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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 6 OF 2015
IN
SUIT NO. 1509 OF 1994
WITH
NOTICE OF MOTION NO. 58 OF 2015**

Radha Vishoo Adnani	...Plaintiff
<i>Versus</i>	
Jaswant S. Adnani & Ors.	...Defendants

Ms. Dipti Panda, *with Jayesh Gawde, i/b Thakore Jarimala & Associates, for the Plaintiff.*
Mr. Y.P. Narwankar, *i/b Mr. P.B. Shah, for Defendants Nos. 1A to 1D.*
Mr. Anand Mishra, *i/b Mr. A.M. Saraogi, for Defendant No. 3.*
Mr. K.K. Trivedi, *Ist Assistant to Court Receiver is present.*

CORAM: G.S. PATEL, J
DATED: 25th March 2015

PC:-

1. In this administration suit, this Court Receiver's Report relates to commercial premises at 307, Dalamal Chambers, New Marine Lines, Mumbai 400 020.

2. The factual background of the matter is that on 6th December 2013, a learned Single Judge of this Court (Mrs. R.S. Dalvi, J.) passed an order in Notice of Motion (L) No. 2096 of 2013 *inter alia* recording in paragraph 4 that the suit premises could fetch about Rs. 85,000/- per month and that Defendant No. 1(b) was prepared to pay this amount as royalty charges. At this stage, it must be noted that Defendant No. 1 was originally the Agent of the Court Receiver in respect of these premises. On his death, Defendant No. 1(b) was among those brought on record. The case of the Plaintiff is that the Defendant No. 1(b) was a trespasser in these premises at least for the period from October 2013 to June 2014. Although learned Advocate for Defendant No. 1(a) on instructions today claims that Defendant No. 1(b) never physically “used” the premises, this makes no difference since it is not in dispute that the possession of the entirety of the suit premises was with Defendant No. 1(b), whether authorizedly or unauthorizedly.

3. Today Defendant No. 1(b) contends that no such statement was made to the learned Single Judge. This is not an argument that I can even begin to countenance. The reasons are many. Mrs. Justice Dalvi’s order was challenged in Appeal (L) No. 13 of 2014. That appeal was ultimately disposed of by an order dated 10th September 2014 which records the submission of Defendant No. 1(b) that no such statement was made and also records that when an application for speaking to the minutes of order was made on 7th May 2014, no clarification was issued. The appeal was disposed of by allowing the Appellant to oppose, “in accordance with law”, any application that the Court Receiver might make thereafter calling for a deposit of this amount of Rs. 85,000/- per month.

4. The sum and substance of this is that there is an order of the learned Single Judge recording the statement on behalf of Defendant No. 1(b) to pay royalty at the rate of Rs.85,000 per month. Defendant No. 1(b) was represented by a learned Senior Advocate at that time and it appears that the order was dictated in open Court and not reserved for any reason. That order was challenged in appeal. No clarification, modification or variation was permitted by the Appeal Court. The Defendant No. 1(b) sought a clarification from the learned Single Judge herself by way of speaking to the minutes. This attempt also failed. I do not see how I can possibly today reopen that very issue, i.e., whether the Defendant No. 1(b) did or did not make that statement to the learned Single Judge. This would amount to sitting in appeal over the order of the learned Single Judge. This I cannot and will not do. It would also necessarily mean sitting in appeal over the orders of the Appeal Court. That too I cannot and will not do. The order of the learned Single Judge binds me. The statement recorded on behalf of Defendant No. 1(b) is part of an order of the Court and it must be implemented as such, all avenues available to Defendant No. 1(b) having now been exhausted.

5. Defendant No.1 (b) submits that he should be directed to pay only 50% of the royalty as he would be entitled to 50% of these premises on administration. This argument is without substance in view of the circumstances noted earlier.

6. Defendant No. 1(b) is directed to make payment of the royalty charges at Rs. 85,000/- per month from October 2013 to June 2014, aggregating to Rs. 7,65,000/- on or before 27th April

2015. The prayer for 10% penalty on account of non-deposit of royalty is expressly rejected in the peculiar facts and circumstances of this case.

7. In the event that the deposit is not made, both the Court Receiver and the Plaintiff are at liberty to proceed in accordance with law, including, if permissible, in execution of this order.

8. The premises have remained unoccupied for an inordinate period of time. None of the parties have brought in any bids. This is of no advantage to the estate sought to be administered. Parties are agreed that the Plaintiff's advertisement for giving the premises on leave and licence basis was unsuccessful, possibly because the period offered was only one year. By consent, the Court Receiver will issue a fresh advertisement offering the premises on leave and licence basis for a period of (a) three years; and (b) five years.

9. The Court Receiver has funds of Rs. 50,000/- deposited by Defendant No. 1(b). From the available funds deposited by Defendant No. 1(b), the electricity dues to BEST for July 2014 shall be paid out first. The costs of the advertisement will, for the present, be paid from the remainder of this deposit. Should a successful bidder be found, the costs of the advertisement will immediately be refunded to the Defendant No. 1(b).

10. The Receiver will also be entitled to the costs of this report to be borne by Defendant No. 1(b) in accordance with prayer (d).

11. In view of this order, Notice of Motion No. 58 of 2015 does not survive and is disposed of as such.

12. Let the Court Receiver make a report after the advertisement is issued.

(G. S. PATEL, J.)