

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1879 OF 2019
IN
WRIT PETITION NO.509 OF 2016**

Kalyan Jewellers India Limited & Ors. .. Applicants

IN THE MATTER BETWEEN :

Kalyan Jewellers India Pvt. Limited & Ors. .. Petitioners

Vs.

Union of India & Ors. .. Respondents

.....

Dr.Milind Sathe, Senior Advocate a/w. Mr.Rishit Badiani and
Mr.Mahesh Sahasranaman i/b. M/s.A.S. Dayal & Associates,
Advocate for the Applicants.

Ms.Rathina Maravarman, Advocate for Respondent No.3.

Mr.Akhilesh Dubey a/w. Mr.Siddhesh Rajput i/b. M/s.Law
Counsellors, Advocate for Respondent No.4.

Mr.N.P. Dalvi, Advocate for Arunachal Pradesh Government.

.....

**CORAM : A.A. SAYED AND
PRAKASH D. NAIK, JJ.**

DATED : AUGUST 27, 2019.

P.C. :

This Civil Application is taken out in the Writ Petition
which is disposed of. The prayers of the Civil Application read as
under:

(a)....

- (b) *That this Hon'ble Court be pleased to direct Respondent No.3 Bank to take over physical possession of the said premises (symbolic possession having already being taken by the Respondent Bank on 6th January 2018) or;*
- (c) *In the alternative to prayer (b) above, this Hon'ble Court be pleased to allow the Petitioners to hand over the possession of the said premises to Respondent No.2 (Tax Recovery Officer) or;*
- (d) *In the alternative to prayer clause (b) above, this Hon'ble Court be pleased to allow the Petitioners to hand over the possession of the said premises to Respondent No.4, the Lessor;*
- (e) *That this Hon'ble Court be pleased to further direct that no permission of this Hon'ble Court is necessary for the Petitioners to terminate the said Leased Deed dated 6th March 2013 as observed in the order dated 29th July 2019 passed by the Hon'ble Presiding Officer, DRT – II, Mumbai."*

2 Since the Petitioner is a lessee under the Lead Deed dated 6th March, 2013 and does not desire to continue in possession of the leased premises in question, the Civil Application can be disposed of by passing the following order:

:: ORDER ::

- (i) The Petitioner is permitted to surrender and hand over possession of the leased premises under the

Lease Deed dated 6th March, 2013 to the lessor, the Respondent No.4-borrower. The Applicant shall deposit the rent upto 21st August, 2019, as stated in its letter dated 26th August, 2019.

(ii) We record the statement of the learned Counsel for Respondent No.4 that the Respondent No.4 shall not create further 3rd party rights in respect of the said premises since we are informed by learned Counsel for Respondent No.4 that there is already a leave and licence Agreement executed in respect of the said premises. Learned Counsel for Respondent No.3-Bank points out that this has been done illegally by Respondent No.4.

(iii) Since the Respondent No.3-Bank has already obtained an order under Section 14 of the SARFAESI Act of taking over physical possession of the premises in question, the Respondent No.3-Bank would be at liberty to take steps to execute the order of the District Magistrate in accordance with law. We make it clear that this decision shall

not come in the way of DRT passing orders at it deems appropriate;

- (iv) Since we have permitted the Applicant to surrender /handover possession of the leased premises to the Respondent no.4, the Undertaking as recorded in paragraph 7 of the order dated 14th February, 2017 in Writ Petition No.509 of 2016 (alongwith Civil Application 353 of 2017) shall stand modified to the extent of the date of surrender/handing over possession of the leased premises to the Respondent No.4;
- (v) This order is passed without prejudice to the rights and contentions of the parties. Needless to say that all contentions of the parties are kept open to be raised before the DRT;
- (vi) On the insistence of learned Counsel for the Arunachal Pradesh Government, we record that his oral request for intervention by the Arunachal Pradesh Government in the present Civil Application is rejected.

3 The Civil Application to stand disposed of
accordingly.

(PRAKASH D. NAIK, J.)

(A.A. SAYED, J.)