

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

COURT RECEIVER REPORT NO.71 OF 2024
IN
EXECUTION APPLICATION (L) NO.27838 OF 2022

SUREKHA DILIP GAWAND & ORS.) ORIGINAL PLAINTIFFS

V/s.

PARAS SUNDERJI DEDHIA AND ANR.) JUDGMENT DEBTORS

WITH
EXECUTION APPLICATION (L) NO.394 OF 2023
WITH
INTERIM APPLICATION NO.374 OF 2023
IN
EXECUTION APPLICATION (L) NO.394 OF 2023
WITH
INTERIM APPLICATION NO.374 OF 2023
IN
EXECUTION APPLICATION (L) NO.394 OF 2023
WITH
INTERIM APPLICATION NO.549 OF 2023
IN
SUIT NO.48 OF 2023
WITH
INTERIM APPLICATION (L) NO.3188 OF 2024
IN
COMMERCIAL SUIT NO.242 OF 2021
WITH
EXECUTION APPLICATION NO.1741 OF 2022
WITH
CONTEMPT PETITION NO.106 OF 2019
IN
SUIT NO.440 OF 2018
WITH
CONTEMPT PETITION NO.61 OF 2019
IN
NOTICE OF MOTION NO.693 OF 2018
WITH

COUNTER CLAIM (L) NO.6422 OF 2022
IN
SUIT NO.388 OF 2022
WITH
INTERIM APPLICATION (L) NO.7447 OF 2022
IN
COUNTER CLAIM (L) NO.6422 OF 2022
WITH
SUIT NO.388 OF 2022
WITH
INTERIM APPLICATION NO.1804 OF 2023
IN
SUIT NO.388 OF 2022
WITH
INTERIM APPLICATION NO.3385 OF 2023
IN
SUIT NO.388 OF 2022
WITH
INTERIM APPLICATION (L) NO.24681 OF 2023
IN
SUIT NO.388 OF 2022
WITH
CONTEMPT PETITION (L) NO.26144 OF 2023
IN
SUIT NO.388 OF 2022
WITH
COUNTER CLAIM (L) NO.6422 OF 2022
IN
SUIT NO.388 OF 2022
WITH
INTERIM APPLICATION (L) NO.2041 OF 2024
IN
SUIT NO.388 OF 2022
WITH
INTERIM APPLICATION (L) NO.36089 OF 2023
IN
SUIT NO.388 OF 2022
WITH
INTERIM APPLICATION (L) NO.1684 OF 2021
IN
SUIT NO.388 OF 2022

WITH
INTERIM APPLICATION NO.1804 OF 2023
IN
SUIT NO.388 OF 2022
WITH
INTERIM APPLICATION (L) NO.3831 OF 2024
IN
INTERIM APPLICATION NO.1804 OF 2023
WITH
INTERIM APPLICATION NO.5049 OF 2022
IN
SUIT NO.302 OF 2021
WITH
INTERIM APPLICATION NO.209 OF 2022
IN
SUIT NO.302 OF 2021
WITH
INTERIM APPLICATION NO.3385 OF 2023
IN
SUIT NO.388 OF 2022
WITH
INTERIM APPLICATION NO.208 OF 2022
IN
SUIT NO.302 OF 2021
WITH
INTERIM APPLICATION NO.4710 OF 2022
IN
COMMERCIAL SUIT NO.242 OF 2021
WITH
INTERIM APPLICATION (L) NO.24681 OF 2023
IN
SUIT NO.388 OF 2022
WITH
APPEAL (L) NO.2121 OF 2024
IN
INTERIM APPLICATION (L) NO.24681 OF 2023
WITH
CONTEMPT PETITION (L) NO.26144 OF 2023
IN
SUIT NO.388 OF 2022
WITH

**SUIT NO.69 OF 2024
WITH
INTERIM APPLICATION (L) NO.27924 OF 2023
IN
SUIT NO.69 OF 2024
WITH
INTERIM APPLICATION (L) NO.27960 OF 2022
IN
EXECUTION APPLICATION (L) NO.27838 OF 2022
WITH
CONTEMPT PETITION NO.7 OF 2020
IN
SUIT NO.173 OF 2018
WITH
INTERIM APPLICATION (L) NO.31598 OF 2022
IN
EXECUTION APPLICATION (L) NO.4566 OF 2022
WITH
INTERIM APPLICATION (L) NO.34202 OF 2023
IN
EXECUTION APPLICATION (L) NO.34196 OF 2023**

Mr.Malcolm Siganporia a/w Ms.Kinjal Kakkad i/b. Mr.Jayesh R. Vyas, Advocates for the Plaintiff in Suit No.388/2022 and for the Applicant in EXA(L)/394/2023 and IA/374/2023 in EXA(L)/394/2023, EXA/1741/2022, CONP/61/2019, CC(L)/6422/2022, IA/1804/2023, IA/3385/2023, IA(L)-24681/2023 in S/388/2022 for Applicant/Plaintiff, CONPL/26144/2023, CC(L)/6422/2022, IA(L)/2041/2024, IA(L)/36089/2023 in S/388/2022 for the Applicant/Plaintiff, IA(L)/1689/2021 in S/388/2022, IA(L)/1804/2023 in S/388/2022, IA(L)/3831/2024 in IA/1804/2023, IA(L)/3385/2023 in S/388/2022 and APP(L)/2121/2024 in IA(L)/24681/2023.

Ms.Neeta Jain a/w Mr. Dhrumil C. Shah i/b. Lex Services, Advocates for the Applicant/Plaintiff in IAL/3188/2024 a/w. IA/4710/2022 in COMS/242/2021.

Mr.Shanay Shah a/w. Paras Gosar i/b Ms. Swati N. Chheda, Advocates for the Applicant/Plaintiff in IAL/27924 in SL/27920/2023.

Mr.Manoj Harit a/w. Mr.Harshit Kumar i/by Manoj Harit & Co., Advocate for the Intervenor in IA/3831/2024.

Mr.Dhaval Visawadia i/b Harakchand & Co., Advocate for the Plaintiff in Suit No.48/2023 and Suit No.302/2021.

Mr.Aadil Parsuramporia i/b Mr. Mehul Rathod, Advocates for Applicants/Decree Holders in IAL/27960/2022, IAL/31598/2022 and IAL/34202/2023.

Mr.Gunjan Shah i/by Mr. Kayval Shah, Advocates for the Defendants No.1 and 2 in all matters.

Ms.Charushila Vaidya, 2nd Assistant to Court Receiver and Mrs.Sampada Dukhande, Section Officer, Court Receiver office,is present in Court.

CORAM : ABHAY AHUJA, J.

DATE : 20th MARCH 2024

P.C. :

1. Pursuant to earlier orders of this Court, when the matter is called out today, upon an enquiry from this Court as to whether the Judgment Debtor no.1 is present in the Court as per directions, Mr.Shah, learned Counsel appearing for the Judgment Debtor no.1, informs that the Judgment Debtor no.1 is out of Mumbai and perhaps in Bhuj, and therefore, unable to remain present in this Court.

2. It is observed from the earlier orders of this Court that by order dated 11th January 2023 upon an undertaking from the Judgment Debtor no.1, Mr.Paras Dedhia, that he will remain present in Court

whenever the proceedings are listed unless and until he is specifically exempted from appearance and that to on a personal bond of Rs.1,00,000/- executed by him before the Prothonotary and Senior Master, the non-bailable warrant issued on 22nd December 2023 was kept in abeyance with a clear understanding that for any reason if Mr.Dedhia avoids his presence in the Court unless specifically exempted, the non-bailable warrant shall be directed to be executed through the N.M.Joshi Marg Police Station. It has been observed that recently since 27th February 2024 onwards Mr.Dedhia has failed to remain present before this Court despite orders for him to remain present. On 27th February 2024 Mr.Dedhia was directed to remain present in the Court on 14th March 2024. On 14th March 2024 when the matter was called out, this Court was informed that Mr.Dedhia could not make it due to ill-health. Therefore, on 14th March 2024, this Court directed Mr.Dedhia to remain present on the next date, which is today.

3. Today when the matter is called out, as noted above, this Court has been informed by Mr.Shah, learned Counsel appearing for Mr.Dedhia, that Mr.Dedhia is out of town, however, he is available on the web-link of this Court. Mr.Dedhia had also logged in through the

web-link, however, since order dated 14th March 2024 directed Mr.Dedhia to remain present in the Court, Mr.Dedhia was disconnected from the web-link as that is not remaining present in Court.

4. It cannot be ignored that there is a non-bailable warrant against Mr.Paras Dedhia that had been kept in abeyance upon an undertaking that he would remain present in the Court on every date when his matter is listed. As noted above, Mr.Dedhia is in breach of the orders of this Court, and therefore, the non-bailable warrant dated 22nd December 2023 is hereby re-activated and the N.M.Joshi Marg Police Station is directed to execute the said non-bailable warrant, arrest him and secure Mr.Dedhia's presence in this Court on the next date. The Director General of Police of the State of Gujarat is requested to render all assistance to secure the presence of Mr.Paras Dedhia in this Court on the next date.

5. The Prothonotary and Senior Master shall forfeit the Rs.1,00,000/- bond that has been executed in favour of the Prothonotary and Senior Master.

6. This Court has also been informed that the Court Receiver has already been appointed by order dated 17th January 2024 by this Court (Coram : Bharati Dangre, J.) and the following operative order was passed:

“In the wake of above, prayer clause clause (A) (C) and (D) are allowed which reads thus :

(A) That pending the hearing and final disposal of the present Suit, this Hon’ble Court be pleased to direct that the Court Receiver, High Court Bombay be appointed under Order XL, Rule 1 of the Code of Civil Procedure, 1908 as Receiver in respect of Land described in Schedule being (Exhibit – A hereto) and the project Yash Signature thereon with full power and authority to enter thereupon and take possession thereof;

(C) That pending the hearing and final disposal of the present Suit, this Hon’ble Court be pleased to order and direct Defendant Nos.1 and 2 to declare all their assets/properties/bank accounts including all the charges/encumbrances created thereon on affidavit, and upon such disclosure, this Hon’ble Court be pleased to pass an order attaching all such disclosed assets and injuncting Defendant Nos.1 and 2 from in any manner dealing with, transferring, selling, alienating or creating any third party rights in respect of such disclosed assets, in the RERA designated bank accounts for Yash Signature;

(D) Defendant Nos.1 and 2, their agents, servants, representatives and/or assigns and/or persons claiming through and/or under them be restrained by an Order and Injunction from in any manner whatsoever, either directly and/or indirectly dealing with, disposing of, selling, transferring, alienating, encumbering, licensing, mortgaging, parting with possession and/or dealing with or creating any third-party rights in respect of Land (Exhibit-A) and the project Yash Signature thereon.

The Court Receiver, High Court, Bombay shall fix a date for inspection of the Project and it shall be imperative for Mr. Dedhia to render co-operation to the Court Receiver by affirming the list of the unsold inventory in the said project.

The Court Receiver upon inspecting entire project and obtaining necessary details from the persons in occupation, and on confirming the occupancy in respect of each of the flat/shop in the project shall submit the report within a period of one week from today, so that further necessary orders can be passed in regard to unsold inventory.

It is expected that that the Court Receiver will receive co-operation from Mr. Dedhia and he shall remain present when the Court Receiver will undertake the said exercise.

The report shall be submitted on or before 23.01.2024.

The disclosure statement as directed to be submitted by Mr. Dedhia, shall also be furnished on or before 23.01.2024. The Court Receiver shall take possession all the vacant premises/units in 'Yash Signature'.

List the proceedings on 23.01.2024 at 2.30 p.m. alongwith Contempt Petition No.61/2019, Contempt Petition (L) No.26144/2023, Suit No.388/2022 and Execution Application (L) No.394/2023 and all other connected matters."

7. By order dated 30th January 2024, this Court (Coram : R.I. Chagla, J.) had kept the order relating to possession to be taken by the Court Receiver with respect to the vacant premises in project Yash Signature in abeyance.

8. Thereafter, the Court Receiver did attempt to take possession, however, the Court Receiver by his Report No.71 of 2024 dated 7th February 2024 has submitted that possession could not be taken. This Court had taken note of the said Report in its order dated 7th February 2024 which is extracted as under :

"1. Pursuant to earlier orders of this Court dated 17th January 2024 (Coram : Smt.Bharati Dangre, J.) and dated 30th January 2024 (Coram : R.I.Chagla, J.), the representatives of the Court Receiver visited the site of the project known as Yash Signature on the plot of land bearing C.T.S.Nos.437, 437/6 to 16 of Village Deonar, Taluka Kurla,

District Mumbai Suburban, situated at Arjun Gawand Estate, Opp. Telecom Factory, Sion Trombay Road, Mumbai – 400 088 to inspect the said premises and to obtain the details of the occupants and the basis of such occupation of the units comprising of flats / office / shops in the said building.

2. Today when the matter is called out, Mr.S.K.Dhekale, learned Court Receiver is present in the Court and seeks to submit report dated 7th February 2024 which records in paragraphs 5, 6 and 7 as under :

“5. The representatives of Court Receiver noticed that there were 36 flats, 2 Commercial offices and 7 shops in the suit projects out of which 12 owners have given their flats on rental basis, 15 flats were found in locked condition, 17 flats are occupied by flat owners and one 2 BHK flat is used as Temporary Society’s Office.

6. The Representatives took photographs of each and every flat/office/shop for office record. The representatives of the Court Receiver obtained detailed information regarding occupancy of the suit project. However, nobody has provided documents except the photocopy of registered PAAA of Flat No.1602. Information of occupants is annexed herewith in tabular form.

7. The Representatives of Court Receiver also noticed that adjoining open land was covered with tin – shed by new builder i.e. Ombs Builders LLP. The persons present at said open land restrained the representatives to visit the said land. Therefore, representatives could not visit the said open land (B – wing).”

3. From the above, it is clear that the orders of this Court referred to above could not be complied with fully.

4. Mr.Chetan Kapadia, learned Senior Counsel for the Plaintiffs/ Applicants in Suit No.388 of 2022 as well as Suit (L) No.27920 of 2020 would submit that considering that the Plaintiffs in these suits as well as other connected suits as well as execution proceedings are yet to receive the outstanding transit rent as well as occupation of the promised flats / offices / shops, it is imperative that the Court Receiver receives police assistance in complying with

the orders of this Court. In addition, learned Senior Counsel would submit that in order to ascertain the legal occupancy of the said flats / offices / shops, this Court direct that each of such unit holders furnish to the office of the Court Receiver the title documents.

5. The learned Counsel/Advocates appearing in Interim Application (L) No.27960 of 2022 in Execution Application (L) No. 27838 of 2022 and in Interim Application (L) No.3188 of 2024 in Suit No.242 of 2021 also support the submissions made by Mr. Kapadia.

6. Mr.Parsuramporia, learned Counsel in Interim Application (L) No.27960 of 2022 in Execution Application (L) No. 27838 of 2022 and Ms.Neeta Jain, learned Counsel in Interim Application (L) No.3188 of 2024 in Suit No.242 of 2021 submit that although their clients hold units in Yash Signature, this Court direct the Court Receiver to act as such in respect of the said units as well.

7. Mr.Doctor, learned Senior Counsel appears for the Intervenor viz. OMBS Builders LLP and submits that his client had earlier entered into an agreement with the original Defendant no.1 and with Yash Builders, original Defendant no.2 to take over the Tower B of Yash Signature and the disputes between the parties pending in this Court could be resolved if this Court would consider granting some time so as to enable the Intervenor to ascertain the situation and talk to the proposed unit holders. Mr.Doctor also submits that the part of the order that has been kept in abeyance be continued till the next date so that endeavour to settle / resolve the disputes can also be made, failing which, this Court may direct the Court Receiver to take possession of the vacant units in Tower A of the Yash Signature project and the vacant land adjacent to the said building.

8. Mr.Shah, learned Counsel appears in the Court on behalf of Mr.Paras Dedhia, original Defendant no.1 and submits that as on date Mr.Dedhia has been taken into police custody on 1st February 2024 and his remand Application would be coming up for hearing on 8th February 2024 and therefore although his client is keen to co-operate with the Court Receiver, being in police custody, he would be unable to do so. Learned Counsel submits that he has just received a copy

of the Court Receiver's Report and would take detailed instructions from his client and seeks some time in the matter.

9. It is not in dispute that comprehensive orders have been passed by this Court not only recording the conduct of the original Defendant no.1 who statedly is in police custody but also directions have been issued to the Court Receiver to obtain necessary details from persons in occupation of the units in the project Yash Signature and to submit report after confirming occupancy in respect of each of such units in Tower A of the project, which as noted above, could not be complied with for the reasons stated in the report as nobody has provided documents except photocopy of registered PAAA of Flat No.1602 and Office premises No.102. The learned Court Receiver who is present in the Court confirms that although he has a list of the occupants of Tower A of the project Yash Signature but since none of the occupants have provided documents, except as mentioned in paragraph 6 of the report, it has not been possible for him to confirm the occupancy and seeks further directions from this Court.

10. Considering the submissions made by the learned Senior Counsel and the Counsel as well as the Court Receiver, this Court directs the occupants in Tower A of project Yash Signature to furnish to the Court Receiver, within a period of two weeks, originals of the registered PAAA along with an affidavit stating the unit number and the document(s) based on which they have obtained the said occupancy.

11. It is clarified that earlier orders dated 17th January 2024 and 30th January 2024 of this Court also apply to the case of the Applicants in Interim Application (L) No.27960 of 2022 in Execution Application (L) No. 27838 of 2022 and in Interim Application (L) No.3188 of 2024 in Suit No.242 of 2021.

*12. List on **27th February 2024**. Let Mr.Shah, the learned Advocate for the original Defendant no.1 also obtain instructions by the next date.*

13. Let a copy of this order be displayed at a prominent place of the Tower A of Yash Signature and let the learned Counsel also inform the parties concerned to co-operate with the Court Receiver.”

9. Thereafter, the matter was listed on 27th February 2024 when this Court was informed that Mr.Dedhia had been released from jail and time was granted to the learned Counsel for Mr.Dedhia to take instructions.

10. This Court is also informed that thereafter an affidavit dated 14th March 2024 has been filed by the Judgment Debtor no.1 where it has been stated that there is an area of 3346 sq.feet available as unsold inventory in the project Yash Signature, B Wing, although in the affidavit dated 16th January 2024 an area of 11,308 sq.feet was stated to be available. It is submitted that the Judgment Debtor no.1 has within a span of two months disposed of 80% of the unsold area and therefore until and unless the Court Receiver takes possession of the entire plot on which the proposed B Wing is to be constructed, grave irreparable loss and prejudice would be caused to the Applicants/Plaintiffs. It is also submitted that keeping in mind the conduct of the Judgment Debtor no.1, the Court Receiver also take possession of the project Yash Heights and Mr.Dedhia's passport also be impounded and directed to be deposited with the Prothonotary and Senior Master, as he is already absconding and is a flight risk.

11. Having heard the learned Counsel and having considered the seriousness of the breaches and the recalcitrant conduct of the Judgment Debtor no.1 in delaying the fruits of the Applicants' decree, therefore, in addition to the order directing arrest of Mr.Dedhia, let the Court Receiver, within a period of three days :

(i) take physical possession of the plot of land for construction of Wing B of the project Yash Signature that has been demarcated by way of tin sheets, situate at Arjun Gawand Estate, Opp.Telecom Factory, Sion Trombay Road, Mumbai – 400 088.

(ii) take symbolic possession of the project Yash Heights situate, lying at Station Road, Govandi, Mumbai – 400 088.

12. Let the Judgment Debtor no.1 deposit his passport with the learned Prothonotary and Senior Master by the next date.

13. The Senior Police Inspector of Govandi (East) Police Station and the Senior Police Inspector of Trombay Police Station to provide all assistance for taking possession of the aforesaid plot/project.

14. The Court Receiver to take possession in accordance with order dated 17th January 2024 of this Court and submit a report by the next date.

15. All the Plaintiffs and Applicants to jointly appoint a security agency to guard the plot of land on which the B Wing is to be constructed of which the Court Receiver has been directed to take possession today and to bear the expenses equally.

16. Needless to say that in accordance with order dated 17th January 2024, Defendants No.1 and 2, their agents, servants, representatives and/or assigns and/or persons claiming through and/or under them are restrained by an Order and Injunction of this Court from in any manner whatsoever, either directly and/or indirectly dealing with, disposing of, selling, transferring, alienating, encumbering, licensing, mortgaging, parting with possession and/or dealing with or creating any third-party rights in respect of said plot of land for construction of Wing B of the project Yash Signature that has been demarcated by way of tin sheets, situate at Arjun Gawand Estate, Opp.Telecom Factory, Sion Trombay Road, Mumbai – 400 088 and of the project Yash Heights situate at Station Road, Govandi, Mumbai – 400 088.

17. Also it goes without saying that in the circumstances of this case, till the next date, the Judgment Debtor no.1 is restrained, in any manner whatsoever, from operating any of his accounts held in any bank in India.

18. Let a copy of this order be furnished to all concerned and all concerned to act on an authenticated copy of this order.
19. Mr.Shah, learned Counsel for the Judgment Debtor undertakes to serve a copy of this order upon the Judgment Debtor no.1.
20. List this matter on **27th March 2024**.

(ABHAY AHUJA, J.)