

Sharayu Khot.

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

INTERIM APPLICATION NO. 1727 OF 2021
WITH
COURT RECEIVER'S REPORT NO. 57 OF 2023
IN
COMMERCIAL SUIT NO. 1461 OF 2018

Span Associates & Anr.

... Applicants
(Third party)

In the matter between

IDBI Trusteeship Services Ltd.

... Plaintiff

Versus

Kamla Landmark Property Leasing & Finance
Pvt. Ltd. & Ors.

... Defendants

Mr. Sanjeev Hariakar for the Applicants.

Mr. Dhruva Gandhi a/w Ms. Nipa Ghosh, Ms. Nandita Shah i/b.
Manilal Kher Ambalal & Co. for the Plaintiff.

Ms. Vedanshi C. Shah i/b Bipin Joshi for Defendant Nos.2 - 5.

Mrs. Rekha Rane, 2nd Asstt. to Court Receiver is present.

CORAM : R.I. CHAGLA J

DATE : 13 February 2023

ORDER :

1. The Court Receiver Report No. 57 of 2023 has been

placed before this Court. The Court Receiver, pursuant to the directions of this Court vide order dated 20th January 2023, along with the Applicants' representative had visited the site on 4th February 2023 at Kamla Aquina, Survey No. 101, Hissa No. 10-A (Pt), CTS No. 193 (Pt) Village Kandivali, Taluka Andheri, Mumbai, M.S.D., Kadam Wadi, Kadam Wadi Road, Andheri (East), Mumbai and carried out exercise of physical inspection of the items lying at site. This was in connection with the averment in the additional Affidavit of the Applicants that these items remained at site. The representatives of the Court Receiver had found the items at site which are set out in paragraph 11 of the Court Receiver Report as reflected in the site Report. These are in 2 parts. The 1st part is a list of ascertained items mentioned in the additional Affidavit and the 2nd part is a list of ascertained items mentioned in Interim Application No. 1727 of 2021. The site report dated 6th February 2022 is at Exh.J to the Court Receiver Report.

2. Learned Counsel for the Plaintiff has tendered a statement which is taken on record and marked 'X' for identification. The statement is divided into 5 parts as under:-

- (i) The 1st part in paragraph A are the items mentioned in the Interim Application and in the additional Affidavit dated 17th October 2022 which were found at the site, when the representatives of the Court Receiver and the Plaintiff visited the site on 4th February 2023 and for these items bills have been produced.

- (ii) The 2nd part in paragraph B are the items mentioned in the Interim Application and in the additional Affidavit dated 17th October 2022, which were found at the site upon the aforementioned visit but in respect of these items, no bills have been produced.

- (iii) The 3rd part in paragraph C are the items mentioned in the Interim Application and in the additional Affidavit dated 17th October 2022, which were found at the site upon the aforementioned visit but in respect of these items, no bills have been produced and there is variance in the quantity.

(iv) The 4th part in paragraph D are the items not found at site upon the aforementioned visit.

(v) The 5th part in paragraph E are the items found at site, but no description for these items have been provided in the Interim Application or in the additional Affidavit dated 17th October 2022. These items are office furniture which the Court Receiver has identified in paragraph 5 of this Report at Sr.No. 18.

3. The statement marked X is appended to this order.

4. Considering that items other than items mentioned in the 4th part in paragraph D of the statement marked X, which have been mentioned by the Applicants in the Interim Application and in the additional Affidavit dated 17th October 2022 are identified by the Court Receiver to be present at site, as mentioned in the statement marked X, the Court Receiver is directed to handover these items to the Applicants within a period of three weeks from today.

5. It is clarified that apart from the items mentioned in the

1st part under paragraph A of the statement marked X for which items bills have been produced, the handing over of the items by the Court Receiver is subject to the undertaking given by the Applicants in paragraph 5 of the additional Affidavit of the Applicants i.e. to indemnify/guarantee/give security in this Court, if any claim is made by any person. This is upon further considering that no claim has been made till date with regard to these items other than by the Applicants.

6. In view of the Court Receiver having complied with the order dated 20th January 2023 and carried out the physical inspection of the items at site as directed by this Court, the Court Receiver's Report No. 57 of 2023 is disposed of.

7. In view of this order, nothing survives in the Interim Application No. 1727 of 2021 and is accordingly, disposed of.

[R.I. CHAGLA J.]