

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

**INTERIM APPLICATION NO. 2168 OF 2021
IN
COMPANY PETITION NO. 664 OF 2013**

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Shri Sachin P. Aphantkar ..Applicant
IN THE MATTER BETWEEN
Phoenix Asset Reconstruction
Company Pvt Ltd ..Petitioner

Versus

The Official Liquidator
M/s Words Infocom Pvt Ltd ..Respondent

Ms.Namrata Shenoy, with *Ms.Priyanka Mahadeshwar*,
Advocates for the Applicant.

Ms. Sneha Goyal, *Advocates for the Official Liquidator.*

Mr.Shatrughan Chauhan, *Dy. O. L. is present.*

CORAM : B. P. COLABAWALLA, J
DATE : JUNE 14, 2023

P.C.

The above Interim Application is filed seeking the following reliefs:-

"(a): That this Hon'ble Court be pleased to to quash and set aside the aforesaid order dated 11-12-2020 passed by the Official Liquidator, High Court, Bombay in office Order No. OL /Liqn./III/ IX/1555 only to the extent it directs to take possession of Residential Flat bearing E-1/G-2, Swastik CHS Ltd., Silver Sarita Apt E/2, Kashigaon, Mira Bhayandar road, Mira Road east, Thane - 401 107;

2 The Applicant claims to be a *bonafide* purchaser of Flat bearing E-1/G-2, Swastik CHS Ltd, Silver Sarita Apt E/2, Kashigaon, Mira Bhayandar Road, Mira Road east, Thane- 401 107 (for short the "**suit premises**") from one Jagruti Sharma and Arjun Sharma, who are the ex-directors of the company (in liquidation). They claim to be in possession of the aforesaid premises since 2016. Since, the order passed by the Official Liquidator dated 11th December, 2020 directed that possession be taken of the suit premises, the aforesaid application is filed seeking to set aside the said order only to the extent it directs to take possession of the suit premises.

3 In the application, it is set out in detail how the Applicant has become the owner of the suit premises. It is stated that in the year 2007, the suit premises were purchased from Shree Laxmi Developers by Jagruti Sharma and Arjun Sharma in their joint name vide a Sale Deed dated 12th April, 2007 and which is a registered Sale Deed. Pursuant to this Sale Deed, Swastik Co-op Housing Society Ltd, on 23th March 2014, also issued a Share Certificate in the name of Jagruti Sharma and Arjun Sharma in relation to the said suit premises. It is thereafter stated that in the year 2016, it was learned by the Applicant that Bank of Baroda,

Ballard Estate, Mumbai was selling the suit premises which was mortgaged by Jagruti Sharma and Arjun Sharma. The Applicant thereafter found out that Jagruti Sharma and Arjun Sharma have mortgaged their personal assets to Bank of Baroda which included the suit premises.

4 Thereafter, the said Bank of Baroda assigned their rights in respect of the said mortgaged suit premises in favour of "The Edelweiss Asset Reconstruction Company Ltd" (EARCL). After assignment, the said Jagruti Sharma and Arjun Sharma have approached and informed EARCL that they wanted to sell the suit premises. It is in these circumstances that the Applicant purchased the suit premises vide a registered Sale Deed dated 17th March, 2016 by paying Rs.17,00,000/- as consideration for same. This payment was done by the Applicant directly to EARCL. After this, the Society has also transferred the Share Certificate in the name of the Applicant on 1st October, 2017. It is in these facts that the Applicant claims that the suit premises have been directly purchased by the Applicant from Jagruti Sharma and Arjun Sharma respectively who were the ex-directors of the Company. It is submitted that in any event the suit premises never belonged to the company in liquidation,

and therefore, the Official Liquidator could not direct that possession of the suit premises be taken, whether symbolic or otherwise. Consequently, it is the submission of the Applicant that the directions which are passed by the Official Liquidator in the order 11th December 2020, to the extent it directs to take possession of the suit premises, be quashed and set aside.

5 The Official Liquidator has filed an affidavit in reply to the above Interim Application. Though in the reply the Official Liquidator has taken a stand that the Applicant has no locus to file the captioned Interim Application, in paragraph 6 of the said affidavit, the Official Liquidator has fairly conceded that the suit premises, and which are purchased by the Applicant, stand in the name of Jagruti Sharma and Arjun Sharma who were the ex-directors of the company in liquidation. In other words, it is conceded that the suit premises did not belong to the company in liquidation. Once this is the stand taken by the Liquidator, then, the Applicant is correct in contending that no directions could have been passed by the Liquidator to take possession of the suit premises.

6 In these circumstances, and considering the facts and

circumstances of the case, the above Interim Application is allowed in terms of the prayer clause (a) reproduced above.

7 The Interim Application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

8 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[B. P. COLABAWALLA, J].