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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
COURT RECEIVER'S REPORT NO. 299 OF 2016
IN
TESTAMENTARY PETITION NO. 315 OF 2007**

Nafis Akhtar Mohammed Moosa Khan & Anr. ...Petitioners

Versus

The Regional Transport Officer & Ors. ...Respondents

Mr. Q. M. Ashfaq,, for the Petitioners.

Mr. Dattatray Achrekar, for Respondents Nos. 2 & 3.

Mr. Kamlesh Mali, for Respondent No. 4.

Mr. M. S. Deshpande, Court Receiver, present.

CORAM: G.S. PATEL, J

DATED: 29th August 2016

PC:-

1. The only positive thing to come out of this matter is that the Court Receiver, who is personally present in Court, informs me that he has immediately discontinued the practice of his officers making so-called "surprised visits" at the instance of one or the other parties to the litigation. As a general, though not invariable rule, the Court Receiver will seek an order from the Judge either in Chambers or in Court before making any such visit. If one of the parties asks for a visit, the Court Receiver must obtain directions on that direction. If there is an immediate and imminent danger of

property custodia legis being transferred or wasted, and the matter is too urgent to wait, the Court Receiver must then make a report of any site visit within the shortest possible time. The Court Receiver should be slow to act unilaterally on the request of any of the parties to the dispute.

2. I am dismissing the Court Receiver's Report and I am doing so with costs against the 4th Respondent, at whose instance the Court Receiver acted. It is on a later request by the Court Receiver personally that I am not imposing costs of the officer of his department who made the visit.

3. I passed an order dated 8th August 2016 commenting on the entirely unsatisfactory state of affairs in this matter. Briefly, the dispute relates to the Janseva Motor Training School which was being run in a building known as Tanker Villa at August Kranti Marg, Gowalia Tank, Mumbai 400 016. The structure has been demolished. There is now in its place a large building known as Lee Plaza. From the very beginning, i.e., since October 2015, Mr. Ashfaq for the Petitioners has pointed out that his clients were unable to use the reallocated premises for a motor training school because they were set too far back from the road and also because they had been allotted premises in the basement. On 26th October 2015, when I first passed an order in the matter, the Petitioners were offered premises in the basement. I noted this in my order of that day. Mr. Ashfaq says that his clients now have premises that are even more remote and that they are unable to run any motor training school from there. They keep some old files and records in that office and nothing else.

4. The Petitioners' principal opponent is Respondent No. 4. On the last occasion his Advocate was not present. I did not carry the matter much further though I did note that on 19th January 2016 and 27th January 2016, the 4th Defendant complained to the Court Receiver that the Petitioner No. 1 was doing business in the building but without payment of royalty. The Court Receiver's office seems to have thought it appropriate to despatch one of its officers, i.e., to act on the 4th Respondent's complaint but not to obtain any direction or order of the Court. This was not a matter, it must be noted, of any third party being inducted into premises *custodia legis* or a complaint of alienation of property. It was hardly the kind of thing that required the Court Receiver to make a surprise visit, one that is described through out this report as a 'surprised visit'.

5. No one is more surprised by this visit than I; for I find it astonishing that this Court Receiver not only made this visit but did so with uncommon and quite astounding zeal and despatch within a mere two days. I have yet to see the Court Receiver do anything with quite such enthusiasm. Indeed, this incredible alacrity in making make a site visit at the instance of the 4th Defendant is notably lacking in everything that followed, because the Court Receiver, having made his 'surprised visit', then did not find the time for the next seven months till 19th July 2016 to make this report nor the time thereafter till August 2016 to place it before me.

6. I am afraid that there is in this matter much to be desired in the conduct of the Court Receiver. I can understand the 4th Defendant wanting to take his chances. I cannot understand the Court Receiver's office or its officers lending themselves to that

attempt. What is worse is that the report does not merely report the site visit and seek directions; it seeks an order to take back possession from the Petitioner and to hand them over to the 4th Respondent. That is evidently a prayer at the instance of the 4th Respondent. It is singularly inappropriate. I am taken aback too that despite my previous order of 8th August 2016, when I made my views amply clear, the Court Receiver has once again placed this matter today for orders on the report. He should, in my view, simply have sought leave to withdraw it.

7. I will dismiss this report. It is the only fate that it deserves. The 4th Respondent had no business trying to goad the Court Receiver in this fashion. The 4th Respondent is a party before the Court. He is represented by Advocates. He could have made an application to the Court and undoubtedly the Plaintiffs and Mr. Ashfaq who appears for them would have been given notice and been heard. The Court Receiver also had no business to act as he did or to present a slanted report of this kind.

8. The Court Receiver's Report is dismissed.

9. The 4th Defendant will pay costs in the amount of Rs.15,000/- to the Plaintiff through Mr. Ashfaq within a period of two weeks from today. It is only because of Mr. Deshpande's intercession seeking leniency on behalf of his department that I am not imposing costs on the officer(s) concerned.

(G. S. PATEL, J.)