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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO. 2809 OF 2022

IN

COMMERCIAL IP SUIT NO. 268 OF 2015

Sanjeev Mehra, Carrying on Business,
Diwan Chand & Co.

...Applicant

IN THE MATTER BETWEEN

Asain Paints Ltd.

...Plaintiff

Versus

Diwan Chand & Co., & Anr.

...Defendants

* * *

- Mr. Rohan Kadam, Ms. Sayali Bandekar and Mr. Harish Raman, for Applicant/Original Defendant No. 5.
- Mr. Vinod Bhagat a/w Mr. Karan Khiani and Ms. Prachi i/by G.S. Hegde and Mr. V.A. Bhagat, for Plaintiff.

* * *

CORAM : MANISH PITALE, J

DATE : 14TH NOVEMBER, 2022.

P. C. :

1. By this Application the Defendant No. 5 is seeking specific directions from this Court. The brief background in which, the aforesaid application is moved is that in the present matter on 10th March, 2015, this Court had passed *ex-parte* ad-interim order, whereby Court Receiver was appointed. The Receiver executed the commission as a consequence of which, certain goods were seized and sealed. Thereafter, Defendant No. 5 was added as party and by order dated 11th February, 2016, a similar interim order was passed against the Defendant No. 5, for appointment of Receiver and seizing and sealing of offending goods at his premises.

2. The goods have been lying at two premises, one of which was rented a premises. When this application was taken up for consideration on the last date, this Court was informed that the Court Receiver had received a letter from an individual claiming to be the landlord of Defendant No. 5, stating that there was fire in the premises in question. The learned Counsel for the Defendant No. 5 requested for sometime to ascertain the facts and to place on record an affidavit. Today an affidavit of Defendant No. 5 is tendered, which is taken on record.

3. In the light of the aforesaid affidavit being placed on record, the learned Counsel appearing for Defendant No. 5 submits that the rented premises had indeed caught fire and as on today, the present application is being pressed only with regard to Prayer Clause (b) of the present application pertaining to the premises owned by the Defendant No. 5 at Kirti Nagar, New Delhi.

4. Reply to the said application is handed over by the learned Counsel for the Plaintiff, which is taken on record.

5. Having heard the learned Counsel for rival parties, this Court is convinced that Prayer Clause (b) can be granted, for the reason that the goods have been lying in the premises seized and sealed for a long period of time and if the Plaintiff desires to have

certain samples for the purpose of evidence, it can request for the same from the Receiver and the remaining goods can be permitted to be destroyed in the supervision of the Court Receiver.

6. In the light of the above, the present application is allowed in terms of Prayer Clause (b), which reads as follows :

“b. Discharge the Court Receiver, Bombay and permit the Applicant to destroy the goods (as inventoried at Exhibit D) and as presently stored at its premises at 2251/6, B.M. Munshi, Ramagh, New Ranjit Nagar, Kirti Nagar, New Delhi under the supervision of the Court Receiver, Bombay or such other person that this Hon’ble Court may appoint and within three weeks or such time that it deems fit and proper.”

7. It is further clarified that the Court Receiver shall permit the presence of representative of the Plaintiff, at the time the goods are destroyed and he shall permit the Plaintiff to retain samples from the said goods before their destruction. The cost for destruction of the goods shall be borne by Defendant No. 5.

8. Needless to say, the Defendant No. 5 will take necessary steps concerning the safety and security of the premises, since the goods are said to be chemicals/paints.

9. The application stands disposed of.

(MANISH PITALE, J.)