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

**CHAMBER SUMMONS NO. 46 OF 2010
IN
SUIT NO. 1499 OF 1981**

R.G. Govan & Company Ltd. ...Plaintiffs
Vs.
Gurucharan A. Malhotra & Ors. ...Defendants
And
The Court Receiver, High Court Bombay & Anr. ...Respondents

Ms. Kashmira Bharucha i/b. Vigil Juris for the Plaintiffs
Mr. Ajay Malvankar, S.O. Court Receiver Officer present

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 4TH FEBRUARY, 2015**

P.C. :

1. This is the most unusually outrageous chamber summons for recovery of various amounts by one of the plaintiffs from the other and from the Court receiver. The plaintiffs got the Court Receiver appointed. The suit property was tenanted. The tenants of the property had to pay the rents. The rents would include municipal taxes. The plaintiffs would not recover the rents. The Court Receiver had to recover the rents. The Court Receiver appointed the Rent Farming Contractor. The Rent Farming Contractor as also the Court Receiver would charge their fees. The fees are by specified percentages as per the rules governing Court Receiver. The Court Receiver recovered both the rents as also

the taxes. The Court Receiver paid the taxes. The Court Receiver saved the property from auction. The Court Receiver acted as the estate manager of the plaintiffs. The Court Receiver is not expected to do this work free of charge. Each recovery and each payment entails costs, charges and expenses. It is for the plaintiffs to pay them. It is for the Court Receiver to deduct them from the plaintiffs' account.

2. The plaintiff No.1 is the previous owner of the suit property. Plaintiff No.2 is the developer. Plaintiff No.2 has to make payments of costs, charges and expenses as per the consent terms between the parties to the suit, including both the plaintiffs, in terms of which the order came to be passed on 4th December, 2006.
3. The parties agreed that plaintiff No.2 must bear the costs, charges and expenses of the Court Receiver because he developed the suit property. The possession has been handed over to plaintiff No.2. Who pays the Court Receiver between the plaintiff No.1 and plaintiff No.2 is a matter of agreement between the plaintiff No.1 and plaintiff No.2. It is not an agreement with the Court Receiver. The Court Receiver is entitled to debit the account of this suit. The Court Receiver has debited the account for the rent as also for the taxes recovered and paid.

4. The debits are correct. The contention of the plaintiffs that the Court Receiver can charge commission over rent, but not over the taxes which are collected, recovered and paid is not supported by any rule of this Court. The entire rent payable by the tenant includes taxes. Hence when the Court Receiver has to collect the rent he must collect the rent which includes taxes. He would be entitled to charge his commission on the entire amount collected, if it is paid as a whole. He would be entitled to charge separately, if amounts are recovered separately. The contention of the plaintiff that he cannot recover one, but only the other is rejected.
5. The plaintiff has relied upon the ledger account of the Court Receiver **Exhibit-DD** to the chamber summons. It shows the amounts recovered. The plaintiff has made arithmetical calculations and prepared columnar statement showing what amounts are recovered by way of rent and taxes and only towards taxes. The exercise need not be gone into by the Court since the very premise on which the distinction is drawn and two statements are made is incorrect.
6. The Court Receiver was to stand discharged without rendering accounts and on payment of his costs, charges and expenses. The Court Receiver's costs, charges and expenses

are reflected in the statement Exhibit-DD which is the Court Receiver's ledger account. The parties are bound by the said account.

7. Of course since it is the agreement between the parties that plaintiff No.2 shall bear the costs, charges and expenses plaintiff No.1 would be entitled to recover them from plaintiff No.2. Plaintiff No.1 shall recover them in accordance with law from plaintiff No.2. Neither this Court nor the Court Receiver can pass directions in that behalf in the chamber summons.
8. There are numerous reliefs prayed for. However in view of the above discussion no prayer is grantable.
9. The chamber summons is dismissed with costs as entirely misconceived.

(ROSHAN DALVI, J.)