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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO.233 OF 2017
IN
SUIT NO.2345 OF 2005

Satish Manilal Shah	...Plaintiff
vs	
Jagdish Manilal Shah And Ors.	...Defendants

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Mr. Prashant Chande, a/w. Mr. Jesal Shah, i/b. M/s. Daru Shah & Co., for the Plaintiff.

Mr. M.A. Shah, for Defendants Nos. 1A to 1C.

Mr. J.V. Parmar, a/w. Mr. O.S. Kamwal, for Defendant No.4.

Ms. V.S. Avsare, 2nd Assistant to Court Receiver.

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CORAM : S.C. GUPTE, J.

DATED : 02 FEBRUARY, 2018

P.C. :

. Heard learned Counsel for the parties.

2. The Receiver's report is on the basis of a letter addressed by Defendant No.4 communicating to the Receiver that Defendant No.4 did not require possession of Room Nos. 28 and 30, for which he was appointed an agent and that he wanted to surrender these rooms to the Court Receiver. The Court Receiver confirms that royalty upto the month of September 2017 has been received from Defendant No.4. The Receiver has no objection for the surrender, except that the Receiver submits that since the letter is issued

in October 2017, Defendant No.4 may be asked to pay the royalty for the month of October 2017. That seems to be reasonable. After the Receiver takes possession of the property, the parties may have to consider appointment of a suitable alternative agency to be appointed for possession of the two rooms. Accordingly, the Receiver's report is allowed in terms of prayer clauses (a) and (b), subject to Defendant No.4 paying royalty for the month of October 2017 to the Court Receiver.

3. Learned Counsel for Defendant No.4 states that he may be allowed to take away his machinery lying within the premises. Learned Counsel submits that the particulars of this machinery have been given in the affidavit given by his client on 25 January 2018. Learned Counsel submits that he has also produced record to show his client's ownership of the machinery. Learned Counsel for the Plaintiff objects to this prayer. Learned Counsel submits that the so called proof tendered by Defendant No.4 to show ownership of the machinery does not inspire any confidence. Learned Counsel submits that there is no invoice produced before the Court by Defendant No.4 in support of his ownership of the machinery. Whether the machinery belongs to Defendant No.4 or not is a matter of fact. Defendant No.4 has not only made a sworn assertion that the machinery belongs to him but has also produced record in the form of an acknowledgement of the supplier of the machinery that the machinery has been supplied by the latter and that he has received a sum of Rs.1,26,000/- towards the same. If the veracity and genuineness of this communication is to be challenged, the challenge must be laid by filing a sworn testimony challenging such veracity and genuineness. In the absence of any affidavit on the part of the Plaintiff, this Court is not inclined to deny Defendant No.4, who was admittedly operating as an agent of the Receiver at the suit

premises, the right to take away his machinery. The Receiver may, before allowing Defendant No.4 to take away the machinery, described in 'Exhibit-3' to his affidavit dated 25 January 2018, confirm the particulars of the cheque/s of Rs.1,26,000/- drawn by Defendant No.4 in favour of Mangesh Engineering works. The Court Receiver may, before parting with possession of the machinery, also make an inventory, note particulars of the machinery and also take photographs of the machinery. Learned Counsel for Defendant No.4, on instructions from his client, undertakes to the Court that in case it is eventually found that the machinery infact belongs to the firm - Choksen Printing Works and not to him, he will submit to an order for payment of compensation to the account of the firm, as this Court may direct. The undertaking of Defendant No.4 is accepted. The Receiver's report is, accordingly, disposed of. The costs of the report, quantified in the sum of Rs.3000/-, shall be paid by Defendant No.4 to the Receiver within a period of three weeks from today.

4. Since the Receiver holds a surplus in the account of the suit, the Receiver shall continue to pay the rent and other outgoings in respect of the two rooms until further orders. Till an alternative arrangement is made, the premises shall remain under the lock and key of the Court Receiver.

(S.C. Gupte, J.)