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

COURT RECEIVER'S REPORT NO. 181 OF 2018
IN
NOTICE OF MOTION No. 462 OF 2017
IN
COMMERCIAL SUIT No. 227 OF 2017

Nirupama Yogesh Kanani & Anr. ...Plaintiffs
vs
Deven Yogesh Kanani & Anr. ...Defendants

Mr.Sanjay Udeshi with Mr.Aditya Udeshi i/b. M/s.Sanjay Udeshi & Co. for Plaintiffs.
Ms.Firdaus Moosa with Ms.Sharon Fernandes and Mr.Hemant Kumar for Defendant No.1.
Mr.D.N. Kher, Court Receiver.

CORAM : S.C. GUPTE, J.

DATE : 30 JULY 2019

P.C. :

This Court Receiver's Report is placed before me on the basis of directions passed by the Hon'ble the Chief Justice.

2 The controversy in the suit concerns dissolution and accounts of a partnership firm. The Court Receiver, High Court, Bombay has been appointed as a receiver in the matter. By an order dated 13 October 2017, the Court Receiver was directed to appoint Defendant No.1 as his agent on payment of royalty but without any security. An offer of royalty was to be made by Defendant No.1 within a specified time. In case no such offer was received from the Defendant, the Court Receiver was to advertise the property for renting it out to third parties and thereafter seek further directions of the court. There are two issues, which call for immediate

attention of the court. There are statutory dues pending in respect of the partnership property. Defendant No.1 estimates these dues to be around Rs.3 to 4 crores, whereas the Plaintiffs have produced assessment orders under the GST Act. The two assessment orders of the Department of Goods and Services Tax produced before the court show balance statutory tax dues of Rs.1,82,22,660/- and Rs.11,94,274/-. Whatever be the correct amount due to the Department, the parties are unanimous that the amount is large and needs to be settled. It is also not in dispute that there is presently an amnesty scheme under which the parties can compromise the dues and pay such reduced amount to the exchequer as is permissible thereunder. The second issue concerns chemical goods lying within the premises. These goods have to be inventorised and disposed of. Both parties agree that for this purpose, an expert agency needs to be appointed. It appears that the Court Receiver has already addressed communications in this behalf to VJTI and ICT, who can provide technical expertise for inventory and disposal of the goods. The Receiver has already received estimates of fees from both VJTI and ICT for this work. The Receiver has to now take a call on whom to appoint. Once the Receiver decides on the agency, its charges would have to be paid. Both parties agree that this can very well be done from the Fixed Deposits of the firm of about a crore of rupees. Neither party, however, is in the custody of the Fixed Deposit Receipts. Both parties agree that, in the premises, suitable directions can be issued to the Court Receiver to apply for duplicate Fixed Deposit Receipts and encash the deposits. The dues, then, can be used, firstly, to defray the costs of inventory and disposal of goods, as noted above, and secondly, and if permissible, to meet the statutory dues of taxes.

3 In the premises, the follower order is passed :

(I) The Court Receiver, High Court, Bombay, who is appointed a receiver of the partnership property, shall write to Saraswat Bank as well as Bank of Baroda, where Fixed Deposits of the partnership firm are lying, for duplicate Fixed Deposit Receipts and discharge of the same by way of encashment of the Fixed Deposits.

(II) Either party is permitted to write to the State Department of Goods and Services Tax with a view to pay the statutory dues, if possible, by availing of any amnesty scheme as may be in force. In case the dues can be paid under the amnesty scheme or otherwise in any manner, the Court Receiver shall cause to be drawn a suitable order or NEFT instructions for payment of such dues.

(III) The Court Receiver may choose the expert agency to be appointed for inventory and disposal of goods on the basis of the communications received from VJTI and ICT. The Court Receiver is empowered to pay the charges of such agency from out of the funds available with the Court Receiver after encashment of the Fixed Deposits referred to above in accordance with this order.

(IV) The Court Receiver is also permitted to take all necessary steps for effectively carrying out the inventory and disposal of the goods.

(V) The costs of the Receiver's Report, quantified at Rs.3000/-, shall be realised by the Court Receiver from out of the funds available with him.

(VI) The Court Receiver's Report is disposed of accordingly.

(VII) Liberty to apply to this court by way of speaking to the Minutes of this order in case of any difficulty.

(S.C. GUPTE, J.)