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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

AND IN ITS COMMERCIAL DIVISION

NOTICE OF MOTION NO.693 OF 2017

IN

COMMERCIAL SUIT NO.755 OF 2017

Suchitra Wd/o Sadhu Koraga Shetty

...Applicant
(Original Defendant)

In the Matter Between

Bai Mamumbai Trust & Ors.

...Plaintiffs

vs

Suchitra Wd/o Sadhu Koraga Shetty

...Defendant

WITH

COURT RECEIVER'S REPORT NO.213 OF 2017

IN

COMMERCIAL SUIT (L) NO.236 OF 2017

Bai Mamumbai Trust & Ors.

...Plaintiffs

vs

Suchitra Wd/o Sadhu Koraga Shetty

...Defendant

.....

Mr. Mayur Khandeparkar, i/b. Maulik Tanna, for the Plaintiffs.

Mr. P.D. Prasad Rao, i/b. Ms. Kanchan Agarwal, for the Defendant/Applicant.

Mr. D.R. Shetty, Court Receiver, a/w. Ms. V.S. Avsare, 2nd Assistant to Court Receiver.

D.N. Kher, O.S.D., Court Receiver.

....

CORAM : S.C. GUPTE, J.

DATED : 24 NOVEMBER, 2017

P.C. :

. Heard learned Counsel for the parties.

2. The present Notice of Motion is taken out by the Original Defendant seeking recall of an order passed by this Court on 12/20 July 2017 in Notice of Motion (L) No.227 of 2017. The order of 12/20 July 2017 was filed in a suit for possession. It is the case of the Plaintiffs in the suit that the suit shops are in wrongful possession of the Defendant. The order notes that two declaratory suits were filed by the predecessor of title of the Defendant in the Court of Small Causes seeking a declaration of his tenancy. Though these two suits were dismissed for default, a third declaratory suit filed thereafter was dismissed by the Court on merits, recording inter alia that the predecessor of the Defendant was not a tenant in respect of the suit property. Even an appeal filed by the Defendant challenging that order was dismissed by the Appellate Bench of the Court of Small Causes by a reasoned order and this order has attained finality. The order of 12/20 July 2017 also notes that there was a writ petition filed by the Defendant in this Court, challenging that order, and that writ petition was pending admission before this Court. The order, in the premises, notes that the Defendant having no semblance of right to the property, cannot simply hold on to the property without payment of any compensation. Considering the overwhelming prima facie case of the Plaintiffs in the present suit and also considering the fact that the litigation under the Rent Control Act had been finally disposed by the Court of Small Causes, this Court was of the view that this was a fit case for appointment of a Court Receiver. The Court Receiver was, however, directed not to disturb possession of the Defendant during the pendency of the suit, subject to payment of compensation by the Defendant. Considering the nature of the

suit premises and other attending circumstances, a compensation of Rs.45,000/- was fixed as an adhoc compensation towards monthly royalty without any security.

3. The present Notice of Motion is moved on the footing that a particular statement finding place in the order of 12/20 July 2017, namely, that the Plaintiff had originally filed a simplicitor injunction suit before the City Civil Court at Bombay, which was withdrawn by the Plaintiff, is demonstrably wrong. It is submitted that the suit before the City Civil Court was not an injunction suit simplicitor but was a suit for declaration and that, in the premises, the order of 12/20 July 2017 needs to be recalled.

4. As I have noted above, the order of 12/20 July 2017 proceeds essentially on the footing that despite approaching the Court of Small Causes, neither the Defendant nor her predecessor in title could establish any semblance of right and, in the premises, could not be allowed to hold on to the property without payment of any compensation. There is nothing in the present Notice of Motion, which calls for a different view. The so called error pointed out by the Defendant in his present Notice of Motion does not go to the root of the matter or can be described as the basis of the determination by the Court, when it passed the order of 12/20 July 2017.

5. Accordingly, there is no merit in the Notice of Motion. The Notice of Motion is dismissed.

6. There is a Receiver's Report moved simultaneously in the matter, in which the Court Receiver seeks certain directions concerning payment of GST on the royalty received by the receiver in pursuance of the

order of 12/20 July 2017. Learned Counsel for the Plaintiffs submits that GST will have to be paid on the compensation received in the matter, since the rental income of the Plaintiffs is above the ceiling limit. On the other hand, it is submitted by learned Counsel for the Defendant that GST being payable on a reverse charge mechanism, since the Defendant's turnover does not exceed more than the ceiling limit, no GST is payable. This is a question of law, which will have to be considered in the light of the provisions of law and rival submissions of the parties. Learned Counsel for the Plaintiffs submits that he shall place a report of a Chartered Accountant obtained by him in this behalf. Learned Counsel for the Defendant submits that he will respond to this report. The issue can be resolved after hearing both the parties. The Court Receiver's Report is, accordingly, stood over to 13 December 2017 at 3.00 p.m. The Court may even consider passing directions towards the trial of the preliminary issue on the next date.

7. Since the royalty fixed by the Court in its order dated 12/20 July 2017 is merely adhoc, the Court Receiver is in the process of taking steps to determine the royalty finally after hearing both the parties. That exercise may continue.

(S.C. Gupta, J.)