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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 2 OF 2019
IN
COURT RECEIVER'S REPORT NO. 139 OF 2019
IN
COMM ARBITRATION PETITION NO. 79 OF 2017**

Phoenix ARC Pvt Ltd

...Petitioner

Versus

Aslam U Patrawala & Ors

...Respondents

Mr Vishal Kanade, *with S Samantaray, i/b Medha Rane, for the Applicant/Petitioner.*

Mr Madhur Rai, *i/b PRS Legal, for the Applicant in IA/1/2019.*

Yugal Anjana Bhatia, *for Respondent No. 1 in SCN/165/2019.*

Mr DN Kher, *Court Receiver, is present.*

CORAM: G.S. PATEL, J.

DATED: 26th November 2019

PC:-

1. The interim application by the petitioner, a secured creditor, seeks the following reliefs:

“(a) Pending the hearing and final disposal of the Arbitration Petition, that this Hon’ble Court be pleased to direct the Court Receiver, High Court of Bombay to hand over the physical possession of the mortgaged property viz.,

Flat No. 1, 33rd Floor, Type C, B Wing of Building No. 18, Imperial Heights, Malad Goregaon Link Road, Goregaon (west), Mumbai 400 062, along with two car parking spaces bearing No. 59 and 59T, in podium 2, in the said building to the authorised officer of the Applicant, secured creditor and discharge the Court Receiver of High Court, Bombay on payment of necessary charges and costs of Court Receiver, High Court Bombay;

(b) Pending the hearing and final disposal of the Arbitration Petition, after handing over the physical possession of the suit flat to the Applicant, this Hon'ble Court be pleased to allow the Applicant to exercise the rights under the provisions of SARFAESI Act for enforcement of security interest including the sale of the mortgage flat under the SARFAESI Act; for adjusting the sale proceeds to the outstanding dues.

(c) That this Hon'ble Court be pleased to direct the Licensee Mr Rajiv Narain, to remove the articles lying in the mortgage property forthwith/or within the time as this Hon'ble Court may deem fit, to enable the Applicant to take further steps towards the sale of the mortgage property.”

2. On 4th November 2019, I made the following order on Interim Application No. 1 of 2019 in Court Receiver's Report No. 139 of 2019 in Commercial Arbitration Petition No. 79 of 2017:

“1. Heard.

2. The matter was to be placed high on board this morning, or on the supplementary board today, by leave granted by the learned Vacation Judge. Due to an error, it could not be listed this morning. In any case, there is no supplementary board on Mondays.

3. Pursuant to an order of 17th October 2019 the Receiver was scheduled to take possession of the premises in question from the Applicant Mr Rajiv Narain. The premises are Flat No. 1 on the 33rd floor of Type 'C', Building No. 18, 'B' Wing, Imperial Heights, Malad Goregaon Link Road, Goregaon (West), Mumbai 400 062.

4. The Receiver gave notice that he would take possession. He did so by his communication dated 24th October 2019. A copy of this is at Exhibit "E" to the Interim Application.

5. Since the matter was not listed this morning, I instructed the Receiver to stay his hands till 3.00 pm and allowed production at 3:00 pm.

6. Mr Rai for the Applicant categorically accepts that the application is really one for clemency and indulgence and seeks an extension of time to vacate. This is not as innocuous as it sounds. It has to be viewed in context. That context is the detailed order of 17th October 2019 (GS Kulkarni J). After setting out at length the previous orders, Kulkarni J noted that the Applicant, Narain, made a statement that he had been paying license fees to the 1st Respondent, one Aslam U Patrawala, but that Patrawala did not deposit the amount with the Court Receiver (paragraph 3). Kulkarni J noted that there was nothing on record on behalf of Narain to show that after an earlier order of 20th June 2017 (KR Shriram J), by which physical possession was directed, any amount was deposited with the Court Receiver or that there was any compliance of that order. Narain said he was willing to deposit all arrears. He sought time, as he had done even at the previous hearing on *5th August 2019*. The Court gave him eight weeks to vacate.

7. The matter was listed repeatedly thereafter and a final opportunity was given to him in the order of ***10th October 2019***.

8. I should reproduce paragraphs 6 and 7 of Kulkarni J's order of 17th October 2019:

“6. I am shocked and surprised at the submissions made today by the learned Counsel for the licensee. He has nothing to say on the position taken by his client and as recorded in the earlier orders. He says that his client cannot deposit any money as he was paying the licence fee to respondent No. 1. When asked as to how he could do this in the teeth of the orders passed by this Court and the solemn statements made on his behalf before the Court, learned Counsel for the licensee has no answer. For all this period the licensee kept the Court in dark about his real intention and enjoyed the benefit to possess the mortgaged premises. Respondent No. 1 does not deny this.

7. Perusal of all these orders and conduct of the licensee Mr Rajiv Narayan as also of respondent No. 1 Aslam U Patrawala, it appears that not only both these parties had taken the Court orders too casually, also they are in gross defiance of the orders passed by this Court, It prima facie appears that respondent No. 1 and the licensee, apart from the fact of having no regard to the orders passed by this Court, have in fact misled the Court in passing the above said orders and have accordingly managed to hold on to the

premises in question. This is thus a case where contempt proceedings are required to be initiated against respondent No. 1 Aslam U Patrawala and licensee Mr. Rajiv Narayan for having breached the orders of the Court.”

9. It is in these circumstances that Kulkarni J issued a contempt notice to both Patrawala and Narain. Those matters will take their own course.

10. However, in paragraph 11 of this order Kulkarni J said:

“11. In the meantime considering the conduct of respondent No. 1 Aslam U Patrawala as also the licensee Mr. Rajiv Narayan, it would be appropriate that the possession of the licenced premises be taken over by the Court Receiver. The licensee Mr Rajiv Narayan is accordingly directed to vacate the premises and hand over possession of the premises to the Court Receiver on or before 4 November 2019.”

11. Narain was, therefore, in no manner of doubt since 17th October 2019 as to what lay before him. Certainly, the date of 4th November 2019 could have come as no surprise to him.

12. This application is nothing but another delaying or dilatory tactic. As before Kulkarni J, I too am treated to the very same submission with promises and assurances of payment to be made at some future date. This is all far too familiar. It has been said and promised before. On each occasion the licensee has failed to honour his commitments to the Court.

13. Kulkarni J's order has not been challenged. It is not for me to modify, recall or interfere with that order much less attempt to sit in any form of review or appeal over it. Orders of this Court if not enforced in both letter and spirit undermine the authority of the Court and rule of law.

14. The application is rejected.

15. At this stage, I am shown a document annexed at page 61 of the Interim Application. This is supposedly a certificate from one Dr Kothari of 24th October 2019 saying that the Applicant is unable to 'walk properly' and has been 'advised bed rest till further investigations after eight weeks'.

16. The certificate reports a pre-existing medical condition — *as of 2008*. Even this cannot have come as surprise to the Applicant. This is yet another attempt to try and delay the inevitable by hook or by crook. It will not succeed.

17. I am equally unimpressed by the argument that the Applicant and his family will find themselves on the road, without shelter or a roof over their heads. That is an argument of desperation entirely unmoored from the facts. The statement of license fees allegedly paid to Patrawala at page 51 shows that this is obviously a family of quite considerable means. This flat on the thirty-third floor of a skyscraper is no hovel or shanty. Narain and his family will make necessary arrangements. They probably already have. If not, they must.

18. The Receiver is to proceed to take physical possession of the flat in question with necessary police assistance, if required (and only if required). Possession is to be delivered by 5.00 pm today to the Court Receiver with

no exceptions whatever. The Receiver will report to the Court once this is done.”

3. The Court Receiver is admittedly in physical possession.
4. The licensee will have ten days from today to remove all belongings, if any, that remain in the premises.
5. In view of this, the interim application is made absolute in terms of prayer clauses (a), (b) and (c).

(G. S. PATEL, J)