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

COURT RECEIVER'S REPORT NO.320 OF 2018
IN
SUIT NO.2122 OF 2012

Nivara Hakk Welfare Centre & Ors.	...Plaintiffs
V/s.	
Maganlal B. Chedda & Ors.	...Defendants

Mr.Suresh Rajeshwar for the Plaintiffs.

Mr.P.M. Shah for the Defendant Nos.2 and 4 to 7.

Mr.Yogesh Sonawane I/b Kumar & Associates for the Defendant No.3.

Mr.D.K. Pandey for the Defendant Nos.9 to 16.

Mr.D.R. Shetty, Court Receiver present.

CORAM : R.D. DHANUKA, J.
DATE : 29TH NOVEMBER, 2018.

P.C. :-

1. Mr.Shah, learned counsel appearing for the defendant nos.2 and 4 to 7 submits that though the name of his client i.e. defendant no.1 was mentioned in the plaint filed by the plaintiffs as occupant in respect of structure admeasuring 15 ft. x 40 ft. and the use / activity as shown in the plaint was "hotel" and though this Court appointed the Court Receiver in respect of the suit properties by the orders dated 26th September, 2012 and 19th September, 2018 with a

direction to appoint the defendants as the agents of the Court Receiver on payment of royalty, the structures of the defendant no.1 is not mentioned in the report submitted by the learned Court Receiver or in the valuation report submitted by M/s.H.Mehta & Associates on 2nd November, 2018. He submits that even today, the defendant no.1 is running a business in the said premises in the name of Nagori Tea House.

2. It is submitted that the Court Receiver be accordingly directed to include the said structure also for the purpose of payment of royalty and for executing the agency agreement. He submits that since there was no visit in the said premises claimed by the defendant no.1, the valuation report submitted by the said M/s.H.Mehta & Associates dated 2nd November, 2018 does not include any valuation in respect of the premises claimed by the defendant no.1 and thus no amount of royalty as suggested by the Valuer in the said report insofar as the premises claimed by the defendant no.1 is concerned be decided unless the said valuer visits the premises claimed by the defendant no.1 and the additional valuation report is prepared so as to suggest the royalty amount insofar as the defendant no.1 are concerned.

3. Learned counsel appearing for the plaintiffs has no objection if this exercise is carried out by the office of the Court

Receiver. He does not dispute that the defendant no.1, who is also represented by Mr.P.M. Shah was shown in the plaint filed by his clients and the relief of eviction is sought also against him. He has no objection if the valuation is made in respect of the said structure also and an amount of royalty is suggested by the valuer and based on such report, the royalty amount is suggested by the Court Receiver for approval of this Court. The statement is accepted.

4. The valuer appointed by the learned Court Receiver i.e. M/s.H.Mehta & Associates is directed to visit the said structure claimed by the defendant no.1 in which the business in the name of Nagori Tea House is being run by the defendant no.1 for the purpose of suggesting the valuation of the said property and also the amount of royalty. Learned counsel for the plaintiffs states that his clients would pay the additional fees required to be paid to M/s.H.Mehta & Associates for the purpose of submitting the additional report at the first instance. The statement is accepted.

5. The Court Receiver is directed to submit a fresh report insofar as the structure claimed by the defendant no.1 is concerned after obtaining the additional report from the valuers i.e. M/s.H.Mehta & Associates is concerned. Insofar as the defendant nos.9 to 16 are concerned, learned counsel for the defendant nos.9 to 16 has no objection to pay the royalty amount as suggested by the learned

Court Receiver in this Court Receiver's Report No.320 of 2018. The statement is accepted. The defendant nos.2 and 4 to 7 have also not disputed the amount of royalty suggested by the learned Court Receiver and thus the royalty amount as suggested by the Court Receiver are approved against aforesaid defendants.

6. The Court Receiver shall be at liberty to file a fresh report insofar as the defendant nos.1, 3 and 8 are concerned. The defendant nos.1, 3 and 8 are permitted to raise their objections in respect of amount of royalty as and when the fresh report is submitted by the learned Court Receiver. The learned Court Receiver is directed to complete the exercise of obtaining the additional report from the learned valuer i.e. M/s.H.Mehta & Associates. The said valuer shall inform the defendant no.1 of his visit two days in advance. The defendant no.1 shall remain present in the said premises and shall assist the learned valuer to prepare the valuation and to submit a report to the learned Court Receiver for the purpose of deciding the issue of payment of royalty.

7. It is made clear that the learned Court Receiver shall be empowered to take symbolic possession of the said premises in which the business in the name of Nagori Tea House is carried out by the defendant no.1. Those defendants who have already accepted the payment of royalty as suggested by the learned Court Receiver

are directed to execute the agency agreement with the Court Receiver within two weeks from today and shall comply with the requisitions as may be directed by the office of the Court Receiver for the purpose of executing the agency agreement in compliance with the orders passed by this Court.

8. The Court Receiver's Report No.320 of 2018 is disposed of in aforesaid terms. Learned Court Receiver is permitted to issue the directions in respect of the security deposit in terms of prayer clause (b) of the report within one week from today.

9. Insofar as prayer clause (d) of the report is concerned, the learned Court Receiver is permitted to recover the said amount of Rs.3,000/- from the suit account.

(R.D. DHANUKA, J.)