



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Civil Application (CAW) No. 302 of 2024

Writ Petition (WP) No. 4869 of 2023

M/s Hotel Four Seasons LLP through its Partners Mr. Mohan Kanhaiyalal
Gaud and others

Versus

Mr. Summet Shriram Agrawal

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri K.P.Mahalle, Advocate for the applicant/
respondent.

Ms. Gauri Venkatraman, Advocate for the non-
applicants/petitioners.

CORAM : ANIL S. KILOR, J.

DATED : 2nd FEBRUARY, 2024.

By way of present application, the applicant
has made following prayers:

*"1. Direct the Petitioners to refrain themselves from
creating third party interest in the suit properties
which are subject matter of Commercial Appeal No.
02/2022 till its disposal.*

*2. Grant ad-interim relief thereby directing the
Petitioners to refrain themselves from creating third
party interest in the suit properties which are subject
matter of Commercial Appeal No. 02/2022 till its
disposal.*

3. *Grant ad-interim relief in terms of Prayer Clause (2).*

4. *Grant any other relief to meet the ends to justice.”*

2. In this case, the writ petition was disposed of vide judgment dated 30th January, 2024 and thereby the matter was remanded to the learned District Judge-2, Amravati to decide the same afresh after hearing both the parties. Both the parties are directed to appear before the District Judge-2, Amravati on 8th February, 2024 and the District Judge-2, Amravati was directed to decide the appeal within two months from the date of appearance of the parties.

3. During the pendency of this Writ Petition No. 4869 of 2023, there was no stay granted to the order passed by the learned District Judge-1, Amravati restraining the non-applicants in this application from creating third party interest to the extent of 20% share of the applicant. Even such order was there in force in earlier round of litigation from October, 2022.

4. The application has been opposed on the ground that application is not maintainable, as it is not a review or speaking to minutes and therefore, if any such order is passed it would amount taking away rights of the non-applicants to oppose such prayer if any made before the District Judge-2 Amravati. It is pointed out that once the judgment is passed the Court is *functus*

officio and cannot entertain any such application and hence, the application is not tenable.

5. In the morning, when the matter was heard, this Court made a specific query to the learned counsel for the non-applicants 'whether the non-applicants are intending to create a third party interest or alienate the property in dispute, before the date fixed by this Court to appear by the parties before the District Judge-2 on 8th February, 2024'. The learned counsel for the non-applicants on instructions submits that, she cannot make any such statement that the non-applicants will not create third party interest or alienate the property by 8th February, 2024 i.e. fixed date before the learned District Judge-2, Amravati.

6. On the other hand, learned counsel for the non-applicants asked for a time till 5th February, 2024 to file reply to this application.

7. It is a settled law that in a disposed of matter, such application is not maintainable as the Court became *functus officio*. However, considering the peculiar facts and circumstances of the present case, I am of the opinion while dismissing the application a liberty should be granted to the applicant to approach to the learned District Judge-2, Amravati and file an application for such relief tomorrow i.e 3rd February,

2024 at 11 am to meet the ends of justice. On filing of such application, District Judge-2, Amravati is directed to consider the same and pass an appropriate order in accordance with law.

8. The civil application is disposed of accordingly.

[ANIL S. KILOR, J.]