

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

**COURT RECEIVER'S REPORT NO.99 OF 2017
IN
SUIT NO.1009 OF 1973**

Ms. Rashna Ratan Surveyor And Another ... Plaintiffs
Versus
Hemlata Shamji Veera And Others ... Defendants

**WITH
NOTICE OF MOTION NO.2879 OF 2016
IN
SUIT NO.1009 OF 1973**

Ratan Dinshaw Surveyor And
Keshavji Kanji Shah ... Applicants/Plaintiffs
Versus
Hemlata Shamji Veera And Others ... Defendants

**WITH
CONTEMPT PETITION NO.77 OF 2016
IN
NOTICE OF MOTION NO.2879 OF 2016
IN
SUIT NO.1009 OF 1973**

M/s Ampoules Company ... Petitioner
Versus
Ratan Dinshaw Surveyor And Others ... Respondents

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Ms. Duraiya S. Retiwala a/w Ms. Rashida M.Y. Retiwala for the Plaintiffs.
Mr. P.B. Shah i/b Kayval Shah for the Applicants in Notice of Motion
No.2879 of 2016.
Mr. P.J. Thorat a/w Sushil Upadhyay i/b Ashok Saraogi for Defendant No.6.
Mr. Rohaan Cama for Court Receiver.
Ms. Kavita Ambekar, 1st Assistant to Court Receiver present.

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CORAM : S.C.GUPTE, J.

DATE : 11 JULY 2017

P.C. :

. After the parties are heard at some length, it is agreed that the following order can be passed on the receiver's report without prejudice to the rights and contentions of the parties. It is made clear that if Defendant No.6 claims any independent rights to the property, which forms part of the court receiver's report, he will have liberty to adopt such proceedings as he may be advised to assert such rights.

2 It is ordered accordingly as follows :-

: O R D E R :

- i) Prayer clause -(a) is granted. The wall will be erected around the property as indicted in the report dated 3 May 2010 prepared by the City Survey Officer which is at Exhibit 'K' Collectively to the receiver's report;
- ii) As far as prayer clause -(b) is concerned, learned Counsel for Defendant No.6 states that he has nothing to do with the structure of ground plus first floor at the rear of the property referred to in this prayer clause. No other person shows cause to this prayer. The Court Receiver is, accordingly, permitted to demolish the structure referred to in prayer clause -(b);

- iii) As far as prayer clause -(c) is concerned, the court receiver shall, as of now, place his possession board on the compound wall. This will of course be subject to the orders in the proceedings, if any, that may be adopted by Defendant No.6 in pursuance of the liability reserved unto him in accordance with this order;
- iv) As far as prayer clause -(d) is concerned, Defendant No.6 agrees to take away material, scrap and other miscellaneous items lying on the subject property including the JCB machine. Such removal to be accomplished within one week from today;
- v) Since the removal of material lying in the property is to be undertaken by Defendant No.6, there is no need for providing any compensation towards the same. So also, the question of compensation payable to the Receiver towards rebuilding of the compound wall and demolition of ground plus one structure at the rear of the subject property, will be decided later in the suit. As of now, the Applicants in Notice of Motion No. 2879 of 2016 shall bear all costs of the steps to be taken in terms of prayer clauses -(a) and (b);
- vi) As far as prayer clause -(f) is concerned, since the entire property described as City Survey No.1A/1 part, shown in the map annexed as part of Exhibit 'K' Colly. to the Receiver's Report (at Pg.50), is being enclosed by compound wall in terms of prayer clause -(c) granted above, there is no question of any one conducting any pay and park activity within the compound. The Receiver is, accordingly, allowed

to stop the pay and part activities being carried out within the compound and to prevent anyone from doing so hereafter. This direction will, of course, be subject to such order as Defendant No.6 may obtain in the proceedings, if any, adopted by him in pursuance of the liberty reserved unto him;

- vii) The Receiver, for carrying out this order, may enlist such support of local police as may be required. Local Police Station of the area is directed to make available such assistance in terms of police protection or otherwise as the Receiver may request for;
- viii) The Court Receiver's report is disposed of in the above terms;
- ix) The costs of the Receiver of and incidental to this Report, which are fixed at Rs.3,000/-, shall come out of the funds lying with the Receiver to the credit of the suit.

3 In view of the disposal of the Court Receiver's Report in the above terms, no separate orders are necessary on Notice of Motion No.2879 of 2016. The Notice of Motion is disposed of accordingly.

4 Contempt Petition No.77 of 2016 shall be heard separately and is stood over to 3 August 2017.

(S.C. GUPTE, J.)