

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 256 OF 2018
IN
SUIT NO. 761 OF 2009**

Russian Federation (Government of Russia) ...Plaintiff
Versus
Sovfracht, Russia & Ors ...Defendants

Mr AV Jain, *I/b AV Jain & Associates, for the Plaintiff.*
Mr Nimay Dave, *with Neha Shah, I/b MS Bodhanwalla & Co, for*
Defendant No. 3.
Mr DN Kher, *OSD, to the Court Receiver, present.*

CORAM: G.S. PATEL, J
DATED: 10th September 2018

PC:-

1. The dispute pertains to a property known as Marine House, CTS Nos. 2/332 and 3/332 at Mount Pleasant Road, Malabar and Cumbala Hill Division in Mumbai. This is said to be a tract of land with a structure on it. A report was commissioned from M/s. Shrinivas N Kini & Co. The Court Receiver conveyed instructions by letter dated 23rd October 2017 and the valuer was asked to determine the fair royalty / compensation for the property. The report is in a sealed cover.

2. There is only one bid received from the 3rd Defendant. The Plaintiff is the Russian Federation, i.e., Government of Russia through its Consul General. Despite repeated opportunities, it has not submitted any bid. Mr Jain for the Plaintiff states that no instructions have been received and yet submits that the bid received today must be assessed against the Valuation Report. I do not think that this is an appropriate approach. This might have been necessary had there been competing bids, but a party who does not, despite repeated opportunities, submit any bid cannot possibly insist that the bid should be rejected for being too low. Indeed, it is entirely unclear to me on what basis this submission is being made if there are no instructions in the first place. Accepting the Plaintiff's suggestions at this stage would mean to allow the property to further degrade or deteriorate for want of an occupant and for want of royalty. The Plaintiff had no shortage of opportunities to make a reasonable bid.

3. Finally, the bid must be accepted if for no other reason, then for the fact that something is better than nothing. The Plaintiff's submission that the Court should be satisfied with nothing, that is to say by rejecting the 3rd Defendant's bid but without any matching or better bid from the Plaintiff is not a suggestion that commends itself even in the slightest. The submission is, therefore, rejected.

4. I have opened the bid and briefly considered it myself. It has not been disclosed to the parties. Having seen this, I must note that the report *prima facie* is one that will itself lead to a considerable amount of debate, if disclosed and pressed into service. Even within the report itself, there is a vast range in the assessed fair

compensation/ royalty. The highest figure is almost twice that of the lowest figure and various figures in between are also suggested. Further, the report seems to have been based, if not in full, then at least in substantial part, on the FSI or potentiality of the land. Whether this can ever serve as an acceptable basis for 'royalty' as opposed to an outright sale will be another contentious area. Therefore, this is another reason not to consider the report as a yardstick. This does not mean that I am rejecting the report on its merits, but I am merely setting it to one side.

5. The bid received is for Rs. 3,31,000/- per month. I will, however, require the 3rd Defendant to agree to an annual increase in the royalty suggested at Rs.3,31,000/- per month. Mr Dave has instructions to state that this amount will be increased by 5% annually on the base figure (not on the increased figure). The term of the royalty will be continued for the period of the Suit or until further orders of the Court. I only make this last provision because I believe it is necessary to reserve liberty to both sides to apply should the need arise.

6. The bid of the 3rd Defendant at Rs. 3,31,000/- per month with 5% increase on this amount annually is accepted.

7. The 3rd Defendant will execute standard-form documents with the Court Receiver in regard to the agency.

8. Mr Dave seeks liberty to make the necessary application for essential repairs and for restoring the premises to a habitable

condition. The 3rd Defendant is at liberty to seek the necessary approvals and the Court Receiver will grant his consent to those applications as and when made. These costs will be initially borne by the 3rd Defendant, subject to final accounting at the final disposal of the Suit.

9. The Valuation Report is to be sealed till further orders.
10. The Court Receiver's Report is disposed of in these terms. The costs of the report will be paid by the 3rd Defendant, subject to final accounting.

(G. S. PATEL, J)