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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 208 OF 2015
IN
SUIT (L) NO. 151 OF 2015

The Hongkong & Shanghai Banking Corporation Limited ...Plaintiffs
Versus
Kamaladevi Agrawal & 6 Ors. ...Defendants

Mr. Snehal Shah, *with Mr. Najan-es-Sami, i/b M/s. Maneksha & Sethna, for the Plaintiffs.*
Mr. Abhijeet Singh, *i/b M/s. Anand Nikhal, for Defendants Nos. 3 and 4.*

CORAM: G.S. PATEL, J
DATED: 24th April 2015

PC:-

1. This is an interpleader suit. The Plaintiff, The Hongkong & Shanghai Banking Corporation (“**the HSBC**”), took on lease for a period of ten years a large commercial premises of about 2404 square feet at Kamala Bhuvan, Plot No. 30-B, Swami Nityanand Marg, Andheri (East), Mumbai – 400 069 from one Vedprakash Agrawal, since deceased. The initial monthly compensation was Rs.

24,040/- per month for the first five years. This was to be enhanced by agreement for the next five year period to Rs. 28,848/- per month. In addition, the Plaintiffs placed a refundable interest free security deposit of Rs. 1,44,240/- with Mr. Vedprakash Agrawal. On 4th May 1995, Mr. Vedprakash Agrawal passed away.

2. There is a dispute about his estate *inter alia* between the Defendants to the present suit. From 17th April 1995 to 5th June 2002, the HSBC deposited the monthly compensation in a current account with itself that stood in the name of the deceased. From 12th March 2003, the Plaintiffs opened a special suspense account bearing No. 003909967002 and transferred to it an amount of Rs. 20,06,508.60 ps. being the monthly compensation due from April 1995 to June 2002 and additional sum of Rs. 1,73,088/- as compensation for six months between July and December 2002. Since then, the Plaintiffs has been depositing an amount of Rs. 28,848/- without deducting TDS into the suspense account. As of 31st July 2011, there was a sum of Rs. 51,50,940.16 ps. to the credit of the suspense account. Since August 2011, the Plaintiffs has not made deposits in this suspense account. Instead, it has, in its books, made a provision for remittance of the amount of Rs. 28,848/- per month.

3. From 2004 onwards, there has been considerable correspondence between the Plaintiffs and the claimants to Mr. Vedprakash Agrawal's estate. The Plaintiffs have stopped using the

premises since about 9th March 2011 and vacated them a few weeks later on 11th April 2011. The Plaintiffs state clearly both in the suit and in the correspondence that they have no interest in these premises. They do not claim any such interest. They also do not claim any interest in the amounts in the suspense account or in the amounts for which provision has been made in their books. In the meantime, Defendants Nos. 1, 3 and 4 have filed an eviction suit bearing T.E. & R Suit No. 97/123 of 2011 in the Court of Small Causes, Bandra seeking recovery of possession.

4. In my view, there is no reason why the Plaintiffs should be required to continue the upkeep, maintenance and security in respect of these premises. The lease for these premises has long expired. The Plaintiffs have stopped using them. They have vacated the premises. They have been forced by the circumstances beyond their control to keep an amount aside both in the suspense account and by making a suitable provision in their books. The Plaintiffs themselves have no interest in the subject matter of the suit. That contest is between the Defendants *inter se*.

5. The prayers in the Notice of Motion are for the appointment of a Court Receiver in respect of the suit premises and of the amount to the credit of the suspense account along with monthly provisioned amount, today about Rs. 15,00,072/-. It is difficult to see why such an order should not be passed. Indeed, these reliefs are in the interest of all concerned. The Plaintiffs are themselves

not concerned with any disputes between the Defendants *inter se*.

6. As to which of the Defendants are entitled to this premises and these amounts, all contentions can be left open. The present order is, therefore, made specifically without prejudice to the rights and contentions of all the Defendants.

7. In this view of the matter, the Notice of Motion is made absolute in terms of prayer clauses (a), (b), c(i) and c(ii), which read as follows:

“(a) that pending the hearing and final disposal of this suit this Hon'ble Court be pleased to appoint the Court Receiver High Court or some other fit and proper person as Receiver in respect of the suit property and the sum of Rs. 51,50,940.16 standing to the credit of Suspense Account bearing No. 003909967002 in Plaintiffs branch at Andheri which is held by the Plaintiffs along with the amount of monthly provisioning amounting to Rs. 15,00,072/- along with authenticated copy of all statements and records pertaining to the said account with all powers under Order 40 Rule 1 of the Code of Civil Procedure 1908 and to specifically direct the Receiver to receive the same from the Plaintiffs and/or any of the Defendants and to retain the same during the pendency of the aforesaid litigation between the Defendants *inter se*;

(b) that pending the hearing and final disposal of this suit this Hon'ble Court be further pleased to order and direct the Plaintiffs to hand over / surrender possession of the suit property and deposit the sum of Rs. 51,50,940.16 standing to the credit of

Suspense Account bearing No. 003909967002 in Plaintiff's branch at Andheri which is held by the Plaintiffs along with the amount of monthly provisioning amounting to Rs. 15,00,072/- and the records and statements pertaining to the said account with the Prothonotary & Senior Master of this Hon'ble Court;

(c) that upon handing over / surrendering possession of the suit property and depositing the sum of Rs. 51,50,940.16 standing to the credit of Suspense Account bearing No. 003909967002 in Plaintiffs branch at Andheri which is held by the Plaintiffs along with the amount of monthly provisioning amounting to Rs. 15,00,072/- and the original statements and records pertaining to the same with the Prothonotary & Senior Master of this Hon'ble Court and the Receiver taking possession and charge of the same, this Hon'ble Court be pleased:

(i) to declare the Plaintiffs as discharged from all liability to and/or and if the Defendants and/or their heirs, assigns, agents, servants, family members, successors-in-title in relation to the suit property and the sum of Rs. 51,50,940.16 standing to the credit of Suspense Account bearing No. 003909967002 in Plaintiffs branch at Andheri which is held by the Plaintiffs along with the amount of monthly provisioning amounting to Rs. 15,00,072/- or in relation to the same or any claims raised by the Defendants as stated above;

(ii) to dismiss the Plaintiffs from this suit;"

8. In addition, the Prothonotary & Senior Master shall immediately, and in any event on or before 29th April 2015, forward

an authenticated copy of this order to the Registrar of the Court of Small Causes, Bandra for placing before the learned Judge hearing T.E. & R Suit No. 97/123 of 2011 filed by Defendants Nos. 1, 2 and 4, namely, Kamaladevi Agrawal, Jagdish Agrawal and Mr. Anoop Agrawal.

9. Liberty also to the parties to place an authenticated copy of this order before the learned Judge of the Court of Small Causes, Bandra.

10. Since in view of prayer clause c(ii) being granted, the Plaintiffs have been removed as such from the suit. Plaint to be amended accordingly on or before 12th June 2015 without need of reverification. It will be open to any of the Defendants to file a suitable application for transposition and for consequential amendments to the plaint.

11. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)