

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**INTERIM APPLICATION NO.2382 OF 2021**  
**WITH**  
**INTERIM APPLICATION NO.2388 OF 2021**  
**IN**  
**SUIT NO.616 OF 2014**

|                                |   |    |                      |
|--------------------------------|---|----|----------------------|
| Phoenix ARC Pvt. Ltd.          | ] | .. | Applicant/Intervenor |
| <b>IN THE MATTER BETWEEN</b>   |   |    |                      |
| Karishma Shetty                | ] | .. | Plaintiff            |
| vs.                            |   |    |                      |
| Karishma Narayan Shetty & Ors. | ] | .. | Defendants           |

Ms.Chinmayee Ghag a/w Nishat Rana i/b Zastriya for the Applicant/  
Intervenor.

Mr.Anand Talreja for the Plaintiff.

Mr.Vishal Maheshwari a/w Kamini Pansare i/b VM Legal for Defendant  
No.2.

**CORAM : BHARATI DANGRE, J**

**DATE : 9<sup>th</sup> June, 2023.**

**P.C.**

1] These Applications are taken out by Asset Reconstruction Company, Phoenix ARC Pvt. Ltd. in the Suit pending before this Court, with a prayer for vacation of the injunction, in operation in respect of the suit premises described as Shop Nos.4 and 5, Ground Floor, Landmark Centre, bearing CTS No.3876 to 3885, Survey No.46. 1B+2B, Pune Satara Road, Pune.

2] The present application is filed in the wake of peculiar circumstances, where Defendant Nos.1 and 2 Kishori Shetty and Manav Shetty availed loan facility from the original lender i.e. Religare Finvest Ltd. through a Facility Agreement dated 31.07.2010, to the tune of Rs.85,00,000/-.

Another loan facility was availed through a distinct Facility Agreement dated 30.03.2011, to the extent of Rs.35,00,000/-.

In order to secure the credit facility, an equitable mortgage of the premises in form of Shop Nos.3A, 4 and 5 to the Landmark Centre, Pune Satara road, was created.

Thereafter, due to default in repayment of the loan, the original lender recalled the loan. The arbitration proceedings were initiated by the original lender against Defendant Nos.1 and 2 and ex-parte award came to be passed.

The Plaintiff filed a Suit wherein the Defendants appeared, but the mortgage deed was not brought to the notice of the Court.

3] The Asset Reconstruction Company, now seek intervention to place on record the sequence of events which resulted in institution of SARFAESI proceedings for realisation of the amount and it is urged that the order dated 18.09.2014 passed in the said Suit, is a clear obstacle and it is projected to be obtained, with the aim to stall proceedings under SARFAESI Act.

As per the Applicant, it has to recover an amount of Rs.1,86,26,943/- and since the mortgage deed cover Shop Nos.3A, 4 and 5, by Interim Application No.2382/2021, the injunction granted in respect of Shop Nos.4 and 5 is sought to be vacated.

4] In the wake of above, I deem it appropriate to allow Application

for intervention as the Applicant is a secured creditor and is in possession of the title deed in respect of shop premises, which is part of the suit property, which is pending for adjudication before this Court.

5] The learned counsel appearing for the Plaintiff and the learned counsel for Defendant No.2 who is also co-borrower, would submit that they have worked out for the arrangement, which is to the effect that the said shops are presently in possession of Manjunath Shetty as Lessee from Kishori Shetty and he is running a Restaurant since the date of handing over of the premises to him. The whereabouts of Kishori Shetty is not known since the year 2016-2017 and it is claimed that she is absconding and as such Mr.Manjunath Shetty continue to run the restaurant Vedant, despite original agreement of lease having expired on 31.12.2019.

6] Mr.Shetty has come up with an offer to purchase Shop Nos.3A, 4 and 5 alongwith other shops which form part of hotel Vedant being Shop Nos.4A, 3B, Store Nos.4 and 5, alongwith open space and Shop No.4.

The price offered for the entire composition is Rs.4.50 Crore. The arrangement worked out between the parties is that the amount which is due and payable to the secured creditor i.e. Asset Reconstruction Company, shall be cleared.

The proposal come forth from the Plaintiff and Defendant No.2, that by way of one time settlement, the bank is ready to settle the amount due and payable to the tune of Rs.2 Crores. The Plaintiff and Defendant No.2 agree that after clearing the amount due and payable to the Applicant to the tune of Rs.2 Crores, they shall seek appropriate directions from the Court, about the balance consideration being

received by Manjunath Shetty as against the said Hotel Vedant which comprised of several other shops/stores, apart from Shop No.3A, 4 and 5.

7] It is informed that draft Memorandum of Understanding, to that effect will be exchanged between the parties and with the permission of the Court, it shall be filed before the Court.

The above arrangement would serve two purposes; first being the Applicant as a secured creditor would release the property from mortgage and get its dues as it was already claiming the said property through SARFAESI proceedings and had first charge over the said property. Secondly, there shall be some clarity between the parties to the partition Suit in respect of the chunk of properties which form part and parcel of the suit property.

8] Let the Memorandum of Understanding, as indicated above, signed by the parties be placed before this Court, within four weeks.

Interim Application No.2388/2021 is allowed.

List Interim Application No.2382/2021 on 30.06.2023.

On the said date, the signatories to the MoU shall remain present in the Court.

**[BHARATI DANGRE, J]**