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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 937 OF 2017
IN
SUIT NO. 3299 OF 2003

Amjad Mohammed Hasnain Choudhari ... Applicant

In the matter between:

Haji Ismail Haji Musafirkhana Trust & Ors ... Plaintiffs
Versus
Yusuf Saleh Mohammad Jafarani & Ors ... Defendants
And
The Court Receiver, High Court, Bombay ... Respondent

Mr Amol Joshi, *with Sufiyan Shaikh, i/b Nazmeen Shaikh, for the Defendant No. 21A/Applicant in NMS/937/2017*
Mr VV Tulzapurkar, Senior Advocate, *with Farhan Dubash, Denzil Arambhan, Apeksha M & Shlok B, i/b Wadia Ghandy & Co., for the Plaintiff.*
Mr Ivor P D'Cruz, *for the Respondent.*
Ms Sayli Apte, *i/b PG Lad, for Defendant No. 38-MHADA.*
Mrs Kavita Ambekar, *Ist Assistant to the Court Receiver.*

CORAM: G.S. PATEL, J
DATED: 28th March 2019

PC:-

1. The Applicant, Amjad Mohammed Hasnain Choudhari, is Defendant No. 21A. He claims to have been in lawful occupation of

Room No. 20, Building No.33, Haji Ismail Musafirkhana Building at Pakmodia Street, Mumbai 400 003 along with his family members or ancestors for a long time. A previous order dated 12th December 2018 directed MHADA to consider his case for eligibility for re-accommodation in that building, one being redeveloped or reconstructed by the Saifee Burhani Upliftment Trust (“**SBUT**”), now the sole Plaintiff.

2. The Court Receiver was appointed on 30th March 1999. It appears that when the Court Receiver took possession, Room No. 20 was locked. There is no dispute that between 2005 and 2019, Choudhari paid no royalty whatsoever to the Court Receiver, although required to do so. The aggregate amount of royalty arrears is computed by the Court Receiver as Rs. 1,24,500/- up to March 2019.

3. When Choudhari applied to MHADA for determination of his eligibility pursuant to my order dated 12th December 2018, he also submitted several documents. A listing of these documents is to be found in the order that the Chief Officer of MHADA passed on 24th January 2019 on Choudhari’s application. These are of varying vintage. The earliest seems to go back to 1974 (a rationing card). There are other documents at sporadic intervals (electricity bills, birth certificates, etc) of 1976-1980. The Chief Officer observed that these documents reflect that Choudhari and his family were indeed residing in Room No. 20 on the first floor. But the order then goes on to hold that since Choudhari did not produce any evidence of payment of what is described as rent but probably means royalty to

the Court Receiver, therefore, his name cannot be considered as a tenant eligible for permanent alternative accommodation.

4. Mr Joshi states that Choudhari has filed an Appeal on 11th March 2019. I will request the Appellate Authority to dispose of that appeal within the next two weeks.

5. Mr Tulzapurkar for SBUT has instructions to state that subject to an order in the appeal setting aside the 24th January 2019 order, and finding Choudhari eligible, SBUT has no difficulty in accepting Choudhari as occupant.

6. I may only observe that the finding of Choudhari's eligibility on the documents he submitted is already in the order dated 24th January 2019. The only thing that remained was the payment of royalty to the Court Receiver. Mr Joshi tenders a cheque No. 000117 drawn on the Kotak Mahindra Bank in favour of the Court Receiver, High Court, Bombay in the entire amount of royalty arrears of Rs 1,24,500. This is accepted subject to clearing; and means that the only reason given in the 24th January 2019 for holding him ineligible — non payment of this amount — no longer survives.

7. The Appellate Authority will communicate its order to the Advocates for SBUT and to Mr Joshi on or before 15th April 2019.

8. The Notice of Motion is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)