

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

**APPEAL (L.) NO. 145 OF 2019
IN
COURT RECEIVER'S REPORT NO. 04 OF 2018
IN
SUIT NO.3092 OF 2010**

Saraswati B. Harwani & Anr. ... Appellants.
(Org.Defendants 1 & 2)
V/s.

Shivkumar Baliram Chandnani & Ors. ... Respondents.
(R.1 & 2 -Org.Plaintiffs &
(R.3-Org.Defendant-3)

**WITH
NOTICE OF MOTION (L.) NO. 326 OF 2019
IN
APPEAL (L.) NO. 145 OF 2019**

Saraswati B. Harwani & Anr. ... Appellants.
(Org.Defendants 1 & 2)
In the matter between :

Saraswati B. Harwani & Anr. ... Appellants.
(Org.Defendants 1 & 2)
V/s.

Shivkumar Baliram Chandnani & Ors. ... Respondents.
(R.1 & 2 -Org.Plaintiffs &
(R.3-Org.Defendant-3)

Mr. Anil Anturkar, Senior Advocate , a/w. Ms. Kavisha Shah &
Ms. Minal Pawar I/by Inida Law Alliance for the Appellants in
the Appeal & Notice of Motion.

Mr. Yogesh Gaikwad, Advocate I/by M/s. Bilawalla & Co. for Respondent Nos. 1 and 2/Original Plaintiffs in the Appeal & Notice of Motion.

CORAM : R.M. BORDE & N.J. JAMADAR, JJ.

DATE : MARCH 27, 2019.

PC :

1 Heard learned counsels appearing for the respective parties.

2 Learned senior counsel appearing for the Appellants, on instructions, seeks leave to delete name of Respondent No. 3. Leave granted. Name of Respondent No. 3 (Original Defendant No. 3) stands deleted.

3 The Appellants are aggrieved by order dated 18th March, 2019 passed by the learned single Judge of this court in Suit No. 3092 of 2010, directing both the parties i.e. the plaintiffs and the defendants to submit their respective bids in sealed covers to the Court Receiver on or before 26th March, 2019 and further directed opening of the bids in the court on 28th March, 2019 at 3 p.m.. Defendant Nos. 1 and 2 are permitted to continue to operate the business as agents of the Court Receiver upto 30th March, 2019.

4 Learned senior counsel for the Appellants invited our attention to the order passed on 17th November, 2015 by the learned single Judge of this court in Notice of Motion No. 3545 of 2010, whereby the Appellants / Original Defendant Nos. 1 and 2 were directed to be appointed as agents of the Court Receiver against payment of royalty of Rs.1,95,000/- per month. It was further directed that the agreement shall be initially for a period of 24 months and continuation of agency thereafter will be considered by the court on payment of enhanced royalty. The aforesaid order came to be modified by virtue of order dated 27th February, 2019 passed by the learned single Judge and in paragraph no.4 thereof, the learned single Judge observed that - the request for an extension or continuance of the defendants' agency need not be immediately granted. It has been further observed that this observation shall not be construed as rejection of the request. Thus it appears that a request of continuation of defendants' agency has not been rejected and the prayer made by the defendants in that regard is expected to be considered while issuing further orders, the learned single Judge has, however, directed the Defendants to deposit an amount of Rs. 2,50,000/- per month for future period. A report of the court receiver was called for which was expected to be considered by the learned single Judge during subsequent hearing of the matter. It appears that the Receiver has tendered the report. However, there is no mention of the contents thereof in the order of the

learned single Judge dated 18th March, 2019, while directing the parties to submit their respective bids in a sealed cover. The learned single Judge has not considered the contentions of the appellants or the respondents, touching merits of the matter. It appears that the learned single Judge would be dealing with the merits of the contentions during subsequent hearing of the matter. In the interregnum, as the parties were directed to submit their bids in a sealed cover to the court receiver on or before 26th March, 2019, we do not propose to disturb the arrangement directed by the learned single Judge by virtue of order dated 18th March, 2019. The parties may tender their bids, as directed by the learned single Judge and it would be also open for the learned single Judge to evaluate the bids on 28th March, 2019, as proposed. The learned single Judge is expected to pass a final order in the matter, touching the merits of contentions of both the parties. It would be open for the parties to challenge the final order that would be passed by the learned single Judge, if they desire. In the meantime, the present arrangement shall continue until end of April, 2019 and in the event decision of the learned single Judge proceeds against the interest of the defendants, the said arrangement shall continue for a period of one month from the date of such adverse order. The defendants shall continue to pay a royalty of Rs. 2,50,000/- during the aforesaid period. The question of payment of differential amount, if any,

would be dealt-with by the learned single Judge while considering the applications on merits.

5 All contentions that would be raised by the parties are specifically kept open and are expected to be dealt-with by the learned single Judge on its own merits.

6 In view of the directions, as above, the Appeal stands disposed of.

7 In view of disposal of the Appeal itself, pending Notice of Motion does not survive and the same stands disposed of as such.

(N.J. JAMADAR, J.)

(R.M. BORDE,J.)

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