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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COURT RECEIVER REPORT NO.30 OF 2017

IN

ARBITRATION PETITION NO.952 OF 2009

Hathway Internet Satellite Pvt. Ltd & Anr. ...Petitioners.

V/s.

Space Vision Cabletel Pvt. Ltd. ..Respondent.

Mr.Ravindra Jain i/b. M/s.Thakore Jariwala & Associates for the
Petitioners.

Ms.Kavita Shah for the Respondent.

Mr.Mandawgade, O.S.D. - Court Receiver.

Coram : N.M.Jamdar, J.

Date : 20 March 2017

P.C. :-

In the order dated 20 February, 2017 in the second line of the order the figure '0' has remained to be added to be added in the amount. The learned counsel for the parties and the Court Receiver points out that the amount will have to be read Rs.31,00,000/-. The order be corrected accordingly. Corrected order be uploaded.

2. The learned counsel for the original Petitioners seeks time. He states that an amount of Rs.15,50,000/- has been deposited. However, no commitment is being made in respect of the remaining amount. In the chamber summons taken out by the Petitioners for modification of royalty fixed at Rs.50,000/- per month, on 6 September 2016, the learned Single Judge (K.R.Shriram, J.) passed the following order :-

“1. On 2nd December, 2011 the Court Receiver had fixed the interim measure adhoc royalty @ Rs.50,000/- per month. No stay of this order has been granted and the counsel for the applicants states that they have not paid a penny till date but at the same time are continuing to act as an agent of the Receiver.

2. Therefore, the applicants to deposit the entire royalty amount with effect from 2nd December, 2011 up to date with the Court Receiver within two weeks from today. If the amount is not deposited within two weeks, the chamber summons will stand dismissed without further reference to the court and if the amount is deposited within two weeks, then one week thereafter the chamber summons be listed for hearing.

3. At this stage, the counsel for the applicants seeks time of four weeks to deposit the royalty amount. Time granted. Therefore, if the amount is deposited within four weeks from today, the chamber summons be listed on 5th October, 2016. If the amount is not deposited within four weeks, the chamber summons will stand dismissed without further reference to the court.”

3. It is informed that the chamber summons was dismissed

because the Petitioners did not pay any amount. The chamber summons was sought to be taken on board, but on 5 October 2016 the learned Single Judge (K.R.Shriram, J.) passed the following order:-

“1. On 6th September, 2016 the applicants' counsel sought time to deposit the royalty amount within four weeks. I am told that this amount has not been deposited yet.

2. Therefore, by virtue of paragraph 2 of the order dated 6th September, 2016 the chamber summons stands dismissed.”

4. Pursuant thereto, the Court Receiver submitted his report seeking directions regarding the complete and total failure of the Petitioners to deposit the amount of royalty.

5. On the Court Receiver's report, an ad-hoc royalty was fixed on 20 February 2017. The only argument that is sought to be advanced by the learned counsel for the Petitioners is that an appeal has been filed for reduction of the Ad-hoc royalty fixed. However, as on today, no order is passed by the Appellate Bench and the chamber summons for modification has already been dismissed. The Petitioners continuing as an agent of the Court Receiver is liable to pay the royalty. It appears that the Petitioners are a private limited company. Nothing is placed on record to show that the condition of the Petitioner is financially unsound or that it is impossible for the

Petitioner to pay the royalty.

6. Ad-hoc royalty has been fixed in the year 2011. It is only after the order was passed on 20 February 2017, part of the royalty is paid. No commitment is coming forth for payment of rest of the amount. No order is passed reducing or modifying the amount and, therefore, limitless indulgence cannot be granted. If the Petitioner desires to continue as agent of the Receiver, the royalty due must be paid. I am, therefore, inclined to give four weeks time to the Petitioner to clear the balance amount by way of last chance. It is pointed out that prayer clause (b) is independent of the aspect of payment of arrears.

7. Accordingly, the Court Receiver's report is disposed of as under :-

- (a) If the arrears of ad-hoc royalty fixed at Rs.50,000/- per month, minus the amount already deposited, are not cleared by the Petitioners within a period of four weeks from today, the agency of the Petitioners will stand terminated without reference to the Court and the Court Receiver will take the consequential action, including on the application dated 8 July 2015 filed by the Respondent as prayed for in prayer clause (b);
- (b) If the arrears are deposited by the Petitioners as directed then

the Court Receiver will take out a separate report in respect of the prayer clause (b);

- (b) The costs of the report be paid as prayed for.

(N.M.Jamdar, J.)