Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COURT RECEIVER'S REPORT NO. 26 OF 2017

IN

SUIT NO. 5757 OF 1998

Hemlata K Gala & Anr ...Plaintiffs
Versus
Chunilal P Satra & Ors ...Defendants

Mr Bhavin Gada, *with Mrs Yogini Gada, i/b Harakchand & Co., for the Plaintiffs.*
Mr Chetan Shah, *a/w Mr Sachin Joshi and Mr RK Agrawal, for the Defendant Nos. 1, 2, 3(a) to 3(c) and 4.*
Mr GG Ketkar, *Ist Assistant to the Court Receiver, is present.*

CORAM: G.S. PATEL, J
DATED: 22nd February 2017

PC:-

1. This Report is thoroughly misconceived. It seeks directions as to what the Receiver do because the Defendants have not kept alive a bank guarantee for the period from 20th December 2011 to 20th June 2012 and 20th December 2014 to 16th June 2015.

2. All this emanates from a Division Bench order of 29th November 2006, which reads thus:

> "We heard Mr Milind Vasudeo, leaned Counsel for the Appellants and Mr Chirag Balsara, learned Counsel for the Respondents.
>
> 2. It is not in dispute that parties are co-owners in the subject shop having equal share. It is also not in dispute that pursuant to the impugned order dated 28th September 2005, the Appellants have surrendered possession of the subject shop as Court Receiver's agent and now since 21st December, 2005 the Respondents have been appointed as the agent of the Court Receiver. The learned Counsel for the Respondents submits that the Respondents have been paying royalty at the rate of Rs. 20,000/- per month since 21st December 2005. Taking this fact into consideration and the valuation of the property, the fixation of the royalty at the rate of Rs. 20,000/- per month does not seem to be excessive warranting interference by us in this appeal.
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> 3. Appeal is dismissed in limine.
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> 4. As regard the arrears of royalty payable by the Appellants, we grant liberty to the Appellants to furnish bank guarantee in the sum of Rs.10,00,000/- from any nationalised bank to the satisfaction of the Court Receiver, within four weeks from today, failing which the Court Receiver shall take appropriate steps in recovering the due amount towards the due royalty from the Appellants."

3. This report makes it clear that the Defendants surrendered possession before 23rd December 2005. The Plaintiffs were then appointed agents of the Receiver. They were paying Rs. 20,000/- per month from 21st December 2005 and this was confirmed. There remained a question of arrears of royalty payable by the Defendants for the previous period during which they were in occupation. This is why in paragraph 4 the Division Bench granted liberty to the

Defendants to furnish a bank guarantee in the amount of Rs. 10,00,000/- from any nationalised bank to the satisfaction of the Prothonotary & Senior Master.

4. The Defendants say there was a delay in furnishing that bank guarantee because they required the IFSC Code of the beneficiary bank and the Court Receiver did not provide this in time. The present position is that a bank guarantee in the amount of Rs. 10,00,000/- has in fact been furnished as on 17th June 2016. It is revalidated and the Defendants agree and undertake to renew it periodically or as necessary till further orders of the Court.

5. There is no question of the Defendants 'furnishing' a bank guarantee for a period after 21st December 2005, i.e., for the periods mentioned in the report, as those periods are when the Plaintiffs and not the Defendants were in possession. Paragraph 4 of the Division Bench order makes it clear that the bank guarantee was only for **arrears of royalty** payable.

6. The grievance of the Court Receiver is that the bank guarantee was not kept alive for these two periods. This is now wholly inconsequential. It would have mattered if there was no valid and subsisting bank guarantee today. The subsistence of the bank guarantee is crucial in the event it needs to be invoked. The present undertaking by the Defendants is sufficient once accepted as an undertaking to the Court to keep the bank guarantee alive.

7. The Court Receiver's Report is disposed of with no order as to costs.

(G. S. PATEL, J.)