

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

**INTERIM APPLICATION NO.770 OF 2022  
IN  
COMPANY PETITION NO. 664 OF 2013**

UTKARSH  
KAKASAHEB  
BHALERAO

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Shri Jayanthkumar Kanthappa Naik ..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-1/104, Swastik CHS Ltd., Silver Sarita Apt E-1E-2, Kashigaon, Mira Bhayandar road, Mira Road east, Thane - 401 107;*

2           The Applicant claims to be a bonafide purchaser of Flat bearing E-1/104, Swastik CHS Ltd., Silver Sarita Apt E-1/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 11<sup>th</sup> 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 12<sup>th</sup> April, 2007 and which is a registered Sale Deed. Pursuant to this Sale Deed, Swastik Co-op Housing Society Ltd, on 23<sup>th</sup> 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 stated that Jagruti Sharma and Arjun Sharma have mortgaged their personal assets to Bank

of Baroda which included the suit premises.

4           It is thereafter stated that in the year 2016, it was learned by Mr. Jitendra B. Patel (second owner of the suit premises) that Bank of Baroda, Ballard Estate, Mumbai was selling the suit premises which was mortgaged by Jagruti Sharma and Arjun Sharma. Thereafter, Jagruti Sharma and Arjun Sharma sold the suit premises to one Mr. Jitendra B. Patel vide a registered sale deed dated 17<sup>th</sup> March, 2016 for a consideration of Rs.32,00,000/-. Mr. Jitendra B. Patel (second owner of the suit premises) has transferred the consideration amount to "The Edelweiss Asset Reconstruction Company Ltd" (EARCL) to whom the Bank of Baroda assigned their rights in respect of the said mortgaged suit premises. Thereafter Mr. Jitendra B. Patel (second owner of the suit premises) sold the suit premises to the present applicant vide a registered sale deed dated 13<sup>th</sup> October, 2017 by paying Rs.45,00,000 to Jitendra B. Patel. The share certificate was also thereafter transferred to the name of the Applicant on 16<sup>th</sup> March, 2018.

5           It is in these circumstances that the Applicant claims to have purchased the suit premises vide a registered Sale Deed

dated 13<sup>th</sup> October, 2017 by paying Rs.45,00,000/- as consideration for the same. In any event it is submitted that 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 was the submission of the Applicant that the directions which are passed by the Official Liquidator in the order 11<sup>th</sup> December 2020, to the extent it directs to take possession of the suit premises, be quashed and set aside.

6           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, originally stood 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.

7           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.

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

9           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 ].**