

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

**COURT RECEIVER'S REPORT NO. 236 OF 2019
IN
CHAMBER SUMMONS NO. 703 OF 2016
IN
NOTICE NO. 663 OF 2011
IN
COM. EXECUTION APPLICATION NO. 265 OF 2011**

Gulshan Noshir Chinwalla	Applicant
In the matter between	
Masterbaker Marketing Limited	Plaintiff
V/s.	
Noshir Mohsin Chinwalla	Defendant.

Mr. D. N. Kher, Court Receiver.

Mr. Sagar Divekar a/w Mr. Abhimanyu Mhapankar & Pratik Ingle,
Advocates for the Plaintiff.

Mr. Prateek Katewa i/b Argus Partners, Advocate for the Applicant in
CHS/703/16.

Ms. Peppino Bahl i/b Law Offices of Divya Bahl for Respondent in
CHS/703/16.

**CORAM : G.S. KULKARNI, J.
DATE : 10th DECEMBER, 2019**

P. C.

By this report, the Court Receiver has prayed for the following
directions:-

- (a) Considering the above fact, delay for submitting this report may be condoned.
- (b) The quotations received from 5 panel valuers in sealed envelope be opened in the Hon'ble Court and the valuer be appointed.

(c) If the Hon'ble Court is pleased to appoint Panel valuer as per prayer clause (b), the plaintiff may be directed to deposit the professional fees of the appointed valuer within such period as the Hon'ble Court may deem fit;

(d) The applicant may be directed to hand over the vacant and peaceful physical possession of suit flats to the Court Receiver to take further steps in the matter within such period as the Hon'ble Court may deem fit and proper.

(e) Cost of this report may be awarded in the sum of Rs. 3,000/- and plaintiff be directed to pay the same;

(f) Any other directions that the Hon'ble Court may deem fit and proper in the matter.

2. By an order dated 13th August 2019, with the consent of the parties court receiver was appointed in respect of two flats, for further action to be taken to sell these two flats. The plaintiff was to be entitled to 50% of the sale proceeds as per the para-1 of the said order.

3. Today as per the report of the Court Receiver, as also agreed at bar on behalf of the applicants in the chamber summons, that one Mr. Zulfikar Barafwalla, brother-in-law of the applicant is in occupation of the flats. There are several letters addressed to vacate the said premises. However, he is not vacating the premises. By this conduct of Zulfikar Barafwalla, the Court Receiver directed could not proceed further to take appropriate steps as directed by this court in order dated 13th August 2019. It is a common prayer that appropriate

directions be given to Mr. Zulfikar Barafwalla and his family to vacate the premises.

4. From the record it appears that Mr. Zulfikar Barafwalla was given sufficient time to vacate the premises as also he is aware of the present proceedings, although he is not a party. He has no concern whatsoever with the dispute. He is also not concerned with the application in this proceeding. Accordingly as per the earlier directions issued on Mr. Zulfikar Barafwalla vacating the premises, the Court Receiver can take further steps to obtain valuation of the said flats and to take further steps to sale the flats as per the orders dated 13th August 2019 passed by this court. Accordingly the following order:-

ORDER

1. Court Receiver at this stage is not pressing for relief in terms of prayer clauses (b) and (c) as made in the report.
2. Delay in filing the report is condoned considering the facts and circumstances of the case.
3. The applicant Mr. Gulshan Chinwalla and his relative Mr. Zulfikar Barafwala, who are stated to be in possession of the flats in question, are directed to hand over the possession of the flats in question to the Court Receiver within two weeks from today.

4. After the possession is handed over, Court Receiver to take appropriate steps as per the order dated 13th August 2019 which be taken within a period of six weeks after vacant possession is handed over to the Court Receiver.
5. In the event Mr. Zulfikar Barafwala fails to vacate the premises, learned counsel for the Applicant has no objection for forcible possession of the premises to be taken by the Court Receiver and obtain vacant possession of the said premises.
6. Accordingly, in the event the possession of the flats as directed in direction (3) above is not handed over, it is open to the Court Receiver to take forcible steps including to break open the lock of the premises, if the premises are closed and if necessary with help of the police to obtain vacant possession of the flats.
7. The cost of the report Rs. 3,000/- to be paid by the plaintiff to the Court Receiver within three weeks from today.
8. The parties including Mr. Zulfikar Barafwala to act on authenticated copy of this order.
9. Order be communicated to Mr. Zulfikar Barafwala by the Court Receiver.
10. Court Receiver's report is disposed of in the above terms.

[G.S. KULKARNI, J.]