

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****(SUO MOTU) CONTEMPT PETITION NO.7 OF 2024****IN****INTERIM APPLICATION NO.7330 OF 2024****IN****CIVIL WRIT PETITION NO.13693 OF 2022****High Court on its own motion****....Petitioner****V/s.****Shakir Abdul Latif Pipi****....Respondent**

**Ms Priyanka Kothari i/b. Ms Vinali Bhaidkar for the Applicant in
IA/7330/2024 and for Respondent in WP/13693/2022.****Ms Akshita Vakharia i/b. Mr. Rahul Talreja for the Respondent .**

CORAM : SANDEEP V. MARNE, J.**Dated : 9 July 2024.****P.C. :**

1) Ms Akshita Vakharia, the learned counsel appears on behalf of the original Petitioner and seeks time to file reply. Let reply be filed before the next date of hearing.

2) The Civil Judge, Junior Division, Mahabaleshwar has sent letter dated 8 July 2024 to the Registrar of this Court enclosing therewith report of the Nazir /Assistant Superintendent dated 6 July 2024. The report indicates

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that when the Nazir approached the premises for taking over possession, it was found that a lock has been put on the gate of the premises and when the original Petitioner was requested to open the gate, he submitted that in accordance with the compromise executed in Regular Civil Suit No.69 of 2023, he has handed over possession of the premises on 31 January 2024 to Abdulla Abdul Latif Alothman Wakf Board, Panchgani and that he is not concerned with the premises in question.

3) Perusal of various findings recorded by this Court in Judgment and Order dated 10 May 2024 would indicate that factum of handing over possession of the premises by the original Petitioner to the said Abdulla Abdul Latif Alothman Wakf Board, Panchgani is already noticed by this Court. In this regard the submission made on behalf of Respondent Nos.3 and 4 in paragraph 6.12 of the Judgment reads thus:-

6.12 He submits that his client is in possession of the suit premises from 31 January, 2024. He submitted that however, the Hotel Ambassador is not in operation.

4) The position of handing over possession of premises to Respondent Nos.3 and 4 in the petition was also confirmed by the original Petitioner, which is recorded in paragraph 8(i) of the order, which reads thus:-

8(i) Mr. Khan submitted that as far as possession is concerned, admittedly it was handed over by his client to the respondent nos.3 and 4, therefore, if this Court pass any order against the respondent nos.3 and 4 to handover possession back to the petitioner, his client would have no objection to the same.

5) This Court has found the said act of handing over possession of the premises by original Petitioner to Respondent Nos.3 and 4-Trust to be wholly

illegal. In this regard, findings recorded by this Court in paragraphs 23, 23.1 and 23.2 read thus:-

23. So also, this Court had passed an order of status-quo. The parties to the writ petition are bound by the status-quo order passed by this Court. Hence, the petitioner herein (licensee) could not have handed over possession of the suit premises to the respondent nos.3 and 4-Trust. In my view, therefore, a case is made out by the applicants herein (licensor) of appointing a Court Receiver in the present proceedings pertaining to the suit premises and the Court Receiver should take over the possession of the suit premises from the respondent nos.3 and 4-Trust and hand it over, back to the applicants herein (licensors).

23.1 The petitioner has admitted that he made a bonafide mistake that there being no stay granted by this Court has handed over the possession of the suit premises to the respondent nos.3 and 4-Trust. ...

23.2 Therefore, from the Court, first status quo order is obtained and during the pendency of the status quo order, the possession of the suit premises was handed over to the respondent nos.3 and 4 by obtaining the collusive order in Regular Civil Suit No.69 of 2023.

6) Thus, this Court has directed the Court Receiver to take possession of the suit premises after noticing factum of the original Petitioner handing over possession of the premises to Respondent Nos.3 and 4-Trust. In fact, such an act has been found to be illegal by this Court. In that view of the matter, the Nazir/Assistant Superintendent ought to have broken the lock on the premises and taken over possession thereof since the action of the original Petitioner in handing over possession of the premises to Respondent Nos.3 and 4-Trust is already found to be illegal by this Court.

7) The Nazir/Assistant Superintendent of Civil and Criminal Court, Mahabaleshwar shall accordingly proceed to break open the lock on the premises, remove any other impediment noticed and take over possession thereof and send a report to this Court before the next date of hearing.

8) List the matter for further consideration on **29 July 2024**. Registry shall forthwith forward the order passed today to Civil and Criminal Court, Mahabaleshwar.

[SANDEEP V. MARNE, J.]