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

**NOTICE OF MOTION NO.77 OF 2005
IN
WRIT PETITION NO.2732 OF 2003**

Gangji Bhanji Bheda and Ors.

... Applicants

Versus

The Municipal Corporation of
Greater Bombay and Ors.

... Respondents

Mr. A.G. Damle, Senior Counsel i/by Mr. D.R. Shah, for the Applicants
and for Petitioners in WP No.2732 of 2003.

Mr. Vinod Mahadik, for the Respondent – BMC.

Mr. P.M. Shah with Mr. Tanna, for Respondent No.5.
Court Receiver present.

**CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.**

DATE : 11th AUGUST, 2015

PC.

. We have perused the Court Receiver's Report No.483 of 2015. The report of the Court Receiver records that he has taken symbolic possession of Shop Nos.4 to 7 and Shop Nos.15 and 16 out of 18 shops. He has stated that Shop Nos.1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 17 and 18 were found to be in locked condition and therefore, possession thereof could not be taken. The report records that name of the occupant of Shop No.4 is Mavalal M. Acharwala (father of the

Applicant in Chamber Summons No.206 of 2015). Report records that Shop Nos.5,6 and 7 have been amalgamated and one Ashalata M. Ahir is in possession thereof. The Report further records that one Pradip Ahir is in possession of Shop Nos.15 and 16. The contention of the learned senior counsel appearing for the Applicants – who are the Writ Petitioners, is that none of the persons found in possession have right to occupy the respective shops. As far as occupant in Shop No.4 is concerned, on the aforesaid Chamber Summons, we are passing an order of impleadment. Before any relief is claimed against the occupants of the Shops, they will have to be impleaded as parties. The learned Senior Counsel appearing for the Applicants/ Petitioners submits that he may be permitted to implead the occupants as party Respondents to the writ petition. The said relief deserves to be granted.

2. The Court Receiver has not taken possession of 12 Shops which were found to be in locked condition. The Court Receiver will have to take physical possession of the said shops. For that purpose, appropriate officers of the Mumbai Municipal Corporation will have to remain present at the site. If the rolling shutters of the 12 shops are found to be in damaged condition, it will be the responsibility of the Municipal Corporation to change the rolling shutters at its own cost.

3. We, therefore, dispose of this Notice of Motion by continuing the ad-interim relief which is granted on 21st April, 2015 with liberty to the Applicants to seek further reliefs after the occupants are impleaded as party Respondents to the writ petition.

4. Hence, the Notice of Motion is disposed of by passing the following order:-

ORDER

- (i) The appointment of the Court Receiver, High Court, Bombay in terms of the order dated 21st April, 2015 will continue to operate till the disposal of the writ petition subject to what is provided in the said order;
- (ii) We direct the Court Receiver to take physical possession of the shop premises (Shop Nos.1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 17 and 18) which were found to be closed within a period of one month from today after notice to the Mumbai Municipal Corporation. After receiving the notice, appropriate officers of the Mumbai Municipal Corporation shall remain present at the site. If the officers of the Mumbai Municipal Corporation are not in a position to open the locks put on the said twelve shops, it will be open for the Court Receiver to break

open the locks and take physical possession of the shop premises. After taking physical possession and after carrying out inventory, the shop premises shall remain in possession of the Court Receiver. Premises shall be kept locked. Usual name boards of the office of the Court Receiver shall be fixed on the twelve shop premises informing the members of the public that the Court Receiver is in possession of the said shops. If the rolling shutters of the said shops are in damaged condition, Mumbai Municipal Corporation shall replace/repair the same at its own cost;

- (iii) We grant liberty to the Applicants to seek further interim relief after all the occupants as disclosed in the report of the Court Receiver are impleaded as parties;
- (iv) Though the Court Receiver will continue in respect of the shop Nos.4 to 7 and 15 and 16, till further orders are passed, actual occupants shall not be dispossessed by the Court Receiver;
- (v) Notice of Motion is disposed of on above terms.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)