

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**INTERIM APPLICATION NO. 2283 OF 2020
IN
APPEAL (L) NO. 126 OF 2020
IN
CHAMBER SUMMONS NO. 1162 OF 2016
IN
EXECUTION APPLICATION NO. 38 OF 2006
IN
CO-OPERATIVE CASE NO. CC/I/379 OF 1999
WITH
APPEAL (L) NO. 126 OF 2020**

Spice Islands Apparels Ltd. ... **Applicant**

IN THE MATTER BETWEEN :

Spice Islands Apparels Ltd. ... **Appellant**

Versus

Mittal Tower Premises Co-operative
Society Limited ... **Respondents**

**WITH
INTERIM APPLICATION NO. 2285 OF 2020
IN
APPEAL (L) NO. 127 OF 2020
IN
CHAMBER SUMMONS NO. 1167 OF 2016
IN
EXECUTION APPLICATION NO. 38 OF 2006
IN
CO-OPERATIVE CASE NO. CC/I/379 OF 1999
WITH
APPEAL (L) NO. 127 OF 2020**

Bhupco Alloys Ltd. ... **Applicant**

IN THE MATTER BETWEEN :

Bhupco Alloys Ltd. ... **Appellant**

Versus

Mittal Tower Premises Co-operative
Society Limited ... **Respondents**

Mr. Sukand Kulkarni a/w. Mr. Akshay Vani & Mr. Manan Jaiswal i/b. MLS Vani & Associates, Advocate for Applicants/Appellants.

Mr. Nikhil Wadikar a/w. Ms. Faiza Shaikh i/b. Mr. Nandu Pawar, Advocate for Respondent No.1.

Ms. Jasmeet Kaur i/b. Jayakar & Partners, Advocate for Respondent Nos.2 and 3.

Mr. Anant B. Shinde i/b. Anant B. Shinde & Co., Advocate for Respondent No.5.

Mr. S. K. Dhekale, Court Receiver present.

CORAM : K. R. SHRIRAM &
RAJESH S. PATIL, JJ

DATE : JANUARY 24, 2023

PC

1. In an interim application taken out by respondent No.1-Mittal Towers Premises Co-operative Society Limited (the “**said Society**”) against respondent Nos.2,3 and 4, the learned Single Judge of this Court had refused to stay the warrant of attachment of the premises being office premises No. 125, A Wing, admeasuring 1138 Sq.Ft. situated at building known as Plot No.201, Mittal Towers Premises Co-operative Society Limited, Nariman Point, Mumbai - 21 (the “**said premises**”). The learned Single Judge rejected appellant’s prayer to set aside the warrant of attachment of the said premises and proceeded to appoint Court Receiver, who was also directed to take further steps to sell the said premises. Appellant was directed to hand over possession of the premises to enable Court Receiver to sell the said premises.

2. Appellant is the occupant of the said premises by virtue of two leave and license agreements dated 27th June 1996 that appellant had entered with respondent Nos.2,3 and 4. It is appellant's case that (a) pursuant to these two leave and license agreements, appellant has given a sum of Rs.75,00,000/- in total as interest free refundable security deposits; (b) the amount has not been returned by respondent Nos.2,3 and 4 and, therefore, as per the agreements, appellant is entitled to continue to occupy the said premises without payment of any compensation; and (c) as per the leave and license agreements, charges/amounts payable to the said Society were to be paid by respondent Nos.2,3 and 4 and was not the liability of appellant.

3. Pending the disposal of these appeals, appellant, to stay the sale of the premises without prejudice to its rights and contentions, deposited a sum of Rs.21,56,737/- pursuant to an order dated 13th May 2021.

4. Respondent No.5(Bank of India) had charge on the said premises. Ms. Kaur for respondent Nos.2 and 3, and 4 is unrepresented leaves it to the Court to pass such order as deemed fit and states that respondent Nos. 2 and 3 have no case to make any submissions.

5. On 3rd January 2023, this Court suggested to the parties that they should work out the matter. Pursuant to the suggestions made by the Court, respondent No.5 has filed an affidavit of one Avanendra Kumar Singh, Chief

Manager affirmed on 7th January 2023 in which it is stated that the said premises be sold by the Court and from the sale proceeds appellant could be paid the amount of Rs.75,00,000/-, the Society could be paid its dues and balance be handed over to respondent No.5. Mr. Wadikar placed on record a copy of the last invoice dated 9th January 2023 raised by the Society for the said premises and the amount payable is Rs.90,30,233/-. Mr. Wadikar states that his instructions are that 10% discount on the interest charged would be given whatever would be the final figure until the entire dues of the Society are discharged from the sale proceeds. This arrangement is also acceptable to Mr. Kulkarni for appellant. Of course, he also stated that the amount of Rs.21,56,737/- referred to in paragraph 3 above should also be paid back to appellant together with accumulated interest, if any. Counsel for respondent No.5 and Society had no objection.

6. Therefore, this Court passes the following order :

ORDER

- a) Court Receiver to take steps forthwith to sell the said premises by public auction.
- b) Before any notice for sale is issued, the Court Receiver shall appoint valuer, i.e., Amol Bora & Co., B-104, Shilpa Junction of N M Joshi Marg & P B Marg, Lower Parel, Worli, Mumbai - 400 013 [Phone-(022)24374363 & Mob.No.

9422306698] as Valuer of the said premises.

- c) Court Receiver shall then take further steps as per the procedure followed in his office to finalize the auction notice.
- d) Court Receiver shall not indicate any reserve price in the notice.
- e) Cost, charges and expenses of sale and Court Receiver's fees and charges shall be shared equally between the Society and respondent No.5/Bank.
- f) Appellant shall vacate and hand over peaceful possession of the said property to Court Receiver after removing all its movables within four weeks from today.
- g) Should the appellant be interested in purchasing the said property, the appellant may participate in the auction.
- h) Once the sale proceeds are received, Court Receiver shall pay Rs.75,00,000/- to appellants, then use the balance to pay the Society keeping in mind the 10% discount society has offered as recorded in paragraph 5 above, and whatever would remain of the said proceeds shall be paid to respondent No.5, the bank.

- i) If anybody wishes to take inspection of the title documents at this stage, the title documents shall be made available in the office of Court Receiver for inspection.
- j) Mr. Shinde states that the title documents of the said premises are with the bank and as and when Court Receiver wants, within three working days of receiving a communication from Court Receiver, the title documents will be handed over to Court Receiver. Statement accepted.
- k) The amount of Rs.21,56,737/-together with accumulated interest to be paid over to appellant by the Prothonotary and Senior Master of this Court within two weeks of appellant vacating the said premises. Appellant shall vacate the said premises within four weeks from today by handing it over to the Court Receiver.
- l) Appellant is put to notice that if it does not vacate the said premises within four weeks from today, then the amount of Rs.21,56,737/- together with the accumulated interest, if any, shall be utilized to deduct appropriate market rent/compensation which we hereby fix at Rs.1,50,000/- per month or part thereof for occupying the said premises beyond the four

weeks period prescribed.

7. Appeals accordingly disposed.
8. Interim applications, if any, also stand disposed.
9. All parties to act on authenticated copy of this order.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)

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GAIKWAD
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by RAJU
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