

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY JURISDICTION
OFFICIAL ASSIGNEE'S REPORT NO. 3 OF 2016
IN
INSOLVENCY PETITION NO. 28 OF 2001
INSOLVENCY PETITION NO. 82 OF 2002**

Re: 1. Bansi Jairamdas Jaising & Anr.
2. Ravi Bansi Jaising ...Insolvents

Ex-Parte: ...Petitioning
Uttamchand Devichand Shah Creditor

Mr. K. A. Shah, *for the Official Assignee.*
Mr. K. S. Lalwani, *for the Petitioning Creditor.*
Mr. K. R. Bulchandani, *a/w Mr. Amit D. Nikam, i/b Kamal & Co.*
for the Applicant.
Ms. Kanchan Chavan, *for Auction Purchaser.*
Mr. M. D. Narvekar, **Official Assignee**, *present.*

CORAM: G.S. PATEL, J
DATED: 15th March 2016

PC:-

1. This order disposes of a report dated 3rd February 2016 and a supplemental report dated 29th February 2016. The principal report relates to Flat No. C-624 situate at Sarita Vihar, DDA, New Delhi. Mr. Bulchandani who appears for the Applicant Prakash Jairamdas Jaising (“**Prakash**”) says that this flat was never a

property of Ratna Bansi Jaising or of any Insolvent could never have been included in the estate of the Insolvent. He says that it has come to be treated as such through sheer inadvertence and oversight, possibly on his own part in not examining in sufficient detail three lists of estates that were placed before the Court earlier, in one of which this flat was included.

2. I must refer at this stage to the order dated 2nd September 2015 passed by Mr. Justice S. G. Gupte in Notice of Motion No. 5 of 2015. That was a Motion filed by Prakash's wife, Renu and the order also covered Notice of Motion No. 43 of 2014 filed by Prakash himself. The judgment considered what was to be done with this flat as also with another flat No. B-295 also at Sarita Vihar, DDA, New Delhi. Paragraphs 7, 8 and 9 of this judgment (as they appeared on page 9 of the judgment; there seems to be some errors in paragraph numbering) must be reproduced here:

"7. In that view of the matter, there is no case for the Official Assignee to proceed against any of these two assets. The Notice of Motion of the Applicant are, accordingly, allowed in terms of prayer clause (b) thereof. The order of 22 July 2014 insofar as it requires the Official Assignee to take steps in respect of flat No. C-624 is recalled and the Official Assignee is directed not to proceed in respect of the two subject properties.

8. The Official Assignee, however, in the face of the facts, which are noted above, is directed to investigate the matter of both title and possession of the

two properties described above and make a report to this Court. On such report, this Court will consider whether or not to direct the Official Assignee to take any steps in respect of these properties before an appropriate Civil Court to seek any order against the Applicant or any other third party. The Official Assignee's report, namely, Report No. 20 of 2015, where the Official Assignee seeks directions for joinder to, and further prosecution of, civil proceedings between the Applicant herein and Monisha, shall be considered later when the Official Assignee makes a report to the Court as directed above. Any report made by the Official Assignee in this behalf shall be served on the Applicant herein. As and when such report is made, a notice of such report shall be served on the Applicant before any order is sought on the report.

9. The Motions are disposed of accordingly. Symbolic possession of the Official Assignee is disposed of."

3. This makes it clear that there is already one finding that the Official Assignee has no cause to proceed against either of these two flats. The two Motions before Mr. Justice Gupte were, therefore, allowed. The Official Assignee was directed not to proceed against either of these properties. However, in paragraph 8, the Official Assignee was directed to investigate the details of the title and possession of both properties. I believe this was absolutely the correct course of action as a matter of prudence.

4. It is in this background that the present report has come to be filed, although its prayer is some what over ambitious. In paragraph 10 of the Official Assignee's Report, this is what the Official Assignee has to say:

"10. The Official Assignee further submits that that after verification of the compilation of original documents and the affidavits filed by the Advocate for the Applicant, **it is seen that the title and possession in respect of Flat No. B-295 is in the name of the Applicant, however, as far as possession in respect of Flat No. C-624 is concerned it is with the Applicant but the title is in the name of Ratna Bansi Jaising and not in the name of the Applicant.** The Official Assignee submits that from the documents furnished by the Applicant Shri Prakash Jairamdas Jaising and the compilation of documents, it appears that Shri Prakash Jairamdas Jaising and his family members have made payments to Delhi Development Authority to release the premises in favour of Smt. Ratna Bansi Jaising (since deceased) and the other documents suggesting that further payments has been made by Shri Prakash Jairamdas Jaising and his family members. The Official Assignee further submits that the Advocates for the Insolvents by their letters applied for copies of the original documents and the affidavit filed by the Applicant, however, the same were not furnished to the Advocates for the Insolvents and therefore

the Insolvents have not filed their say in respect of title and possession of Flat No. B-295 and Flat No. C-624. The Official Assignee will refer to and rely upon the correspondence that has transpired between the Advocates for the Insolvents and Applicant as and when produced."

5. This makes it clear that other than an allotment letter, there is nothing at all to indicate that Flat C-624 ever belonged to or fell in the estate of any of the three insolvents. On the contrary, the evidence seems overwhelmingly to point to Prakash and his family having resided, used and lived in flat C-624 for merely two decades or more. He also claims to have paid the consideration for it. There is a very little reason in these circumstances to accept the prayer of the Official Assignee that Flat No. C-624 be subjected to some sort of injunction or restraint. To do that, first and foremost, the flat would have to be shown unambiguously as being in the estate of one of the insolvents or having been offered for the benefit of the insolvent by a well-wisher. Neither is the case here.

6. The Official Assignee's Report is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)