

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION NO. 1325 OF 2017
IN
ARBITRATION PETITION NO. 1429 OF 2015**

Tata Capital Housing Finance Limited	...Petitioner
<i>Versus</i>	
M/s Dwelling Hospitality India (P) Ltd. & Ors	...Respondents
And	
Mr.Vishal Peter And Ors	...Applicants

Mr.Mayur Khandeparkar with Mr.Jay Vakil i/b. MDH & Partners, for the Petitioner.

Ms.Pranjali Mehendale i/b . Lex Services, for the Applicants.

Mrs.Kavita Ambekar, Ist Asstt. to Court Receiver present.

CORAM : G.S.Kulkarni, J.

DATE : 28th August, 2017

P.C. :

1. The applicants in this notice of motion are claiming to be the licensees of respondent no.3-Mr.Vinod Bychegowda, of the premises being 401, 3rd floor, 'The Palm Apartment' No.7, Whistling Green Layout and Challaghatta, Bangalore (for short 'the said premises'). By an order dated 17 January 2017, Court Receiver, High Court, Bombay came to be appointed as a receiver of the said premises, the premises being a mortgaged property in relation to the

financial borrowings which was availed by respondent no.3. In paragraphs 8 and 9 the Court ordered as under:-

“8. In the meantime, since the home loan was secured by a mortgage of the property in question, more particularly described in Exhibit “G” at page 86, viz., Flat No.401, 3rd Floor, “The Palm” Apartments, No.7, Whistling Greens Layout, Challaghatta, Bangalore, Karnataka-560037, in my view the Court Receiver must be appointed of that asset. The Court Receiver is therefore, appointed of the mortgaged property described above. He will take symbolic possession of this property acting on an authenticated copy of this order. The local police authorities in Challaghatta will render assistance to the Court Receiver. They will also act on an authenticated copy of this order.

9. These being a residential premises, the Court Receiver will, till further orders of the Court, not disturb the possession of the persons found in occupation. The Court Receiver will make a report as to who is in actual occupation. If it is found that the Respondents are not themselves using the premises, the Receiver will report as to the basis on which the occupant is in possession of those premises. The question of appointing an agent of the Receiver is deferred till the next date.”

2. Accordingly, the Court Receiver had proceeded to take possession of the said premises. The order dated 26 April 2017 records that physical possession of the premises was taken over by the Court Receiver.

3. The case of the applicants is that they are the licensees of

the suit premises and in their absence the Court Receiver had locked the premises and a notice, that the premises were in possession of the Court Receiver, was pasted on the outer door of the said premises, only then the applicants learnt that the premises are sealed in pursuance of the orders passed by this Court in the above proceedings. The applicants contend that they have their day to day belongings which are lying in the said premises and which are required to be released. The applicants submit that they be permitted to remove the belongings. Accordingly, the applicants make the following prayers:-

“(a) That this Hon'ble Court be pleased to allow the Applicants to intervene in the captioned matter.

(b) That this Hon'ble Court be pleased to order and direct the Court Receiver as appointed by vide order dated 26th of April, 2017 to open the seal of the said premises being 401, 3rd floor, The Palm Apartment No.7, Whistling Green Layout, and Challaghatta Bangalore (hereinafter referred to as Said Premises) thereby allowing and permitting Applicants to remove their belongings lying inside the said premises.”

4. I have heard the learned Counsel for the applicants and Mr.Khandeparkar, learned Counsel for the petitioner – TATA Capital Housing Finance Ltd. Respondent No.3 is not appearing though the appearance of the advocate for respondent no.3 is shown on the cause-list.

5. Mr.Khandeparkar, learned Counsel for the petitioner at the outset would state that the petitioner has no objection for the applicants to be permitted to remove their belongings lying in the premises. Mr.Kandeparkar however, on instructions, submits that the petitioner is not agreeable for the correctness of the list of the items as set out at “Exhibit H” to this notice of motion.

6. In the circumstances, in the interest of justice, the notice of motion is required to be allowed. The same is allowed in terms of prayer clauses (a) and (b).

7. The Court Receiver shall issue appropriate notices to all the parties at the time of removing the seals of the premises to enable the applicants to remove their belongings lying inside the premises. The exercise of permitting the applicants to remove the belongings be undertaken and completed within a period of ten days from today. All necessary formalities be complied by the Court Receiver.

Notice of Motion is disposed of in the above terms. No costs.

[G.S.Kulkarni, J.]