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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

Dhanappa
I. Koshti

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Dhanappa I. Koshti
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**NOTICE OF MOTION NO. 1035 OF 2016
IN
SUIT NO. 1962 OF 2012
WITH
COURT RECEIVER'S REPORT NO. 134 OF 2019
IN
SUIT NO. 1962 OF 2012**

Varinder Singh Bharara & Jasvinderkaur
Bharara

...Applicants/Plaintiffs

vs

Mukesh L. Chhabria & Ors.

...Defendants

.....

Mr Shreepad Murthy a/w Mr Abhishek Patil I/b Ms P.M.Bhansali for
the Applicants/Plaintiffs

Ms Apurva Gupte I/b Mr Prashant Dingrani for Defendant No.2.

Mr P.K.Nardele, O.S.D., Court Receiver's Office present.

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**CORAM : B. P. COLABAWALLA, J.
AUGUST 9, 2019.**

P.C. :

The above Notice of Motion has been filed by the plaintiff seeking a direction against the Court Receiver to take the forcible possession of the suit flat being Flat No.26, 2nd floor of "B" wing, Shree Akshar Kripa CHS Ltd. situated on plot No.36, Manish Nagar, Four Bungalows, Andheri (W), Mumbai 400 053 and hand over possession of the suit flat to the plaintiffs. A Court Receiver's Report has also been filed *inter alia* seeking a direction that the Court Receiver may

be allowed to take physical and vacant possession of the suit flat with the help of police assistance, if necessary, and also for a direction against defendant No.2 to deposit the arrears of royalty from March 2018 to July 2019 along with 10 % penalty over the said amount.

2 By an order dated 23rd April, 2014 passed in Notice of Motion No. 116 of 2013, this Court had passed an order appointing the Court Receiver as the Receiver of the suit flat and with a direction that the Receiver shall allow defendant No.2 to continue in possession as his agent only upon paying royalty, security and the usual undertakings. The order further provided that if defendant No.2 fails to make payment, the Court Receiver shall obtain vacant possession of the suit flat and hand over the same to the plaintiffs. It further directed that in such an event, the plaintiffs shall be put in possession of the suit flat but also as the agent of the Court Receiver without payment of any royalty or security.

3 The learned advocate appearing on behalf of the plaintiffs submitted that in the facts of the present case, admittedly defendant No.2 has not paid the royalty amount as fixed by the Court Receiver. Over and above this, she has also not paid the society's charges amounting to Rs.5,74,438/- and which are the arrears till February

2019. He, therefore, submitted that as per the order passed by this Court on 23rd April, 2014, defendant No.2 be thrown out and the plaintiffs be allowed to occupy the suit flat as an agent of the Court Receiver. The learned advocate for the plaintiffs submitted that the present suit has been filed for declaration of the ownership of suit flat as well as for possession on the ground that the suit flat has been purchased by the plaintiffs from defendant No.1 (husband of defendant No.2) and has paid full consideration in relation thereto. He submitted that these facts are not disputed. He submits that this entire alleged dispute between defendant Nos.1 and 2 (matrimonial disputes) is nothing but to somehow defeat the rights of the plaintiffs in the suit flat. He, therefore, submits that in the facts of the present case, the ends of justice require that the plaintiffs be put in possession of the suit flat as an agent of the Receiver.

4 On the other hand, the learned advocate appearing on behalf of defendant No.2 submitted that though it is true that there are arrears of royalty payable to the Receiver from March 2018 to July 2019 along with 10 % penalty over the said amount, now, the said amounts have been paid to the Receiver. Over and above this, she stated on instructions that even the arrears of the society charges shall be paid to the society (defendant No.3) on or before 16th August,

2019. She submitted that defendant No.2 is a single woman occupying the suit flat which was her matrimonial home and it would cause grave prejudice if she is dispossessed. She, therefore, submitted that defendant No.2 be allowed to continue as an agent of the Court Receiver on the payment of royalty and on such further terms and conditions as this Court may deem fit and proper.

5 I have heard the learned counsel for parties at length and have also perused the papers and proceedings in the Notice of Motion as well as in Court Receiver's Report. It is an admitted fact that defendant No.2 has been in arrears of payment of royalty from March 2018 to July 2019. Even the payment of royalty due for August, 2019 has not been paid. However, it has been brought to my attention that royalty for the period March 2018 to July 2019 has now been paid by Demand Draft in favour of the Court Receiver. The learned advocate appearing on behalf of defendant No.2 has further undertaken to this Court that the royalty due for the month of August 2019 shall be paid by Friday (16th August, 2019). The said statement is accepted as an undertaking given to this Court. It is further undertaken that defendant No.2 shall pay the monthly royalty of Rs.22,000/- to the Court Receiver on or before 10th of each succeeding month. This undertaking is also accepted.

6 As far as the arrears of society charges are concerned, the learned advocate appearing on behalf of defendant No.2, on instructions of defendant No.2 who is present in Court, states that the arrears of society charges up to date shall be cleared by 16th August, 2019. The said statement is also accepted as an undertaking given to this Court.

7 In light of the aforesaid facts and the statements made on behalf of defendant No.2, I am inclined to give one more opportunity to defendant No.2 to continue as the agent of the Court Receiver. It is made clear that in case defendant No.2 commits any single default in either clearing the society's charges as well as payment of royalty to the Court Receiver, defendant No.2 shall be physically and forcibly dispossessed from the suit flat by the Court Receiver with the assistance of police, if necessary, including breaking open the lock and thereafter the Receiver shall put the plaintiffs in possession of the suit flat as an agent of the Court Receiver, but without payment of any royalty or security. It is made clear that the Receiver will not be obliged to once again approach this Court for seeking dispossession of defendant No.2, if any default is committed as per the order passed today. In the light of this order the Notice of Motion as well as Court

Receiver's Report are disposed of.

8 The learned advocate appearing on behalf of defendant No.2 states that the costs of the Receiver amounting to Rs.3000/- shall also be paid to the Receiver by 13th August, 2019. The said statement is also accepted as an undertaking given to this Court. In addition to this, defendant No.2 is directed to pay the costs of Rs.25,000/- to the Tata Memorial Hospital, Mumbai on or before 19th August, 2019 failing which the Court Receiver's Report shall be made absolute in terms of prayer clause (a) and thereafter the consequences of the order dated 23rd April, 2014 (regarding putting the plaintiff in possession) shall follow.

9 Considering that the suit is of the year 2012 and issues have already been framed, place the suit on board **"For Directions"** on 19th August, 2019.

(B.P.COLABAWALLA, J.)