

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1422 OF 2021

IN

WRIT PETITION NO.3767 OF 2002

Messrs. Shri Ram Investments

... Applicant

IN THE MATTER BETWEEN :-

Messrs. Shri Ram Investments

... Petitioner

V/s.

Kaipee International

... Respondent

Mr. P. J. Thorat a/w Mr. Anish S. Jadhav, Advocate for Applicant/Petitioner.

Mr. Atul Damle, Sr. Advocate a/w Ms. Uma Sharma i/by Dharam & Co. for Respondent.

Mr. Afzal Abdul Gaffar Sopariwala, Partner of Kaipee International.

CORAM : A.S. GADKARI, J.

DATE : 25th October, 2021.

PC. :

1. The Court Commissioner Report and the photographs annexed thereto clearly indicate that, the Respondent has committed breach of Order dated 16th October, 2007 and are carrying out additions and alterations of permanent nature in the suit premises. It further appears that, the respondents have demolished internal wall of the suit premises thereby changing nature of the suit premises.

2. Mr. Thorat, learned counsel for the Applicant-Petitioner submitted that, the Respondent's Partnership Firm has also changed its composition thereby giving more rights to newly added partners, which as per various decisions of Supreme Court and this Court, amounts to creating third party right, title and interest in the suit premises.

3. Prima facie, it appears that, the act which is being committed by the Respondents is in utter violation of Para No.3 of the Order dated 16th October, 2007 passed in Civil Application No. 2487 of 2007.

In view thereof, the respondent is hereby directed not to further carry out any construction in the suit premises and to maintain status-quo as on today.

4. Mr. Thorat, learned counsel for Applicant/Petitioner submitted that partners of the Petitioner are senior citizens.

In view thereof, list the petition on final hearing board as per its own turn in the category of senior citizens.

5. At this stage, Mr. Damle, learned senior Advocate appearing for Respondent, on instructions from Mr. Afzal Abdul Gaffar Sopariwala fairly submitted that, the Respondent will restore position of the suit premises to its earlier position and will remove the construction carried out by the Respondent as has been mentioned in the para 15 of the application and will restore the position of the suit premises as per the plan annexed at Page-50.

The said statement is accepted.

He further submitted that, the restoration of position of suit structure will be without prejudice to the rights and contentions of the Respondent to be raised at the time of final hearing of the present Writ Petition.

6. In view of the statement made by the learned senior counsel, no further Orders are necessary.

7. In view of the statement made by the learned Senior Counsel for the Respondent, Mr. Thorat, learned counsel for the Applicant/Petitioner does not press prayer clause (b) at this stage.

Interim Application is accordingly disposed off.

[A.S. GADKARI, J.]