Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COURT RECEIVER'S REPORT NO. 49 OF 2018

IN

SUIT NO. 4913 OF 2000

WITH

COURT RECEIVER'S REPORT NO. 50 OF 2018

WITH

COURT RECEIVER'S REPORT NO. 51 OF 2018

WITH

COURT RECEIVER'S REPORT NO. 52 OF 2018

Nadeem Majid Oomerbhoy …Plaintiff

Versus

Rashid Sattar Oomerbhoy & Ors …Defendants

Ms Neeta Jain, *with Piyush Raheja, ZA Jariwala & Ganesh Ambekar, i/b M/s. Thakore Jariwala & Asociates for the Plaintiff.*

Mr Kalpesh Joshi, *with Ms Nisha Shah, for Defendants Nos. 1(a) and 1(b).*

Mr K Singh, *for Defendants Nos. 2, 3, 4(a) in S/4913/2000.*

Mr DR Shetty, *Court Receiver with Ms Kavita Ambekar, Ist Assistant to Court Receiver, present.*

CORAM: G.S. PATEL, J

DATED: 26th November 2018

PC:-

1. There are four Court Receiver's Reports. These are in respect of decrees obtained by third parties from a District Court in Andhra Pradesh.

2. Court Receiver's Report No. 49 of 2018 is in respect of a decree said to have been obtained by one Sri Sai Krishna Oil Traders on 30th October 2006 from the IInd Additional District Judge, Kadapa at Proddatur. Court Receiver's Report No. 50 of 2018 is similarly in respect of a decree said to have been obtained by one Sri Sai Oil Company on the same date from the same Court. Court Receiver's Report No. 51 of 2018 is in respect of a decree said to have been obtained by one Harshini Oil Producers, and Court Receiver's Report No. 52 of 2018 is in respect of a decree said to have been obtained by one Kanakdurga Oil Mills.

3. On behalf of the Plaintiff, it is pointed out by Ms Jain that the decrees themselves might well be nullities. They were obtained without joining the Court Receiver although the plaintiff in each of those suits knew of the appointment of Court Receiver. *Prima facie* this will need to be examined. I do not see how a decree holder in execution can simply move the Court Receiver and demand satisfaction of the decretal amount from the funds in the hands of the Court Receiver without the Court Receiver having been made a party-defendant to the Suit to begin with. If the Decree Holder approaches the matter by contending that the Court Receiver is a garnishee — or something to that effect — then the decree holder must adopt appropriate proceedings under Code of Civil Procedure

1908 and cannot simply demand satisfaction of the decree by the Court Receiver.

4. On 5th September 2018 when all four Reports were listed, Ms Smriti Tiwari, i/b Khaitan and Company for these four decree holders sought time to file a reply to the Court Receiver's Reports and a response to the Affidavit by then filed by the Plaintiff. KR Shriram J granted time. In paragraph 3 of his order, the learned Judge directed that the decree holders would have to explain the basis of the claim they made.

5. No Affidavit by the applicants–decree holders has been filed. None appears for any of the four applicants. No order can be passed in favour of the applicants–decree holders.

6. All four Court Receiver's Reports are disposed of in these terms with no orders.

7. The Court Receiver is not to disburse any funds to any of the decree holders without an order of the Court in a properly brought and maintainable proceeding in accordance with the Original Side Rules and the provisions of the Code of Civil Procedure 1908. All contentions of the Plaintiff, the Court Receiver and the Defendants are expressly kept open with an additional liberty to these parties (including the Court Receiver) to make an appropriate application before the District Court to have the decree set aside as also to pursue such other remedies as are available in law.

8. If the decree holders have filed any proceedings under Order 21 of the CPC, these will be dealt with on their own merits. All contentions are kept open.

(G. S. PATEL, J)