

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

ORDINARY ORIGINAL CIVIL JURISDICTION.

COURT RECEIVER'S REPORT No. 56 OF 2019

WITH

COURT RECEIVER'S REPORT No. 65 OF 2019

IN

SUIT No. 2122 of 2012.

Nivara Hakk Welfare Centre & Ors

..Plaintiffs.

Vs

Maganlal B. Chheda & Ors

..Defendants.

Mr. Cesar Pereira i/by Mr. Suresh Rajeshwar for plaintiffs.

Mr. Yogesh Sonawane i/by M/s Kumar & Associate for defendant No.3.

Mr. Dishang Shah a/with Ms. Geetika Rajpal i/by Mr. P.M.Shah for defendant Nos. 1, 2 and 4 to 7.

Mr. U.B.Lingare i/by Mr. Jotiram Jadhav for Defendant Nos. 9 to 16.

Mr. P.K. Nardele, O.S.D., Court Receiver is present.

CORAM :- B.P. COLABAWALLA, J

DATED :- 13TH SEPTEMBER, 2019.

1. Perused the reports as also the several orders passed by this Court earlier. The learned Advocate appearing on behalf of

defendant Nos. 1, 2 and 4 to 7 has stated that the premises which were in their possession and of which physical possession was handed over to the Court Receiver on various dates, have now paid the arrears of royalty in relation to the aforesaid premises and therefore seek to be appointed as the Agents of the Court Receiver, pending the hearing and final disposal of the above suit.

2. The learned Advocate submitted that with reference to the premises known as “Nagori Tea House” defendant No.1 has paid arrears of royalty as per the order dated 6th August, 2019 (Shri S.C. Gupte,J). He stated that physical possession of these premises was taken by the Court Receiver on 6th July, 2019. Now as the arrears of royalty have been paid, he seeks to be appointed as the Agent of the Court Receiver. The Court Receiver has stated before me that the arrears of royalty of Rs. 2,30,100/- have been deposited by defendant No.1 in relation to the premises known as “Nagori Tea House”. In these circumstances, the Court Receiver is directed to allow defendant No.1 to occupy the premises known as “Nagori Tea House” as an Agent of the Court Receiver on defendant No.1 executing an Agency Agreement with the Court Receiver on the usual terms and conditions within a period of two weeks from today. Defendant No.1 further undertakes that the

monthly royalty of Rs.17,700/- shall be paid by him on or before the 10th day of each succeeding month, without any default, failing which the Court Receiver shall take physical forcible possession of the aforesaid premises (“Nagori Tea House”) with the help of police, if necessary, including breaking open the locks without any further reference to the Court. The said undertaking is accepted.

3. The learned Advocate further pointed out that in relation to the office premises on the first floor (above shop Nos. 7 and 8) symbolic possession of the said premises was taken over by the Court Receiver on 18th April, 2019. The royalty fixed for these premises is Rs. 6,090/- per month. The learned Advocate stated before me that the arrears of royalty as per the order dated 6th August, 2019, namely, from 19th September, 2018 to 30th September, 2019 amounting to Rs.79,170/- shall be paid within a period of two weeks from today. The said statement is accepted. The learned Advocate has further undertaken that the monthly royalty of Rs. 6,090/- shall be paid on or before the 10th day of each succeeding month, without any default, failing which the Court Receiver shall take physical forcible possession of the aforesaid premises [office premises on 1st floor (above shop Nos. 7 and 8)] with the help of police, if necessary, including breaking open the

locks without any further reference to the Court. The said undertaking is accepted. In view of the aforesaid statements, the Court Receiver is directed to appoint defendant No.1 as the Agent of the Court Receiver in relation to the aforesaid office premises only on defendant No.1 paying the arrears of royalty and on executing the Agency Agreement on the usual terms and conditions with the Court Receiver within a period of two weeks from today.

4. With reference to the premises known as “Famous Vada Pav Centre” Shop No.3 and which was in possession of defendant No.2, namely, Mohammed Dilshad, physical possession of these premises was taken by the Court Receiver on 19th July, 2019. The learned Advocate appearing on behalf of defendant No.2 stated that the arrears of royalty amounting to Rs.1,57,079/- as per the order dated 6th August, 2019 has been deposited. He further undertakes that the monthly royalty of Rs. 12,083/- shall be paid on or before the 10th day of each succeeding month without any default, failing which the Court Receiver shall take physical forcible possession of the aforesaid premises (Famous Vada Pav Centre Shop No.3) with the help of police, if necessary, including breaking open the locks without any further reference to the

Court. The said undertaking is accepted. In view of the aforesaid statements, the Court Receiver is directed to appoint defendant No.2 as the Agent of the Court Receiver in relation to the aforesaid premises (known as “Famous Vada Pav Centre” Shop No.3) only on the execution of the Agency Agreement with the Court Receiver on the usual terms and conditions within a period of two weeks from today. It is made clear that in the event defendant No.2 does not pay the future monthly royalty of Rs.12,083/- on or before the 10th day of each succeeding month, the Court Receiver shall be at liberty to take physical forcible possession of the aforesaid premises (“Famous Vada Pav Centre” Shop No.3) with the help of police, if necessary, including breaking open the locks without any further reference to the Court.

5. With reference to the premises known as “Lucky Video Game Parlour” – Shop No.2, occupied by defendant No.3, namely, Sadashiv Shetty, physical possession of these premises was taken by the Court Receiver on 19th July, 2019. The learned Court Receiver appearing before me has stated that defendant No.3 has deposited the arrears of royalty amounting to Rs.1,72,406/- till 30th September, 2019. The learned Court Receiver has stated that in view of the aforesaid deposit of arrears, the same order can

be passed as the order passed in relation to the premises known as “Nagori Tea House” given to defendant No.1. In these circumstances, it is directed that the Court Receiver shall appoint defendant No.3 as the Agent of the Court Receiver in relation to the aforesaid premises only on defendant No.3 executing a fresh agency agreement on the usual terms and conditions with the Court Receiver within a period of two weeks from today. It is further directed that defendant No.3 shall pay the future monthly royalty of Rs. 13,262/- on or before 10th day of each succeeding month without any default failing which the Court Receiver shall be at liberty to take physical forcible possession of the aforesaid premises (“Lucky Video Game Parlour”-Shop No.2) with the help of police, if necessary, including breaking open the locks without any further reference to the Court.

6. As regards premises known “Fashion Hub” (Rajeshri Lottery) Shop No.4, the learned Advocate appearing on behalf of defendant No.4 has brought to my attention the order passed by this Court on 8th April, 2019 under which defendant No.1 was allowed to execute an Agency Agreement for and on behalf of defendant No.4. He has also brought to my attention that physical possession of these premises were taken by the Court Receiver on

15th June, 2019 from defendant No.1. The learned Advocate has stated that the arrears of royalty as per the order dated 6th August, 2019 amounting to Rs.42,419/- has already been deposited with the Court Receiver on 6th September, 2019. The learned Advocate has further undertaken that the monthly royalty of Rs. 3,263/- shall be deposited with the Court Receiver on or before the 10th day of each succeeding month, failing which the Court Receiver shall be at liberty to take physical forcible possession of the aforesaid premises with the help of police, if necessary, including breaking open the locks without any further reference to the Court. The said undertaking is accepted. In view of the aforesaid statements, the Court Receiver is directed to appoint defendant No.1 (for and on behalf of defendant No.4) as the Agent of the Court Receiver in relation to the aforesaid premises only on the execution of a fresh Agency Agreement on the usual terms and conditions with the Court Receiver within a period of two weeks from today. It is made clear that in the event defendant No.1 does not pay the future monthly royalty of Rs. 3,263/- on or before the 10th day of each succeeding month, the Court Receiver shall be at liberty to take physical forcible possession of the aforesaid premises [Fashion Hub (Rajeshri Lottery) Shop No.4] with the help of police, if necessary, including

breaking open the locks without any further reference to the Court.

7. As regards premises known “Samsung Mobile Shop (M/s Gala Electronics) Shop No.7”, the learned Advocate appearing on behalf of defendant No.5 has brought to my attention the order passed by this Court on 8th April, 2019 under which defendant No.1 was allowed to execute an Agency Agreement. He has also brought to my attention that physical possession of this premises was taken by the Court Receiver on 15th June, 2019 from defendant No.5. The learned Advocate has stated that the arrears of royalty as per the order dated 6th August, 2019 amounting to Rs.81,120/- has already been deposited with the Court Receiver on 11th September, 2019. The learned Advocate has further undertaken that the monthly royalty of Rs. 6,240/- shall be deposited with the Court Receiver on or before the 10th day of each succeeding month, failing which the Court Receiver shall be at liberty to take physical forcible possession of the aforesaid premises with the help of police, if necessary, including breaking open the locks without any further reference to the Court. The said undertaking is accepted. In view of the aforesaid statements, the Court Receiver is directed to appoint defendant

No.1 as the Agent of the Court Receiver in relation to the aforesaid premises only on the execution of a fresh Agency Agreement on the usual terms and conditions with the Court Receiver within a period of two weeks from today. It is made clear that in the event defendant No.1 does not pay the future monthly royalty of Rs. 6,240/- on or before the 10th day of each succeeding month, the Court Receiver shall be at liberty to take physical forcible possession of the aforesaid premises (Samsung Mobile Shop (M/s Gala Electronics) Shop No.7 with the help of police, if necessary, including breaking open the locks without any further reference to the Court.

8. As far as premises known as “Ramesh Novelty” Shop No.5 and “M/s Ramesh Sales” Shop No.8 are concerned, the learned Advocate appearing on behalf of defendant No. 6 has stated that physical possession of these premises were taken by the Court Receiver on 19th July, 2019 from defendant No.6. The learned Advocate has stated that the arrears of royalty as per the order dated 6th August, 2019 (amounting to Rs. 28,639/- and Rs. 1,17,390/-) have already been deposited with the Court Receiver on 6th September, 2019. He therefore seeks to restore the possession of the aforesaid two premises as an Agent of the Court

Receiver. The learned Advocate has further undertaken that the monthly royalty of Rs. 2,203/- (for “Ramesh Nolveity” shop No. 5) and Rs.9,030/- (for M/s Ramesh Sales, Shop No.8) shall be deposited with the Court Receiver on or before the 10th day of each succeeding month, failing which the Court Receiver shall be at liberty to take physical forcible possession of the aforesaid premises with the help of police, if necessary, including breaking open the locks without any further reference to the Court. The said undertaking is accepted. In view of the aforesaid statements, the Court Receiver is directed to appoint defendant No.6 as the Agent of the Court Receiver in relation to the aforesaid premises only on the execution of a fresh Agency Agreement on the usual terms and conditions with the Court Receiver within a period of two weeks from today. It is made clear that in the event defendant No.6 does not pay the future monthly royalty of Rs. 2,203/- (for “Ramesh Nolveity” shop No. 5) and Rs.9,030/- (for M/s Ramesh Sales, Shop No.8) on or before the 10th day of each succeeding month, the Court Receiver shall be at liberty to take physical forcible possession of aforesaid Shop No. 5 and/or Shop No. 8 , as the case may be, with the help of police, if necessary, including breaking open the locks without any further reference to the Court.

9. As regards premises known “Om Sai Pan Bhandar” Shop No.6, the learned advocate for defendant No.7 has brought to my attention that physical possession of these premises was taken by the Court Receiver on 19th July, 2019 from defendant No.7. The learned Advocate has stated that the arrears of royalty as per the order dated 6th August, 2019 amounting to Rs.28,574/- has already been deposited with the Court Receiver on 11th September, 2019. The learned Advocate has further undertaken that the monthly royalty of Rs. 2,198/- shall be deposited with the Court Receiver on or before the 10th day of each succeeding month, failing which the Court Receiver shall be at liberty to take physical forcible possession of the aforesaid premises with the help of police, if necessary, including breaking open the locks without any further reference to the Court. The said undertaking is accepted. In view of the aforesaid statements, the Court Receiver is directed to appoint defendant No.7 as the Agent of the Court Receiver in relation to the aforesaid premises only on the execution of a fresh Agency Agreement on the usual terms and conditions with the Court Receiver within a period of two weeks from today. It is made clear that in the event defendant No.7 does not pay the future monthly royalty of Rs. 2,198/- on or before the 10th day of

each succeeding month, the Court Receiver shall be at liberty to take physical forcible possession of the aforesaid premises known “Om Sai Pan Bhandar” Shop No.6, with the help of police, if necessary, including breaking open the locks without any further reference to the Court.

10. As far as premises of defendant Nos. 9 to 12 are concerned, the learned Advocate appearing for them states that defendant No.9 was in possession of Room No.1, commercial office, (now known as Rajashree Lottery & Sai Estate). Similarly, defendant No.10 was in possession of Room No.2 Commercial premises (Tea Canteen) and defendant No.11 was in possession of Room No.3 Residential / godown and Room No.3A (residential / godown, 1st floor). Defendant No.12 was in possession of Room No.4 “Darshan General Store”. The learned Advocate brought to my attention that physical possession of all these premises were taken by the Court Receiver on 19th July, 2019. The learned Advocate appearing on behalf of the aforesaid defendants has stated before me that all the arrears of royalty with reference to these premises as per the order dated 6th August, 2019 has been deposited by the aforesaid defendants with the Court Receiver on 11th September, 2019. The learned Advocate for the aforesaid

defendants has further undertaken that monthly royalty payable by defendant No.9 (Rs.8,505/-), defendant No. 10 (Rs.7,493/-), defendant No. 11 (Rs.8,336/- and Rs.4,168/-) and defendant No. 12 (Rs.8,123/-) shall be deposited with the Court Receiver on the 10th day of each succeeding month, failing which the Court Receiver shall be at liberty to take physical forcible possession of the premises for which default is committed in the payment of royalty, with the help of police and by breaking open the locks, if necessary, without further reference to the Court. The said undertaking is accepted. In view of the aforesaid statements, the Court Receiver is directed to appoint defendant Nos. 9, 10, 11, and 12 as the Agent of the Court Receiver in relation to the aforesaid premises only on them executing fresh Agency Agreements on the usual terms and conditions with the Court Receiver within a period of two weeks from today. It is made clear that in the event defendant Nos. 9, 10, 11, and/or 12 do not pay the future monthly royalty on or before the 10th day of each succeeding month, then in terms of the undertaking recorded above, the Court Receiver shall be at liberty to take physical forcible possession of the aforesaid premises with the help of police, if necessary, including breaking open the locks without any further reference to the Court.

11. As far as defendant Nos. 13 to 16 are concerned, they are in occupation of Room No.5 “Shama Bhojanalaya” (defendant No. 13), Room No. 6 Godown (defendant No.14), Room No.7 Bakri Godown (defendant No.15) and Room No.8 Onion Potato Godown (defendant No.16). The learned Advocate appearing on behalf of the aforesaid defendants stated that they have in fact deposited amounts of royalty in excess than what was ordered by this Court on 6th August, 2019 (Shri S.C.Gupte,J). All of them have also executed the Agency Agreements with the Court Receiver and occupying the respective premises as the Agents of the Court Receiver. The learned Advocate therefore submitted that considering that all these defendants have paid royalty in excess, the monthly royalty due from them ought to be adjusted from the excess already paid to the Court Receiver. The details of the excess payment are as under :-

Defendant No.	Amount due upto 30 th September, 2019. In Rs.	Amount paid excess. In Rs.
Defendant No.13	55,575/-	2,94,975/-
Defendant No.14	61,308/-	3,25,404/-
Defendant No.15	35,321/-	1,87,473/-

Defendant No.16	37,882/-	2,01,106/-

The fact that these excess payments have been made by the aforesaid defendants is not disputed by the Court Receiver and he has stated that the monthly royalty payable from 1st October, 2019 shall accordingly be adjusted from the excess amounts already deposited with the Court Receiver. The said statement is accepted.

12. As far as costs of Report No. 56 of 2019 is concerned, the costs of the Court Receiver for this Report is an amount of Rs. 3,000/-. The learned Advocate appearing on behalf of the plaintiff states that the costs of the Receiver for this Report (Report No.56 of 2019) shall be paid by the plaintiff within a period of two weeks from today. The said statement is accepted as an undertaking given to this Court. The Court Receiver has fairly stated before me that no costs are payable in relation to Report No. 65 of 2019.

13. The learned Court Receiver who is present has stated that in view of the order passed today, nothing further survives in the present Court Receiver's Report No. 56 of 2019 as well as Court Receiver's Report No. 65 of 2019 and the same can be accordingly disposed of. In these circumstances, Court Receiver's Report Nos. 56 of 2019 and 65 of 2019 are accordingly disposed of.

(B.P. COLABAWALLA, J)

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