

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5693 OF 2015

**Mumtaz Khan Khudabaksh
(Through Constituted Attorney)**

: Petitioner.

Versus

Yakub J. Khan and ors.

: Respondents.

Mr. Tanvir A H Shaikh for the Petitioner.

CORAM : R. M. SAVANT, J.

DATE : 21st September 2015

P.C.

1 The order dated 15/12/2014 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai allowing Notice of Motion No.1128/2013 filed by the Plaintiff for appointment of Court Receiver under Order LX Rule 1 of the Code of Civil Procedure is taken exception to by way of the above Petition.

2 By the impugned order the Trial Court has appointed the Court Receiver, High Court, Bombay to take possession of the suit flat and had directed the Court Receiver to continue the possession of defendants over the suit flat on a condition that the defendants shall pay rent of Rs.10,000/- per month from the date of taking over possession. The possession of the defendants is continued on the ground that they have been in long

standing possession, at least that is the observation made in the impugned order.

3 It seems that an application for speaking to the minutes of the said order came to be filed by the Petitioner/original Plaintiff pursuant to which the order has been clarified to the extent that the word “rent” has been replaced by the word “royalty” . However, in so far as the other reliefs are concerned, the Court declined to grant the said clarification in view of the fact that the same would not come within the purview of the application for speaking to the minutes.

4 In my view, having regard to the directions contained in the order dated 15/12/2014 which has been clarified to the extent mentioned in the clarificatory order dated 30/04/2015 in the application for speaking to the minutes, no case for interference in the writ jurisdiction of this Court is made out. However, if it is the case of the Petitioner – original Plaintiff that an agreement has not been entered into by the defendants as agents of the Court Receiver in respect of the premises in question or if it is the case of the Plaintiff that the amount of royalty fixed is not in consonance with the market rate, it would be open for the Plaintiff to file an appropriate application before the Trial Court. If any such application is filed, needless to state that the same would be considered by the Trial Court on its own merits and in accordance

with law uninfluenced by the impugned order or the order passed on the application for speaking to the minutes of the order. With the aforesaid directions the Writ Petition is disposed of.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Order.