupation of the Defendants for residence and (iv) liability of Defendant nos. 2 to 4 to bring into the Court arrears of licence fees already received by them. All these points are dealt below.

15. This court, in **Haldyn Glass Limited Vs. Saumyalata Shyama Shetty & Anr.**[1], in a similar set of facts, where the plaintiff, as in our case, had discharged its burden *prima facie* to show that the funds for purchase of the suit flat had come from the plaintiff's account and by an elaborate scheme of embezzlement and misappropriation on the part of the Defendant, stated the law on appointment of a Court receiver in such matters in the following words.

> "15. The power of the Court to appoint a court receiver is to be exercised, if the Court finds it just and convenient to appoint such Receiver. The object of appointing a court receiver is to protect, preserve and manage the suit property during the pendency of the suit. There may be a well founded apprehension that the property in the suit may be dissipated or other irreparable mischief may be done to it, unless the Court appoints a receiver. There may also be a case for holding the property in the hands of an officer appointed by the Court for the benefit of the true owner that may be found after the conclusion of the trial. In the latter case, not only is the property to be protected and

1 NMS (L) No. 1232/14 in S.(L) 534/14 decided on 1.8.2014

preserved, but also managed *inter alia* by receiving income therefrom so that the property and its income would be available for the benefit of the true owner. There may also be other weighty reasons for such appointment. In sum, the appointment of a receiver is matter which rests on the sound discretion of the Court. In the present case, *prima facie* the property has come in the hands of Defendant No.1 through illegal means and there is a concrete apprehension of dissipation of the property or irreparable mischief thereto, if the court receiver is not appointed. In an old Calcutta case, the Calcutta High Court explained the distinction between the case in which a temporary injunction is granted and a case in which a receiver is appointed. In **Chandilal vs. Padmanand,** (1895) ILR 22 Cal 459**,** the Court held that while in either case, it must be shown that the property should be preserved from waste or alienation; in the case of temporary injunction, it is sufficient if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged, whilst in the case of receiver, the plaintiff has to show good *prima facie* title to the property over which the receiver is sought to be appointed. In the facts of the present case, as pointed out above, the Plaintiff has clearly made out a good *prima facie* case to show that the property was purchased out of funds embezzled from it and had to be made over to the Plaintiff and that there was clear likelihood of the property being dissipated or encumbered and / or irreparable mischief being done to it at the hands of the wrongdoer.

16. As discussed above, here is a case for appointment of court receiver not only on the ground that the property needs to be protected, but also on the ground that it must be preserved and managed for the benefit of the true owner of the property and the property as well as its income should be held by an officer of the court for the benefit of the true owner to be found at the trial.

17. There is one more reason that the Court must grant the prayer of receiver in the present case. This is not a case of an ordinary civil dispute between rivals claiming to be entitled to an immovable property. This is a case of acquisition of a valuable immovable property by resorting to criminal acts of cheating, forgery and criminal breach of trust. Admittedly, more than Rs.37 lakhs have been withdrawn by Defendant No.1 from the accounts of the Plaintiff and paid to the vendor and

various parties towards purchase and renovation of the suit flat. There is no plausible explanation of any lawful authority to do so on the part of Defendant No.1.Even otherwise, having regard to the elaborate scheme of siphoning off funds from the accounts of the Plaintiff, which is *prima facie* borne out from the record produced by the Plaintiff before this Court, there is reason to believe that the other funds for purchase of the suit flat have also come from these very criminal acts. The Delhi High Court in the case of **Subroto Ghose vs. Ashok Kumar Gupta,** MANU/DE/0828/1996, was concerned with the case of a similar act of grabbing of immovable property by the defendant by illegal means, and by hatching a criminal conspiracy and preparing false and fabricated documents. In that context, the Court held as follows :

> "(19) The next question is what should be the appropriate order to be passed in the facts and circumstances of the case. The facts noted above show that the present is not the routine case of a suit for possession filed by an owner against a licence after expiry of the licence period. It is also not a case of possession of property being sought from a person whose possession though initially authorized, has become unauthorized on the day of institution of the suit. It is a case of grabbing of a valuable immovable property through criminal acts. It is a very serious matter where the defendants 1 to 5 have prima facie included in criminal conspiracy, fraud, fabrication of documents, collusion and deceit knowingly and intentionally using false and fabricated documents to falsify public records. Such blatant acts deserve to be dealt with through strong and effective measures. The defendants cannot be permitted to continue to enjoy the fruits of their illegal acts. They do not deserve to remain in possession of the suit property even for a single day any further. It will be a travesty of justice to ask the plaintiff to wait till the final decision of the suit when a decree for possession may be ultimately passed in the facts and circumstances of the case. I feel it eminently, just and convenient to appoint a Receiver to take possession of the suit property and to manage the same.""

16. Learned Counsel for Defendant Nos. 2 to 4 sought to distinguish the facts in **Haldyn Glass Limited's** case from the facts of our case. Counsel submitted that unlike in **Haldyn's** case, in the present case

Defendant No. 2 was not an authorized signatory and it was the authorized signatory here, i.e. Sanjay himself, who signed the cheques. Secondly, it was submitted that in **Haldyn Glass** more than 50 percent amount for purchase of the suit flat had come out of the plaintiff company's account. It was submitted that there were no averments of fraud in the notes to balance sheets and annual accounts of the Plaintiff and that the allegations of embezzlement had come only after IT raids on the Plaintiff. None of these is really a distinguishing feature. As I have noted above, the forgery and embezzlement are *prima facie* established. Even the money trail is adequately traced and made out. Want of reference in the annual accounts or timing of the allegations are irrelevant in the face of voluminous material which is otherwise available on record. The law stated in **Haldyn Glass** clearly applies to the facts of the present case. There is a clear case for appointment of a receiver.

17. The plaintiff is the successor of the original proprietorship of Binaifer, having taken over it as a going concern. The plaintiff can most certainly seek relief in respect of transactions which date back to the tenure of the proprietorship.

18. The fact that leave and licence agreements are entered into, which disclose negligible or nil licence fees, actually supports the plaintiff's case.

19. As for the reliefs which could possibly be granted in the peculiar facts of the case, it needs to be noted that out of 11 properties set out in para 4 of the affidavit in support of the Notice of Motion, at least five properties are given out on licence to third parties and there is no reason why during the currency of these licences, the income by way of licence fee should not come into the hands of the Court Receiver and thereafter the premises should be lincenced and income received by the Receiver. Three properties, namely, Row House No. 4-A in Gaurav Residency Phase – 2, Flat No. 201 in Geeta Ratna Building and Flat No.

003 in Chheda Enclave, are claimed to be in possession of Defendant Nos. 2 and 3 for their residence, the mother of Defendant No. 2 for her residence and Defendant Nos. 2 to 4. Appropriate injunctive reliefs could be granted in respect of these. As for the remaining properties, namely, Flat No. 704 in Evershine Woods, and Shop Nos. 1072 and G044 in Ease Zone and Express Zone, these properties form part of the subject matter of Notice of Motion (L) No.2659 of 2014. The respective owners / developers of these properties are impleaded as Respondents to this Notice of Motion. These properties are in the hands of the respective vendors (Respondents) since payments for the same were made by the Defendants only in part and there have been subsequent defaults. It is just and equitable that the plaintiff may be permitted to pay the balance consideration and take into its possession these flats as agents of the receiver with a right to create lincences in respect thereof and appropriate the amounts towards such payments and hold the balance subject to the result of the suit.

20. That only leaves the question, whether the Defendants should be ordered to bring into the Court the arrears of licence fees received by them till date. This plea is made by the plaintiff on the basis of an order passed by this Court (Per Gavai J.) in the Criminal Writ Petition filed by Defendant Nos. 3 and 4 to deposit compensation received by these Defendants into the Court to the credit of the present suit. As of date, we do not have before us the calculations of the arrears received by the Defendants so far. The pleadings are not adequate in this behalf. It is not necessary to hold up the hearing of these Motions for the propose of ascertaining these amounts. It may instead be more appropriate to reserve liberty unto the plaintiff to make a specific application for deposit of arrears of licence fees so far received by Defendant Nos. 2 to 4.

21. In the premises, the following order is passed:

(a) The Court Receiver, High Court, Bombay is appointed a receiver in respect of the properties described in paragraph 4 of the affidavit in support of Notice of Motion No. 395 of 2012 with powers under order 40 Rule 1 of C.P.C;

(b) The Court Receiver shall take only formal possession of three items from out of these properties, namely, (i) Row House No. 4-A in Gaurav Residency Phase – 2, (ii) Flat No. 201, Geeta Ratna Building, and (iii) Flat No. 003, Chheda Enclave and not disturb the physical possession of the occupants thereof ;

(c) The Court Receiver shall pay to the Respondents to Notice of Motion (L) No. 2659 of 2014 the balance consideration for three properties forming part of the subject matter of that motion, namely, (i) Flat No. 704, 7th Floor, Evershine Woods, B3 (3) Building, Mira Road (East), Thane District, (ii) Shop No. 1072 on Ground Floor, Ease Zone, Goregaon (West), Mumbai, and (iii) Shop No. G044, Ground Floor, Express Zone, Patel Vanika, Western Express Highway, Malad (East), Mumbai–400 063 and take over the properties and handover possession thereof to the Plaintiff as agent of the Court Receiver. The payment of such balance consideration shall be funded by the Plaintiff;

(d) The Plaintiff shall, as such agent, be entitled to create licences in respect of these three properties and recover licence fees and appropriate the same upfront towards reimbursement of the payment of the balance consideration in terms of Clause (c) above, and retain the balance licence fees subject to further orders that may be passed by this Court in the suit;

(e) As for the remaining five properties, the Court Receiver shall write to the licensees thereof and ask for the payment of license fees after the date of this order directly to the Court Receiver, to be held to the credit of the suit and suitably invested in fixed deposits of Nationalized Bank/s, to abide by further orders that may be passed in the suit;

(f) After the expiry of the presently subsisting leave & licence agreements, the Court Receiver shall take over physical possession of the properties mentioned in clause (e) above, and appoint third party agents to use and occupy the premises on payment of such license fees and subject to such security deposits as the receiver may deem fit after obtaining a suitable report from a valuer on his panel for such fees and deposits;

(g) The Court Receiver shall receive and suitably invest amounts received towards the agency agreements referred to in clause (f) above in fixed deposits of Nationalized Banks, to abide by further orders that may be passed in the suit;

(h) Notices of Motion No. 395 of 2012 and 2659 of 2014 are disposed of;

(i) In view of disposal of Notice of Motion No.395 of 2012, Notice of Motion No.543 of 2010, which was taken out in the unamended suit for similar reliefs, does not survive and the same is also disposed of;

(j) In view of the orders passed on Notice of Motion No.395 of 2012 and Notice of Motion No.2659 of 2014 and for the reasons stated in the order, Notice of Motion No.964 of 2010, which is taken out by Defendant Nos.3 and 4 for injunction restraining the Plaintiff from causing any obstruction or disturbance in the possession of Defendant Nos.3 and 4 of the properties forming part of the subject matter of the suit, is dismissed;

(k) So also, Notice of Motion No.1348 of 2013, which is taken out by Defendant Nos.2, 3 and 4 for permission to replace the existing licences in respect of the properties being the subject matter of the present suit, is, for the same reasons, dismissed;

(l) Since the attachment of the properties levied by the Investigating Agency was set aside by this Court in Criminal Writ Petition No.3102 of 2010 and the properties are restored to the possession of the occupants, no order needs to be passed on Notice of Motion No.2538 of 2011, which is taken out by Defendant No.3 for removal of seals put by the Investigating Agency on the properties. The motion is, accordingly, disposed of;

(m) Contempt Petition No.25 of 2012 is stood over, to be taken up by the learned Judge taking contempt petitions in suits;

(n) Liberty is reserved for the Plaintiff to take out a Notice of Motion for deposit into this Court of arrears of licence fees referred to in the order above by Defendant Nos. 2 to 4;

(o) Costs to be costs in the cause.

(S.C. Gupte, J.)