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

WRIT PETITION NO.11156 OF 2023

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Urshila Ajit Kerkar

... Petitioner

V/s.

Office of the Court Receiver, High Court,
Bombay & Anr.

... Respondents

Ms. Tanmayee Gadre with Mr. Gul Madani i/by Mr. S.
J. Khera for the petitioner.

Mr. Chirag Mody with Mr. Anuj Savla i/by DSK Legal
for respondent No.2

Mr. Mahendra Ghelani with Ms. Greeshma Thomas
i/by Law Chanter for respondent Nos.4 & 5.

Mr. S. K. Dhekale, Court Receiver, High Court of
Bombay and Mr. Rahul S. Powar, Clerk are present.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging an order dated 28th August 2023 granting prayers (a) to (f) in Court Receiver Report No.21 of 2022.

2. Prayers (a) to (f) in the Court Receiver's Report read as follows:

“(a) Reliefs prayed by Ms. Urshila Kerkar in Notice of

Motion No.2306 of 2022 be rejected.

(b) The Hon'ble Court please be direct Liz Investment Pvt. Ltd., Agent of Court Receiver, High Court Bombay to deposit the entire arrears of royalty amounting Rs.2,19,86,800/- (towards the arrears of royalty for the period from July, 2019 to August, 2022 @ Rs.5,26,000/-p.m. (38 months) alongwith penalty/late fee immediately in the office of Court Receiver, High Court, Bombay.

(c) Court Receiver, High Court, Bombay be directed to take forcible physical possession by break open lock of subject flat i.e. South Flat, Second Floor, with garage attached thereto situated at Mark Heaven Building, Apollo Bunder, P.J. Ramchandani Marg, Colaba, Mumbai-400 039 from M/s. Liz Investment Pvt. Ltd. or whosoever found in possession with the help of police assistance.

(d) In-charge of Colaba Police Station may be directed to provide necessary police assistance while taking forcible physical possession of suit flat.

(e) Cost of this report be fixed and may be awarded at Rs.5,000/- be recovered from M/s. Liz Investment Pvt. Ltd., Agent of Court Receiver or the same may be permitted to be appropriated from the funds available with the Court Receiver in the suit account.

(f) Any other directions that the Hon'ble Court may deem fit."

3. On 29th March 2004, Liz Investment Private Limited executed the agreement as an agent of receiver subject to payment of an initial royalty of Rs.1,10,000/- which was subsequently increased to Rs.5,26,000/- from 25th September 2008.

4. According to the petitioner, she is in possession of property delivered to Liz Investment Private Limited as an agent of the

receiver. According to the petitioner, she is a suspended director of Liz Traders and Agent Private Limited, the reconstituted name of Liz Investment Private Limited. According to the petitioner, on 25th February 2022, NCLT admitted Company Petition No.(IB)-2941 (MB) of 2019 and ordered initiation of CIRP against Liz Traders, pending before NCLT.

5. On 18th September 2021, the Court Receiver filed a Court Receiver Report No.17 of 2022 seeking deposit of arrears of compensation/royalty with effect from 1st July 2019 till August 2021 aggregating Rs.1,36,76,000/-. By order dated 23rd August 2022, the Court appointing receiver granted the report.

6. On 23rd February 2022, the Court Receiver filed another Report No.21 of 2022.

7. It is not disputed that compensation/royalty amounts to Rs.2.89 crores are due from Liz Traders Private Limited. The Trial Court, therefore, on 28th August 2023, allowed Court Receiver's Report No.21 of 2022 in terms of prayer clauses (a) to (f).

8. The petitioner has, therefore, filed a present writ petition.

9. According to the learned advocate for the petitioner, the petitioner's right as a suspended director of a corporate debtor is protected by section 14 of the Insolvency and Bankruptcy Code, 2016 (hereafter, IBC Code, for short). Clause (d) of Sub-Section (1) of Section 14 of the IBC prohibits all persons from seeking recovery of property either as an owner or lessor when the property is occupied by or in the possession of the corporate debtor. According to the learned advocate for the petitioner, the

petitioner, being the suspended director, is interested in the CIRP process. Therefore, the petitioner is entitled to protection of Section 14 of the IBC. According to her, provisions of section 14 of IBC need to be interpreted on plain reading as there is no ambiguity in the statute. The only exception to Section 14 is carved out under Sub-Sections (2) and (3) of Section 14 of the IBC. The present case is not covered under Sub-Section (2) and (3) of Section 14 of the IBC. Therefore, the petitioner's position as a suspended director of Liz Traders Private Limited cannot be disturbed. In support of her contention, she relied on the following judgments:

- (a) **State of Rajasthan vs. Babu Ram** reported in (2007) 6 SCC 55.
- (b) **Haryana State Cooperative Land Development Bank Ltd. vs. Haryana State Cooperative Land Development Banks Employees Union of India And Another** reported in (2004) 1 SCC 574.
- (c) **Shubhabrat Sudhanshu Dutta (Ex-director, Indo Bonito Multinational Ltd) and Another vs. Indo Bonito Multinational Ltd.** reported in 2017 SCC OnLine Bom 5558.
- (d) **Abhay Lodha Ex-Director of Topworth Steels And Power Pvt. Ltd. vs. Topworth Steels and Power Pvt. Ltd.** reported in 2018 SCC OnLine Bom 20250.
- (e) **Mr. Anand Rao Korada Resolution Professional vs. M/s. Varsha Fabrics (P) Ltd. & Ors.** in Civil Appeal Nos.8800-8801 of 2019 decided on 18th November 2019.

(f) **Alchemist Asset Reconstruction Company Limited vs. Hotel Gaudavan Private Limited And Others** reported in (2018) 16 SCC 94.

10. Per contra, learned advocate for respondent Nos.2, 3, 7 and 8 opposed the petition, contending that once the receiver is put in possession of the property, his status is that of the custodian of the property and the agent of the receiver has no enforceable rights in the property. Therefore, provisions of section 14 of the IBC do not apply to the petitioner's claim. It is also submitted that the suspended director has no right to contest the order of delivery of possession as only a corporate debtor can challenge such an order. In support of their contention, they relied on the judgment of Telangana High Court in the Case of **Mohd. Sabir Parvez vs. Quinn Finace Unlimited Company** reported in 2018 SCC OnLine Hyd 1900.

11. Rival contentions fall for consideration.

12. I have anxiously considered the contentions raised by the parties. For the adjudication of the point involved, it is necessary to understand the nature of the position of a receiver appointed by the Court. The receiver appointed in a particular suit is nothing more than the hand of the Court, so to speak, to hold the property of the litigants whenever it must be kept in the grasp of the Court in order to preserve the subject matter of the suit *pendente lite* and the possession of the receiver is simply the possession of the Court. To such an extent is this the case that any attempt to disturb that possession, without the leave of the Court, is a contempt of Court.

The receiver's possession is on his behalf and for the benefit of all the parties to the suit in which he is appointed. The property in his hands is *in custodia legis* for the person who can make a title to it. He is not appointed for the benefit of strangers other than parties to the suit. He has no estate or interest himself, and his power to manage is created by the Court's order appointing him and binding on persons before the Court.

13. The status of such receiver came up for consideration before Three Judges Bench of the Apex Court in the case of **Kanhaiyalal vs. Dr. D. R. Banaji And Others** reported in AIR 1958 SC 725. The Apex Court, in paragraph 8, observed as follows:

“8..... The general rule that property in *custodia legis* through its duly appointed Receiver is exempt from judicial process except to the extent that the leave of that court has been obtained, is based on a very sound reason of public policy, namely, that there should be no conflict of jurisdiction between different Courts. If a court has exercised its power to appoint a Receiver of a certain property, it has done so with a view to preserving the property for the benefit of the rightful owner as judicially determined. If other Courts or Tribunals of co-ordinate or exclusive jurisdiction were to permit proceedings to go on independently of the Court which has placed the custody of the property in the hands of the Receiver, there was a likelihood of confusion in the administration of justice and a possible conflict of jurisdiction. The Courts represent the majesty of law, and naturally, therefore, would not do anything to weaken the rule of law, or to permit any proceedings which may have the effect of putting any party in jeopardy for contempt of court for taking recourse to unauthorised legal proceedings. It is on that very sound principle that the rule is based. Of course,

if any Court which is holding the property in *custodia legis* through a Receiver or otherwise, is moved to grant permission for taking legal proceedings in respect of that property, the Court ordinarily would grant such permission if considerations of justice require it. Courts of justice, therefore, would not be a party to any interference with that sound rule. On the other hand, all Courts of justice would be only too anxious to see that property in *custodia legis* is not subjected to un-controlled attack, while, at the same time, protecting the rights of all persons who may have claims to the property.”

14. In **Deokuer And Another vs. Sheoprasad Singh And Others** reported in AIR 1966 SC 359, the Apex Court was considering a question in a suit for declaration as to whether consequential prayer for possession of the property is mandatory or not. In the context of said question, the Apex Court quoting with approval judgment in the case of **K. Sundarama Iyer vs. Sarvajana Sowkiabil Virdhi Nidhi Ltd.** reported in I.L.R. (1939) Mad. 986, held that it was not necessary to ask for possession when the property was in *custodia legis*.

15. The point that needs to be adjudicated is whether the petitioner is entitled to claim the benefit of section 14 of the Code. It is therefore necessary to consider section 14 of the Code, which reads as follows:

“14. Moratorium—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor

including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or

interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to—

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

16. On meaningful reading of Section 14(1)(d), it is clear that recovery of property by owner/lessor where such property is “occupied by” corporate debtor is not permissible when a moratorium under IBC is declared. Section 14(1)(d) does not deal with any of the assets or legal right or beneficial interest in such assets of the corporate debtor, but what is referred to therein is the “recovery of any property”. Moreover, the bar under clause (d) is attracted only when the owner or lessee is seeking recovery of property. In the facts of the case, the receiver is seeking property from an agent of the receiver on default of payment of royalty amount. Such proceedings cannot be termed as proceedings for the

recovery of property by the owner or lessee.

17. In the context of the nature of possession of agent of private property, in **Maria Margarida Sequeria Fernandes and Others vs. Erasmo Jack de Sequeria (Dead) through L.Rs.** reported in (2012) 5 SCC 370, the Apex Court was considering a suit for injunction filed by a person in possession of immovable property claiming his right to continue with possession of immovable property. In the context of said issue, the Apex Court laid down four classes of possession as follows:

- (i) Possession in consequence of proprietary interest;
- (ii) Possession in consequence of licensor or contractual right;
- (iii) Gratuitous or purely permissive possession; and
- (iv) Trespasser possession.

18. In this context, the Apex Court considered possession of a caretaker or agent. In the context of said issue, the Apex Court, in paragraph 97, crystallized principles of law under:

“(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

(3) The courts are not justified in protecting the possession

of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

19. On careful reading of Clause (5) of the Apex Court's judgment, it is clear that the caretaker is equated with the agent who holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property, irrespective of his long stay or possession.

20. Apart from the said judgment, it must be noted that the receiver's possession is that of the custodian on behalf of the parties to the suit. The receiver's agent cannot claim himself to be in possession within the normal term "possession" as is contemplated by Clause D of Section 14 of the IBC. While the receiver himself is acting as a custodian of property for and on behalf of the parties to the suit, it would be unjust to interpret the creation of rights in favour of the agent of the receiver to claim the independent right to continue with possession, particularly in default of payment of compensation/royalty.

21. The object of the Insolvency and Bankruptcy Code, 2016, is to resolve insolvency and bankruptcy cases involving an insolvency

professional's appointment to manage the debtor's affairs and the resolution of the case transparently and efficiently. The purpose of such an act is to recover the dues of the corporate debtor and calculate the value of the assets so that if ultimately it is found that the company is to be revived, the appropriate recommendation shall be made to the appropriate Court for the revival of such company. However, possession of the receiver's agent cannot be termed as an asset of a company. Applying section 14 of the IBC to the receiver's agent would amount to reading something into statute that the legislature never intended.

22. The judgments relied upon on behalf of the petitioner that the statute needs to be interpreted plainly is concerned, there cannot be dispute about the said legal proposition. However, in the facts of the case, having recorded a finding that the possession of the agent cannot be termed as possession within the meaning of Clause (d) of Section 14 (1) of the IBC, it is not necessary to deal into detail the implications of Section 14 of the IBC.

23. In so far as the locus of suspended directed to agitate rights of the corporate debtor is concerned, such issue does not rise for consideration in the facts of the case as I have already held that the position of an agent of the receiver cannot be termed as possession or occupation contemplated by Clause 2 of Sub-Section (1) of Section 14 of the IBC.

24. Therefore, in view of the undisputed fact of failure to pay Rs.2,89,30,000/- towards the royalty amount by the corporate debtor, the exercise of discretion by the Court cannot be faulted.

There is no merit in the writ petition.

25. The writ petition stands dismissed. No costs.

26. At this stage, learned advocate for the petitioner seeks a stay of the order passed by the Trial Court. However, since this Court has not granted any ad-interim relief in favour of the petitioner, no case for extension of ad-interim relief arises. Therefore, the request is rejected.

(AMIT BORKAR, J.)