Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COURT RECEIVER'S REPORT NO. 256 OF 2024

IN

SUIT NO. 406 OF 2022

WITH

INTERIM APPLICATION (L) NO. 26994 OF 2021

IN

SUIT NO. 406 OF 2022

WITH

APPEAL NO. 66 OF 2024

IN

INTERIM APPLICATION (L) NO. 26994 OF 2021

Praksh Kishenchand Sapra …Applicant

In the matter between

Praksh Kishenchand Sapra …Plaintiff

Versus

M/s. Azalea Holiday Inn Pvt Ltd & Ors …Defendants

Mr Archit Jayakar, *with Mihir K, i/b Jayakar & Partners, for the Plaintiff.*

Mr Anuuj N Narula, *i/b Jhangiani Narula & Associates, Defendants Nos. 1 to 6.*

Ms Charushila Vaidya, *IInd Assistant to the Court Receiver, present.*

CORAM: ARIF S. DOCTOR, J
DATED: 24th July 2024

PC:-

1. Mr Jayakar, Learned Counsel appearing on behalf of the Plaintiff has today raised a grievance qua Defendant No. 2 to the effect that Defendant No. 2 is in possession of Room No. 201/II, 204/II along with a common bathroom/toilet as also Room No. 207/II in the suit premises completely unauthorisedly. It is his submission that pursuant to the order dated 4th January 2024, the Court Receiver was appointed and inter alia directed as follows:

> *"It is with the permission of the Court Receiver, the plaintiff and the defendants shall be entitled to create interest in the Suit property and the Court Receiver shall supervise the arrangement so worked out and if any amount is to be received from such an arrangement, which may include rent etc, shall be deposited in a separate account and the receivables shall be used to clear the tax liability, with the consent of the plaintiff and the defendant nos.1 and 2.*
>
> *Pending hearing and final disposal of the Suit, the respondent no.1 to 13(a) to 13(d) are injuncted from making any claim or representation to any person or authority as owners of the subject property of the Suit, in any manner whatsoever.*
>
> *It is made clear that the tax amount, which is claimed by the Corporation in terms of its affidavits shall be subject to its final adjudication, as there is a stay operating in the proceedings filed by the defendants on the ground that the property is not subject to commercial use. It is open for the Court Receiver to assess the amount of tax payable in consultation with the Officers of the Corporation."*

2. The Court Receiver is today filed a report seeking following reliefs:

> *"(a) What steps the Court Receiver should take as Advocate for the Defendant Nos. 1 to 6 has informed this Registry, that Defendant No.6 and Defendant No. 13 (a) to 13 (d) have vacated rooms/portion of their occupancy and are not desirious to continue in property as a Licensees of the Court Receiver.*
>
> *(b) The cost of this report be awarded in the sum of Rs. 5,000/- and the same should be debited from the funds available in the suit account."*

3. It now appears that all the occupants of the suit premises have handed over possession of their respective premises except for Defendant No. 2. Mr Jayakar submits that Defendant No. 2 is a director or Defendant No. 1 and, therefore, would have no right to be in use and occupation of the suit premises mentioned above. It is his submission therefore that Defendant No. 2 forthwith also handover the possession of the said premises to the Court Receiver, failing which be put on some terms as to payment for use of the same. Mr Narula opposes this application since he submits that Defendants Nos. 1 to 6 have challenged the order dated 4th January 2024. Mr Jayakar points out that there is no stay granted in by the Appeal Court nor have the Defendants been actively pursuing the Appeal. This is disputed by the Defendants who submitted that the Appeal is kept on 20th August 2024.

4. The fact remains today that there is no stay granted to the 4th January 2024 order appointing the Court Receiver. Hence, there is no impediment in this Court in hearing the matter.

5. Since the Appeal is listed on 20th August 2024, I deem it fit to list the present matters on 27th August 2024. I make it clear that in the absence of any stay on that date being granted by the Appeal Court, this Court will proceed with the hearing of this application.

(ARIF S. DOCTOR, J)