

Sharayu.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 639 OF 2015
IN
TESTAMENTARY PETITION NO. 315 OF 2007**

Nafis Akhtar Mohammed Moosa Khan & Anr.	...Petitioner
<i>Versus</i>	
The Regional Transport Officer & Ors.	...Respondents

Mr. Q.M. Ashfaq, *with Mr. Arvind Taral, for the Petitioner.*
Mr. J.P. Nishad, *i/b Mr. A. Saraogi, for the Respondent No. 5*

CORAM: G.S. PATEL, J
DATED: 26th October 2015

PC:-

1. This Court Receiver's Report arises in a contested Testamentary Petition now renumbered as a Suit.

2. The present dispute is in respect of the premises of Janseva Motor Training School, formerly being conducted at Shop No. 12, Tanker Villa Estate, August Kranti Marg, Gowalia Tank, Mumbai – 400 036. The Court Receiver was appointed by an order dated 29th August 2008. He was directed to enforce an earlier order dated 6th

July 2007. The Court Receiver took possession of those premises. Various Reports were placed before the Court for orders. Ultimately, the appointment of the Court Receiver was confirmed and the 1st Plaintiff, Nafis Akhtar Mohammed Moosa Khan, was appointed as his agent at a monthly royalty Rs. 39,000/- per month subject to the execution of an Agency Agreement in the usual form. That Agency Agreement was executed in 2012. The 1st Plaintiff paid the royalty upto June 2015. There is no dispute about this.

3. In June 2015 the Court Receiver received a communication from the 2nd Plaintiff, Nasim Akhtar Mohammed Moosa Khan offering to pay royalty of Rs. 60,000/- per month.

4. The present Report, therefore, seek directions as to whether the 2nd Plaintiff should be given the agency and whether the 1st Plaintiff should be directed to pay royalty at the rate of Rs. 39,000/- from July 2015 to September/October 2015.

5. I find it very difficult, having heard Mr. Ashfaq for the Plaintiffs, to make any such order at this stage. The reason for this is that it appears that the building i.e. Tanker Villa Estate has itself been demolished. The premises that were the subject matter of the agency do not exist. The earlier premises had a frontage on the main road, i.e. August Kranti Marg, Opposite Cumballa Hill Hospital. The Plaintiff has now been offered alternative premises by the developer but these are in the basement of the redeveloped building. None of the parties have accepted these premises because, according to them, there is no possibility of conducting any business of a Motor Training School from a basement. Mr. Ashfaq

also points out that the premises offered have no ventilation and no proper lighting and it is unreasonable to expect the Plaintiffs, or anybody else for that matter, to conduct any sort of business from there; certainly no motor training school can operate from such premises. It follows that it is also unreasonable to expect anyone to pay royalty for premises that are not only not taken but are completely unusable.

6. The Court Receiver is at liberty to place a fresh report. In the meantime, the Plaintiffs are directed to file an Affidavit setting out complete particulars regarding the demolition of the old building and the the redevelopment of the new building.

7. I am, however, making it clear that the 1st Plaintiff is not liable to pay any amount from July 2015 onwards. I am also making it clear that the 2nd Plaintiff is no longer bound by his offer of Rs. 60,000/- per month because that offer was made at a time when the earlier road-facing premises were in existence.

8. The present report is disposed of in these terms.

(G. S. PATEL, J.)