

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COURT RECEIVER'S REPORT NO.185 OF 2017

IN

REPORT NO.186 OF 2014

IN

SUIT NO.4913 OF 2000

Nadeem M. Oomerbhoy

.. Plaintiff

vs.

Rashid Sattar Oomerbhoy & Others

.. Defendants

Mr.Ganesh Ambekar i/b M/s.Thakore Jariwala and Associates for the
plaintiffs

Mr.Rahul R. Singh for defendant nos.2, 3, 4 (a) to 4(c)

Mr.M.R.Mandawgade, O.S.D. Court Receiver

CORAM : K. K. TATED, J.

DATE : OCTOBER 5, 2017

P.C.:

1. This matter is taken on board pursuant to the application of the Court Receiver for speaking to minutes of order dated 22.9.2017 passed by this court.

2. Mr.M.R.Mandawgade, Court Receiver submits that following typographical errors are to be corrected in the order dated 22.9.2017:

*a) The year in the cause title of the report No.186 is to be corrected as **2014** instead of 2017.*

b) The amount Rs.5,01,955/- mentioned at third line of the paragraph 2 of the said order is to be corrected as

Rs.5,01,935/-.

*c) The Recovery Certificate mentioned as dated 20th July, 2017 is to be corrected as **28th July 2017** at 5th line of the 2nd paragraph, 16th line of 3rd paragraph, third line of 5th paragraph and third line of clause 'd' of 5th paragraph.*

*d) The word mentioned as expedited in third line of clause 'b' of 5th paragraph is to be corrected as **accepted**.*

3. Same is corrected.

4. Rest of the order remains as it is. The original order shall stand corrected accordingly.

(K.K.TATED, J.)

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COURT RECEIVER'S REPORT NO.185 OF 2017
IN
REPORT NO.186 OF 2014
IN
SUIT NO.4913 OF 2000**

Nadeem M. Omerbhoy .. Plaintiff

vs.

Rashid Sattar Omerbhoy & Others .. Defendants

Mr.Piyush Raheja a/w Mr.Z.A.Jariwala a/w Mr.Ganesh Ambekar i/b
M/s.Thakore Jariwala and Associates for the plaintiffs

Ms.Nisha Shah i/b Mr.Kalpesh Joshi for the defendant no.1

Ms.Usha Tiwari for Benhur Society

Mr.Rahul R. Singh for defendant nos.2, 3, 4 (a) to 4(c)

Mr.M.R.Mandawgade, O.S.D. Court Receiver

**CORAM : K. K. TATED, J.
DATE : SEPTEMBER 22, 2017**

P.C.:

1. Heard.

2. By this Court Receiver's Report, Court Receiver is seeking direction from this court whether Court Receiver should make payment of Rs.5,01,935/- to Benhur Co-op.Housing Society towards the arrears of its dues in respect of flat No.401 till 25.2.2009 or to challenge the Recovery Certificate dated 28.7.2017 issued under section 101 of the

Maharashtra Cooperative Societies Act, 1960 by the Deputy Registrar, Co-operative Societies, D Ward, Mumbai against M/s.Ahmed Oomerbhoy, Court Receiver, High Court, Mumbai.

3. On 15.9.2017 after hearing both the sides advocate for the respondent Society took one week time to take instruction from her client whether they are ready and willing to accept the sum of Rs.5,01,935/- towards arrears of maintenance charges upto Rs.25.2.2009. Thereafter today advocate for the Society filed affidavit dated 21.9.2017 duly affirmed by Jay G.Patel, Hon'ble Secretary of the Society. Along with affidavit they placed on record certified true copy of the Minutes of Managing Committee of the society held on 18.9.2017 in respect of the amount due and payable by the respondent. The said affidavit is taken on record. In the said affidavit Society specifically stated in paragraph 5 and 6 that they are ready and willing to accept sum of Rs.5,01,935/- from the office of the Court Receiver towards maintenance dues in respect of flat no.401 till 25.2.2009. They have also stated that once the said amount is paid by the Court Receiver they will not take any action against the Court Receiver as per Recovery Certificate dated 28.7.2017 issued under section 101 of the Maharashtra Cooperative Societies Act, 1960. Paragraph 5 and 6 of the said affidavit reads thus:

“5. I say that on 15.9.2017 the above Court Receiver Report was taken up before this Hon'ble Court for direction when Advocate appearing for the plaintiff expressed that the plaintiff is desirous of challenging the said Recovery Certificate and the Court Receiver stated to make payment of Rs.5,01,935/- (Rupees Five Lakh One Thousand Nine Hundred Thirty Five Only) to the society towards it's dues in respect of the Flat No.401 till 25.2.2009 subject to society accepting the same as

full and final due amount from the Court Receiver till 25.2.2009, i.e. till the time the said Flat No.401 was in possession of the Court Receiver; and after accepting the said amount no amount will be due or payable from the Court Receiver to the society in respect of the dues of the said Flat No.401.

6. I say that accordingly Managing Committee Meeting was held on 18th September 2017 wherein it is decided that the Society shall accept from the Court Receiver the said sum of Rs.5,01,935/- (Rupees Five Lakh One Thousand Nine Hundred Thirty Five Only) towards arrears of the society dues in respect of Flat No.401 and on receiving the said sum of Rs.5,01,935/- from the Court Receiver no amount will be due or payable from the Court Receiver to the society in respect of the said Flat No.401 and the society shall not execute the said Recovery Certificate against the Court Receiver. The Society shall execute the said Recovery Certificate against the Flat No.401 for recovery of the balance amount deducting the said amount Rs.5,01,935/- and further due amount as on date. A copy of the Resolution passed in the said Managing Committee Meeting is annexed hereto as Exhibit-"B".

4. Mr.M.R.Mandawgade from the office of the Court Receiver submits that he has also gone through the affidavit dated 21.9.2017. He submits that office of the Court Receiver is ready and willing to pay the said amount towards the maintenance charges of the flat No.401 as per the terms and conditions of the sale.

5. On the other hand, the learned counsel for the plaintiff vehemently opposed for payment. He submits that Court Receiver may be directed to challenge the recovery certificate dated 28.7.2017 under section 101 of the Maharashtra Cooperative Societies Act, 1960. He submits that though plaintiff is in possession of the suit premises, conveyance was executed in his favour in August, 2017. Hence, Court Receiver is only liable to pay entire maintenance charges. He further

submits that in any case, if plaintiff decides to challenge the said recovery certificate, then, in that case, Court Receiver may be directed to provide all the documents to the plaintiff, for effective challenge of the said certificate. Considering these facts and the submission made by the learned counsel for the plaintiff Society and the Court Receiver, following order is passed:

- a) In view of affidavit dated 21.9.2017 filed by the Society duly affirmed by Jay G.Patel, Hon'ble Secretary of the Society, Court Receiver is permitted to release sum of Rs.5,01,935/- in favour of Society towards the arrears of its dues of flat no.401 till 25.2.2009.
- b) Undertaking given by the Society in their affidavit dated 21.9.2017 and in minutes of Managing Committee Meeting dated 18.9.2017 is accepted.
- c) Office of the Court Receiver is directed to provide all the documents which they have to the advocate for the plaintiff as and when they apply on usual terms and conditions.
- d) In view of above mentioned order, it is not necessary for office of the Court Receiver to challenge the Recovery Certificate dated 28.7.2017 issued under section 101 of the Maharashtra Co-operative Societies Act, 1960.
- e) Court Receiver's Report stands disposed of accordingly.

(K.K.TATED, J.)