

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

**INTERIM APPLICATION NO.3106 OF 2021
IN
COMPANY PETITION NO. 664 OF 2013**

UTKARSH
KAKASAHEB
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Shri Bhavesh M. Parmar ..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-3, 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-3, 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. 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 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. In these circumstances the Applicant purchased the suit premises from Jagruti Sharma and Arjun Sharma under a registered Agreement for Sale dated 25th October, 2016 and also put the Applicant in possession of the suit premises immediately thereafter. The sale consideration was a sum of Rs. 12,00,000/- which was to be paid directed to EARCL. Out of this, Rs. 2,00,000/- was paid directly to EARCL. However, the balance amount of Rs.10,00,000/- has not yet been paid to EARCL as they refused to accept the same by stating that the Applicant would have to come along with Jagruti Sharma and Arjun Sharma. It is stated in the application that despite many follow-ups with Jagruti Sharma, she had not gone along with the Applicant to EARCL and it is in these circumstances that the balance amount of Rs.10,00,000/- is not yet paid. In the application it is stated that

the Applicant is ready to deposit the balance amount in this Court, if the Court so directs.

5 In any event, it is submitted on behalf of the Applicant that the order passed by the Official Liquidator on 11th December, 2020 (directing the taking of, of the possession of the suit premises) cannot be sustained because admittedly the suit premises does not belong to the company in liquidation. It belongs to the ex-directors of the company, namely Jagruti Sharma and Arjun Sharma respectively. If this be the case, then, notwithstanding the fact that the Applicant still has to pay a sum of Rs.10,00,000/- to EARCL, the Liquidator was not justified in taking possession of the suit premises, was the submission.

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, 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.

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].