

ATUL

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 445 OF 2016
IN
SUIT NO. 2194 OF 2010**

NESCO Limited		...Plaintiffs
<i>Versus</i>		
Indo American Industries & Ors		...Defendants

Ms Leena Shah, i/b Shah & Furia Associates, for the Plaintiffs.
Mr Pravin Shah, for the Defendants.
Mr. G.G. Ketkar, 1st Assistant to the Court Receiver, is present.

CORAM: G.S. PATEL, J
DATED: 16th January 2017

PC:-

1. The premises in question, admeasuring 3590.89 sq ft at NSE Road, Western Express Highway, Goregaon (East), Mumbai 400 063, were put into receivership by an order dated 16th November 2015 in this action in trespass and for mesne profits. Defendant No. 5 was appointed an agent of the Receiver. M/s. Nadkarni & Co, Panel Valuers, were appointed by the Registry to value to the property and submit a report fixing payment of royalty.

2. It is not in dispute that the 5th Defendant was put in possession on 16th November 2015 and that it returned possession

to the Court Receiver on 20th May 2016. Therefore, as regards prayer (a) the Court Receiver may now proceed to put the Plaintiffs in possession without payment as to royalty, having regard to the frame of the suit. This takes care of prayer (a) of the present Report.

3. As regards prayer (b), this pertains to the fees of M/s. Nadkarni & Co of Rs. 89,413/-. The Plaintiffs have deposited Rs. 50,000/- with the Court Receiver. The Plaintiffs agree and undertake to deposit the additional amount of Rs. 39,413/- on or before 6th February 2017. The Court Receiver will make part payment of Rs. 50,000/- to M/s. Nadkarni & Co immediately, followed by the balance within five working days of receipt. Prayer (b) is thus disposed of in these terms.

4. There remains the question of non-payment by the 5th Defendant of royalty from 16th November 2015 to 20th May 2016. M/s. Nadkarni & Co have estimated the royalty at Rs. 1,27,500/- per month. Given that the 5th Defendant is no longer in use and occupation of these premises, and it would have been a very different thing had it sought to continue in possession without royalty, I do not see any difficulty in accepting the submission on behalf of the Defendants that the question of payment of royalty, whether as mesne profits or compensation or otherwise, for this period from 16th November 2015 to 20th May 2016 should be deferred to the final disposal of the Suit. The principal reason for doing so is that the question of appropriate royalty is best assessed at that time while dealing with the issue of mesne profits as well. This order will prejudice neither side.

5. The Court Receiver's Report is disposed of in these terms.
The costs of this Report will be borne by the Plaintiffs.

(G. S. PATEL, J.)