

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**COURT RECEIVER'S REPORT NO. 423 OF 2016**  
**IN**  
**SUIT NO. 3092 OF 2010**

Shivkumar B. Chandnani and Another ... Plaintiffs  
*Versus*  
Saraswati B. Harwani and Others ... Defendants

---

**Mr. Simil Purohit**, *with Ms. Siddhi Doshi, i/b Bilawala and Company for the Plaintiffs.*  
**Mr. C.R. Naidu**, *with Ms. Kavisha Shah, i/b India Law Alliance for Defendants Nos. 1 and 2.*  
**Mr. G.G. Ketkar**, *1st Assistant to Court Receiver with Mr. A. Rano, Section Officer present.*

---

**CORAM: G.S. PATEL, J**  
**DATED: 11th January 2017**

**PC:-**

1. The allegation made by the Plaintiff is that the Defendant who has been appointed a agent of the Receiver by an order dated 18th December 2015 has violated the terms of that agency agreement. The Suit is under Section 6 of the Specific Relief Act. The Court Receiver was appointed by an order dated 28th October 2010. The property in question is two shops Nos 5 and 6, Plot No. 373, Khar Lotia Palace CHSL, Linking Road, Khar (West), Mumbai 400 052. The Receiver took physical possession on 8th November

2010. The 2nd Defendant was declared as the highest bidder for the agency on 22nd September 2014. Under the order of 17th November 2015, the Receiver appointed the two Defendants as his agents on payment of a royalty of Rs. 1,95,000/- p.m.

2. The agency agreement dated 7th January 2016 contains the usual terms and conditions, including, *inter alia* a prohibition from making any structural alterations to the premises.

3. On 3rd February 2016 and 29th February 2016, the Plaintiffs Advocates complained to the Receiver that under the pretext of carrying of essential repairs and renovations the Defendants had made material alterations of a permanent nature to the Suit premises. Specifically they alleged that the outer shutters of the Suit were extended by one and a half feet, that the Defendants had broken a wooden cupboard near the old cash counter and installed grill door with a separate access to the exterior. On 19th March 2016, the Court Receiver's representative made a site visit and took photographs. The photographs showed that the cupboard was indeed broken and that there was grill door installed.

4. These allegations have been denied.

5. It is necessary only to note at this stage that a similar apprehension was previously expressed by the Plaintiffs, viz., that the Defendants would attempt to make a structural alterations so as to get an internal staircase leading to that premises on the floor above the constructed. By his order dated 17th November 2015,

Gupte J found that there to be no substance in this apprehension. He held that the terms of the agency agreement afforded sufficient protection.

6. There is one other subsidiary issue and that is the allegation that the Defendants have not permitted the Receiver to put up his board outside the premises. Mr. Naidu on instructions from the Defendants immediately states that there is no such obstruction or resistance and the Receiver may put his board outside the premises immediately. The Court Receiver will proceed to do so. The Receiver will put the notice board on the wall on either side of the grill but not on the grill itself so as not impede its functioning.

7. As to the question of structural repairs, I am shown several photographs including some that were annexed to the previous site report of 16th January 2016. Mr. Naidu points that there was a drainage area outside the shutter and that the frame of these shutters was considerably rusted. There was also a lintel which required to be replaced. The BMC apparently did not allow this replacement. The present photographs do show the shutter having been replaced. Mr. Naidu makes a statement that there is no extension of the internal area at all; there cannot be. It is the shutter that has been replaced. As regards the rear grill door, his statement is that it always existed but it was obscured by the cupboard that was placed in front of it and blocked it. The cupboard was found to be extensively damaged by termites and this was removed. This has now allowed access to the external grill door. Mr Naidu says that there is a video recording that shows the damage to the cupboard.

This is dated 15th January 2016 and it also shows the exterior of the premises.

8. Mr. Purohit submits that if the Defendants area allowed access to the premises through the rear grill door, the Plaintiffs' rights will some how be affected. I fail to see how that is even remotely possible. The property is entirely *custodia legis*. The occupation of the Defendants is as agents of the Court Receiver and not otherwise. Neither the shutter nor the grill door create any rights of any kind in favour of the Defendants.

9. Having considered this material, I am not persuaded that there have been any "structural alterations" as would require or justify the termination of this agency at this stage. No further action needs to be taken by the Court Receiver at this stage other than placing his sign board as indicated above. The costs of this report are to be borne by the Plaintiffs.

10. The Court Receiver's Report is disposed of in these terms.

**(G. S. PATEL, J.)**