

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 73 OF 2019
WITH
COURT RECEIVER'S REPORT NO.47 OF 2019
IN
SUIT (L) NO.1444 OF 2018**

Mahant Baba Mohandasji Chela
of Baba Uttamdasji & Anr

..Plaintiffs

Vs.

Shabbir S. Khan & Ors

..Defendants

Mr. Sharan Jagtiani a/w Mr. Priyank Kapadia and Ms Minal Chandnani I/b
Jaiwant Chandnani and Associates for Plaintiffs

Mr. D. R. Shetty Court Receiver present

Mr. Y. S. Bhate I/b Ms Ashwini Singh for UIDAI (Adhar)

Mr. Vikram Singh I/b Mr. J. P. Singh for Defendant Nos.2 to 4

Mr. Rakesh Tripathi for Defendant No.1

CORAM : K.R.SHRIRAM, J.

DATE : 26th APRIL 2019

P.C.:

1 On 12th April 2019, the following order came to be passed:

"1 At the outset, Mr. Bhate tenders an affidavit of one Dr. Bhalchandra V. Jichkar affirmed on 4th April 2019 in which it is stated that as per the amended law no detail of Aadhar Card holder can be shared unless UIDAI authority and the Aadhar Card Holder are heard by this Court.

2 The Court has certainly no problem hearing as many as people are required but the problem here is the Aadhar Card holder one Gurubhai Sureshbhai Thakkar has given an address in which he does not exist. The Court Receiver has given one Aadhar Card of Gurubhai Sureshbhai Thakkar No.9947 0606 5442 in which the address given is C/o. Sureshbhai Gokuldas Thakkar, Foreshore Apartment CHS Ltd., B402, Juhu Tara Road, Next to Sea Princess Hotel Santacruz West, Mumbai, Juhu and his mobile number is also given as 9969366666.

3 It is plaintiffs' case that this apartment belongs to plaintiffs and

there are disputes pending with defendant nos.1 and 2 to 4. Therefore, it is a mystery as to how in the Aadhar Card the said address came to be given. It is for this reason, this Court had directed the UIDAI authority to provide documents to show how the concerned address was given. The Court is not interested in biometric of the Aadhar Card holder. Therefore, even for a moment if we accept what Mr. Bhate states is correct, still this Gurubhai Sureshbhai Thakkar cannot be traced. Mr. Bhate, on instructions from Mr. Bipin Khot, Assistant Director General, UIDAI states that his client will provide the required details to the Court Receiver with copy to plaintiffs' advocates on or before 23rd April 2019.

4 On 15th March 2019 defendant nos.1 to 4 were directed to file an affidavit. No affidavit came to be filed and therefore, the time to file affidavit was extended on 22nd March 2019. Defendant nos.1 to 4 were to file the affidavit and serve a copy by 12th April 2019, i.e., today. Mr. Shenvi instructed by Mr. Mahesh Tiwari states that an Associate of Mahesh Tiwari lost his mother and therefore, the affidavit could not be filed.

5 In my view, it is the most ingenious excuse which cannot be accepted. The attempt seems to be to delay and disobey the orders of this Court and drag on the matter as much as possible. Be that as it may, the affidavit to be filed and copy served by 20th April 2019.

6 For not obeying Court's order, not once but twice, defendant no.1 shall pay a sum of Rs.25,000/as donation to National Defence Fund (NDF), State Bank of India, Institutional Division, Parliament Street, New Delhi, Account No.11084239799www.pmindia.nic.in. and this amount to be paid on or before 20th April 2019.

7 I am not imposing any cost on defendant nos.2 to 4 at this point of time because the bailable warrant issued against them is returnable on 26th April 2019."

2 Mr. Tripathi for defendant no.1 states that donation of Rs.25,000/- as directed in paragraph 6 of the said order has been paid and undertakes to file proof of payment with an affidavit to be filed on or before 30th April 2019. A copy of the said affidavit shall also be provided to plaintiffs and the court receiver.

3 Mr. Tripathi states that once again defendant no.1 has not complied with the directions passed by this court on 15th March 2019 and has not filed the affidavit. Mr. Tripathi states that he was in personal difficulty. It has to be noted that first time direction to defendant no.1 to file affidavit was passed on 15th March 2019, today we are on 26th April 2019. Despite giving one more opportunity on 12th April 2019, the said affidavit is not filed. In my view, this is nothing but an attempt to delay the matter and to suppress the documents. Be that as it may, defendant no.1 shall file affidavit as directed on 15th March 2019 read with order dated 22nd March 2019 and 12th April 2019 and serve a copy thereof on or before 30th April 2019. Affidavit should be to the satisfaction of the court when it is examined. For not complying with the directions of the court, once again, defendant no.1 shall give donation of Rs.25,000/- to Bombay SPCA – The Bombay Society for the Prevention of Cruelty to Animals, Beneficiary Name : BSPCA INCL.BSDPHA, beneficiary account no.0064002100030631, account type: current, beneficiary bank name: Punjab National Bank, IFSC code: PUNB0006400, MICR Code: 400024021, and this amount shall be paid on or before 2nd May 2019 with proof of payment being forwarded to plaintiffs' advocate and the court receiver.

4 As regards defendant nos.2, 3 and 4. Mr. Vikram Singh I/b Mr. J. P. Singh had appeared for defendant nos.2 to 4 on 22nd March 2019. On

22nd March 2019 bailable warrant of arrest has been issued against defendant nos.2 to 4, returnable today. Bailable warrant, from the office report indicate has been forwarded to Superintendent of Police Gwalior, Madhya Pradesh. It has been forwarded only on 9th April 2019. Mr. Singh states that he also has not been able to contact defendant nos.2 to 4 but Mr. Singh tenders printout of email dated 8th April 2019 addressed by Mr. J. P. Singh to one Neeraj Jain (neerajjain703@yahoo.com) informing the said person about the order passed on 22nd March 2019 and advising defendant nos.2 to 4 to remain present in court today. The said copy of email is taken on record and marked "X" for identification. Mr. Singh states that Mr. J. P. Singh also tried to contact defendant nos.2 to 4 over telephone but defendant nos.2 to 4 were not reachable.

5 Registry to issue a fresh warrant of arrest returnable on 28th June 2019. The Superintendent of Police Gwalior, Madhya Pradesh shall personally ensure that the warrants of arrest are served. While executing the service of warrant of arrest, the Superintendent shall also ensure that defendant nos.2 to 4 provide photo copies of their driving licence / pan card / aadhar card / passport / any other identification.

6 As regards paragraphs 2 and 3 of the order dated 12th April 2019, as reproduced above, Mr. Bhate states that there appears to be some

lapse while considering the documents for issuance of the adharcard. The UIDAI, Mumbai by letter dated 22nd April 2019 addressed to the court receiver has provided the details of the documents based on which the adharcard was issued in the name of Gurubhai Thakkar in which the address given is of the suit flat. It appears that the said Gurubhai Thakkar first applied for and was issued adharcard on 19th August 2013. The adharcard was updated on 1st November 2016 due to change of address. It was twice updated thereafter, first time on 13th November 2018 and second time on 6th December 2018 and both the updation was due to change of address. The documents based on which the updation was given on 13th November 2018 is an electricity bill issued by Adani electricity to one Vijay Kumar Jain and the address given therein is the suit flat. There is no explanation as to how the address of Mr. Thakkar was updated to the suit flat when only document submitted for updation was Adani Electricity bill and the suit flat was in the name of one Vijay Kumar Jain. Mr. Bhate on instructions states that UIDAI has already commenced investigation because they also feel that there has been some lapse and that is a very serious lapse. Mr. Bhate states that the report will be given and copy of this order will be forwarded to the Ministry of Electronics and Information Technology, Government of India. Statement accepted. Court receiver shall also forward a copy of this order to the Ministry of Electronics and Information Technology and also to Ministry of Home Affairs, Government of India to

investigate so that if there are any such cards issued without proper documentation, the Government can take further steps.

7 The court receiver may take further steps to complete the renovation in the suit flat at the cost of plaintiffs and thereafter call for offers to give the suit flat on leave and licence. The court receiver to reimburse the costs incurred in renovation of the suit flat as first charge to plaintiffs out of the leave and licence compensation earned.

8 Deputy Commissioner of Police, Cyber Cell, Mumbai, is directed to check all the details of the email address (neerajjain703@yahoo.com) and give details of who is the person and the address from which this email was opened and from where it is being used currently and submit a report to the court receiver within four weeks of receiving a copy of this order from the court receiver.

9 Court Receiver's Report No.47 of 2019, stand disposed.

10 Stand over to 28th June 2019.

(K.R. SHRIRAM, J.)