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

CHAMBER SUMMONS 1055 OF 2018
IN
NOTICE OF MOTION NO.141 OF 2018
IN
COMMERCIAL SUIT NO.755 OF 2017
AND
CHAMBER SUMMONS NO. 1246 OF 2018
IN
COMMERCIAL SUIT NO.755 OF 2017

Suchitra Wd/o. Sadhu Koraga Shetty … Applicant

In the matter of :

Bai Mamubai Trust
And Others … Plaintiffs
Versus
Suchitra Wd/of Sadhu Koraga … Defendant
And
The Court Receiver, High Court, Bombay … Respondent

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Mr. P.D. Prasad Rao i/b Kanchan Agarwal for the Applicant in Chamber Summons No.1055 of 2018/original Defendant.
Mr. P.S. Dani, Senior Advocate i/b Mr. M.K. Tanna for the Plaintiffs/Applicants in Chamber Summons No.1246 of 2018.

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CORAM : S.C. GUPTE, J.

DATE : 25 JANUARY 2019

P. C. :

. Chamber Summons No.1055 of 2018 has been taken out by the Applicant (original Defendant) for setting aside the report/order dated 7

June 2018 passed by the Court Receiver directing the Applicant to pay a sum of Rs.1,20,000/- as final royalty from 12/20 July 2017. The companion chamber summons, namely, Chamber Summons No.1246 of 2018, has been taken out by the original plaintiffs praying for enhancement of royalty fixed by the court receiver to Rs.2,41,810/- per month. Both chamber summonses are heard together.

2 The present suit seeks a decree of possession in respect of three shops, which together constitute a restaurant, where the Plaintiffs are carrying on business in the name and style of "Manoranjan Hotel". It is the Plaintiffs' case that by a conducting agreement dated 20 December 1952, the Plaintiffs granted a conducting licence in respect of this business to one Maganlal S. Hemani. In March 1968, Hemani inducted various third parties in the premises. Litigation ensued between Hemani and these third parties. On 9 August 1968, the Plaintiffs terminated the conducting licence and called upon Hemani to restore possession of the premises to the former. In 1979, Hemani filed a declaratory suit before the Court of Small Causes in Mumbai seeking a declaration of his tenancy in respect of the suit property. During the pendency of this suit, apprehending creation of further third party rights on the part of Hemani, Plaintiff No.2 filed a simplicitor injunction suit before the City Civil Court at Bombay. It appears that this suit was withdrawn in the year 1990 by Plaintiff No.2. Pending this suit, a deed of assignment was executed by Hemani purporting to assign the entire business to one Sadhu Kora Shetty. He also purported to have assigned his alleged tenancy rights in favour of Shetty and simultaneously executed a Power of Attorney to enable Shetty to look after the business. In 1990, Shetty filed his own declaratory suit before the Court

of Small Causes, being R.A.D. Suit No.364 of 1990, seeking declaration of his tenancy. That suit was dismissed for default on 10 September 1999. Without reviving this suit, Shetty filed another declaratory suit, being R.A.D. Suit No.1245 of 2000, seeking similar relief. Even that suit, it appears, was dismissed for default on 8 June 2000. Despite dismissal of the two suits, Shetty filed a third declaratory suit, being R.A.D. Suit No.1843 of 2003, claiming to be a monthly tenant in respect of the suit property. During the pendency of the suit, Shetty expired; he was survived by the present Defendant, who impleaded herself as Plaintiff in that suit. The suit was eventually dismissed on 1 December 2009. The trial court recorded in its order that the predecessor of the Defendant was not a tenant in respect of the suit property. An appeal filed by the Defendant was dismissed by the appellate bench of the Court of Small Causes by a reasoned order. This order, as of now, has attained finality. (Though there has been a writ petition filed by the Defendant in this court, it was filed after the filing of the present suit and that petition is simply pending admission before this court without any interim relief.) In these facts, the Plaintiffs have now approached this court by way of the present title suit, claiming recovery of possession of the suit premises from the Defendant.

3 At the hearing of a Notice of Motion in this suit, the Defendant objected to the maintainability of the suit on the ground of bar of limitation. At the hearing of the Notice of Motion, which prayed for appointment of Court Receiver, this court held that on the facts of the case, the Defendant, not having even a semblance of right to the property, could not simply hold on to it without payment of any compensation. Considering the overwhelming *prima facie* case of the Plaintiffs in the

present suit and also considering the fact that the litigation under the Rent Control Act had attained finality in favour of the Plaintiffs in the Small Causes Court, the court found the case to be a fit case for appointment of Court Receiver. Accordingly, the court framed a preliminary issue of limitation and pending determination of that issue, appointed Court Receiver, High Court, Bombay, as receiver of the suit property. The Receiver was directed to merely take formal possession of the property and not disturb the physical possession of the Defendant. The Receiver was directed to appoint the Defendant as an agent of the Receiver on payment of an ad-hoc monthly royalty of Rs.45,000/- but without any security. By further order passed by this court on 24 November 2017, this court directed the Court Receiver to determine the final quantum of royalty. In a meeting before the Court Receiver, the parties were asked to suggest the name of a valuer on the valuers' panel for assessing the monthly compensation. Finally, Nadkarni & Co. were appointed as valuers to suggest fair and reasonable royalty to be charged for the suit property. Nadkarni & Co. submitted their report dated 19 February 2018, proposing a fair and reasonable royalty in the sum of Rs.1,91,600/- per month. The report was then circulated to the parties and their submissions on the report were heard. After taking into account the material produced by the parties and their respective submissions, the Court Receiver directed the Applicant herein (original Defendant) to pay royalty in the sum of Rs.1,20,000/- per month for suit premises comprising of shop Nos.1, 2 and 3, open otala and covered open space described in the report.

4 Both parties are aggrieved by this order. It is the case of the Defendant that the royalty fixed by the Court Receiver is exorbitant and

disproportionate, whilst the Plaintiffs' case is that the royalty is a very conservative estimate, not commensurate with the market rates and should be enhanced.

5 Nadkarni & Co., whilst proposing fair and reasonable royalty for the suit premises, appear to have ascertained various market conditions including prevalent compensation for comparable properties in the locality and rationalized royalty payable for the suit property by comparing locations, accommodations, type of constructions, amenities provided and the present condition of the suit property. The valuers first took into account the condition of the locality. The locality was said to be well developed with all civic amenities, such as shops, markets, hospitals, etc. available in the vicinity. All modes of public transport like BEST buses, taxis and auto-rickshaws were said to be available along M.G. Road, which is a major shopping destination not only at Ghatkopar but also for the entire eastern suburbs of Mumbai. Ghatkopar station of Suburban Central Railway and of Mumbai Metro Line-1, were said to be situated within walking distance of the suit property. The valuers then cited nine instances from the locality and compensation received in each of these nine cases. After excluding cases of unrealistically low compensation from these and also taking into account the circumstances of the suit property, namely, its location in an old building compared to the other buildings, instances of which were cited, and taking an overall view of the matter, i.e. frontage, relative advantages and disadvantages relevant to the suit premises vis-a-vis the premises in the instances cited, the valuers assessed a fair and reasonable rate of royalty at Rs.280/- per sq.ft. of carpet area per month. After taking into account this rate for the carpet area and otala forming

part of the suit premises, the valuers considered the covered open space and loft and worked out fair and reasonable royalty in the sum of Rs.1,91,600/- per month. When the report was placed before the Court Receiver and the parties were heard, the Receiver took into account a decision of our court dated 23 April 2008 on Chamber Summons No.1539 of 2006, which *inter alia* discussed the mandate of the Court Receiver in fixing royalty to be paid by his agent who is also a party to the litigation. The Receiver also took into account the large variation of compensation in three instances cited from the same society. The Receiver considered that there was no case for fixing royalty as suggested by valuers for the use of the loft on the basis that as per regulation 13 of the regulations for stamp duty valuation prescribed in Stamp Duty Ready Reckoner, the area of loft was not to be taken into consideration. Thus, applying the various criteria fixed by the court for determination of royalty and considering the instances cited and royalty proposed by the valuers and doing away with royalty for loft, the Court Receiver fixed a sum of Rs.1,20,000/- per month as fair and reasonable royalty for the use of the suit premises.

6 The determination of royalty by the Receiver, as noticed above, appears to be a fair and reasonable view. Nothing substantial is pointed out at the hearing of the chamber summonses, why the Receiver's determination should not be accepted. Learned Counsel for the original Defendant made various submissions, which really bear on the rights claimed on behalf of the Defendant and the circumstances, in which she found herself. These are really not material for the purpose of determination of royalty. Whether or not a receiver should be appointed and whether the suit premises should be given to the Defendant as an

agent of the Receiver on payment of royalty, are matters finally determined by this court on the Plaintiffs' Notice of Motion and in its order dated 24 November 2017 referred to above. These cannot be re-agitated in the present chamber summonses.

7 For contesting the quantum of royalty fixed by the Receiver, none of the parties has produced before this court any rival instances or other concrete material. Submissions of both parties are based on general observations. Learned Counsel for the Defendant submits that the premises are very old and housed in a dilapidated and shabby building, compared to the other instances cited by the valuers. It is clear, both from the valuers' report as well as the Receiver's report, that this aspect was given due consideration whilst arriving at the amount of royalty. Whilst considering relative advantages and disadvantages of the suit premises, the valuers have evaluated the condition of the building in comparison with buildings in the other instances. The Court Receiver also appears to have applied his mind to this aspect of the matter. Both Valuers and Receiver have also taken into account variation in rates of compensation per sq. ft. of carpet area in the instances cited. The Receiver has also considered the observations of this court concerning the Receiver's mandate in fixing royalty to be paid by his agent from amongst the parties to the litigation. After considering all this material, the Court Receiver has fixed royalty at the rate of Rs.1,20,000/- per month. There is nothing to suggest that this determination is in any way unreasonable or improper. The determination, accordingly, does not merit any interference.

8 In the premises, both Chamber Summonses are dismissed. Costs to be costs in the cause.

(S.C. GUPTE, J.)