

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO.154 OF 2017
IN
COMM. SUIT NO.442 OF 2016**

Kamla Realty (Bombay) ... Plaintiff
versus
New Gopal Premises Co-op. Housing
Society Ltd. and Ors. ... Defendants

Mr. Vora i/b. Pramodkumar and Company for the Plaintiff.
Mr. Vikhil Dhoka i/b. Solicis Lex for Defendant Nos. 2, 4 and 6.
Mr. Dharmendra Damani i/b. Mr. Jitendrakumar Damani for Defendant No.5.
Mrs. Kavita Ambekar, 1st Assistant to Court Receiver, present.

**CORAM: S.J. KATHAWALLA, J.
DATE: 14th DECEMBER, 2017**

P.C.:

1. In Notice of Motion No.1861 of 2016, this Court passed an Order dated 17th March, 2017 inter alia directing Defendant Nos. 2 to 6 to handover possession of their respective flats within a period of four weeks from the date of the Order. It was also clarified that if the Defendant Nos. 2 to 6 fail to handover possession as ordered / directed the Court Receiver, High Court, Bombay shall stand appointed as Receiver in respect of the Suit flats, who shall proceed to take forcible possession of the Suit flats. Defendant Nos. 2 to 6 filed Appeal (L) No.31 of 2017 impugning the Order dated 17th March, 2017. The Appeal was admitted. However, no interim orders were granted.
2. Since Defendant No. 2 to 6 failed to handover possession of the Suit flat in

accordance with the Order dated 17th March, 2017, the Plaintiff by its Advocate's letter dated 27th June, 2017 requested the Court Receiver to take forcible possession of the Suit flats. The Defendant Nos.2 to 6 by their Advocate's letter dated 27th June, 2017 (Received by Court Receiver on 10th July, 2017) recorded that the Court Receiver had no power or authority to take forcible possession. On 15th July, 2017 the representative of the Court Receiver visited the Suit premises to take possession of the same, however, the Flats of Defendant Nos. 2 to 6 were found to be locked. In view thereof, on 2nd August, 2017, the Court Receiver sought directions from this Court, when the Court permitted the Court Receiver to take forcible possession by breaking open the locks and further directed the Plaintiff to make arrangements for keeping the goods if found in the suit premises, in safe custody till further orders of this Court.

3. On 1st September, 2017, the Court Receiver took forcible possession of the flats by breaking open the locks of the Suit flats and handed over possession of the same to the Defendant No.1 (Society).

4. Thereafter, Defendant No.1 Society by its letter dated 1st September, 2017 informed the Advocate for Defendant Nos. 2 to 6 that they have received possession of the suit premises and requested his clients to collect the goods and material lying inside the suit premises within 48 hours. By an Email dated 1st September, 2017, the Advocate for the Defendant Nos.2 to 6 intimated that another lock has been put by his clients on the Court Receiver's lock, for extra safety. On 2nd September, 2017,

Defendant No.1 handed over possession of the entire building to the Plaintiff to commence the development work. On 3rd September, 2017 when the workers of Plaintiff visited the site to commence development work, Defendant Nos.2 to 6 prevented them from doing so. They abused and threatened the workers who were forced to leave the site. On 3rd September, 2017, the Defendant No.1 Society wrote a letter to the Borivali Police Station and asked for police protection to commence the development work, when they were informed that the Society should obtain necessary Orders from the Court. By an order dated 12th September, 2017, this Court issued show cause notice to the police officers. By an order dated 13th September, 2017, this Court granted a week's time to the Police Officers to file Affidavit. By an order dated 21st September, 2017 this Court accepted the unconditional apology tendered by the Police Officer and granted liberty to Defendant Nos.2 to 6 to collect their goods within one month, by giving 24 hours clear notice in writing and also granted liberty to the Plaintiff to move this Court in the event of the Defendants failing and neglecting to collect their goods. By an order dated 10th November, 2017 this Court fixed an appointment on 17th November, 2017, for Defendant Nos.2 to 6 to collect the goods in the presence of the Court Receiver. It was clarified that if any Defendants fails or neglects to collect the goods, the Court will pass appropriate Orders for destruction of the goods. On 17th November, 2017, at the appointed date and time, Defendant Nos.2, 3, 4 and 6 collected their goods; however Mr. Dhirajlal Shah (Husband of Defendant

No.5) refused to collect the goods. Infact, Defendant Nos.2, 4 and 6 through Advocate Vikhil Dhoka have informed the Court that they are not interested in pursuing the Suit, however Advocate Mr. Jitendrakumar Damani is not giving them his no objection despite several requests made to him. As far as Defendant No.5 is concerned, Advocate Damani states that his client is not desirous of taking possession of the items which the Receiver has called upon him to collect, since according to his client, the same are in damaged condition and some items are missing. He states that he will be taking appropriate steps for claiming damages qua the damaged and missing items. In view thereof, the Court Receiver is directed to forthwith sell the items which are offered for collection to Defendant No.5, but he has declined to do so, by way of private treaty and handover the sale proceeds to Defendant No. 5.

(S.J.KATHAWALLA, J.)