

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

**INTERIM APPLICATION NO. 2216 OF 2020
IN
COURT RECEIVER REPORT NO. 142 OF 2019**

Bai Mamumbai Trust & Ors. ...Plaintiffs/Applicants
and
Suchitra w/o. Sadhu Koraga Shetty ...Defendant

Mr.Mayur Khandeparkar i/b. M.K. Tanna for Applicants/Plaintiffs.
Mr.PD. Prasad Rao i/b. Kanchan Agrawal for Defendant.
Ms.Rekha V. Rane, 2nd Assistant to Court Receiver.

CORAM : S.C. GUPTE, J.

DATE : 24 MARCH 2021

P.C. :

Heard learned Counsel for the parties.

2 This interim application seeks various reliefs. Learned Counsel for the Applicants (original Plaintiffs), however, presses only three prayer clauses of the interim application, namely, prayer clauses (e), (f) and (g). Prayer clause (e) seeks directions to the Court Receiver to take steps to remove all articles, things, goods, furniture and fixtures of the Defendant lying in the suit premises, whereas prayer clause (f) seeks directions for discharge by the Defendant of all outstanding bills for electricity and water charges for the period during which the Defendant was in use, occupation and possession of the suit premises as an agent of the Court Receiver. Prayer clause (g) seeks appointment of the Plaintiffs as agents of the Court Receiver and putting them in possession of the suit premises without payment of royalty or furnishing of security and allowing them to let out the suit premises to third parties on leave and licence, generating thereby

revenue in respect of the suit premises.

3 Learned Counsel for the Respondent (original Defendant) opposes the interim application. Learned Counsel submits that a preliminary issue has already been framed in the suit and without deciding that issue, no further interim relief should be granted to the Applicants/Plaintiffs. Learned Counsel submits that pending determination of the preliminary issue, the Plaintiffs are sufficiently protected by interim orders already passed in the matter. Learned Counsel relies on the judgment delivered by this court in **Mukund Ltd. vs. Mumbai International Airport**¹ in support of his case that without deciding the preliminary issue, which concerns the Defendant's objection to the jurisdiction of the court, it is not open to the court to proceed to hear the main application for interim relief.

4 In the very first place, the interim relief prayed for herein is a fall-out of what has already been directed by this court in its interim order passed on 13 September 2019. The order of 13 September 2019 was passed on a Receiver's report. Originally, the Defendant was in possession of the suit property as an agent of the Court Receiver. The Court Receiver had fixed a royalty of Rs.1,20,000/- per month payable by the Defendant from 12/20 July 2017. In the meantime, under orders of the court, pending fixation of royalty by the Court Receiver, the Defendant went on to pay a sum of Rs.45,000/- as monthly royalty on ad-hoc basis between 12/20 July 2017 and 7 June 2018 when the Receiver fixed royalty of Rs.1,20,000/- per month and called upon the Defendant to deposit the differential amount (i.e. difference between Rs.1,20,000/- fixed as final royalty and

1 2011(2) Mh.L.J. 936

Rs.45,000/- paid as ad-hoc royalty earlier). The Defendant neither paid the arrears nor the royalty fixed by the Receiver prospectively and in the premises, the Receiver's report sought directions for future course of action. This court, after considering the objections of the Defendant, upheld the order of the Court Receiver fixing royalty in the sum of Rs.1,20,000/- per month from the date of the report, i.e. 1 June 2019. The court ordered the Defendant to pay arrears and continue to pay future royalty in the sum of Rs.1,20,000/- per month from the date of the report, i.e. 1 June 2019. In the event of the Defendant's failure to pay such arrears or future royalty, the Receiver was directed to take physical possession of the suit property by dispossessing the Defendant. This order has not been challenged by the Defendant and holds the field as of this date. In pursuance of this order, the Receiver did proceed to take possession of the suit property from the Defendant, since the Defendant, despite this order, neither paid arrears nor future royalty to the Court Receiver. The Defendant was dispossessed on 19 November 2019. The cause for the present interim application arises as a result of the Defendant's stand that though he was required to deliver possession of the suit premises to the Court Receiver, his belongings, including furniture and fixtures installed by him within the premises, need not be removed, since this court purportedly did not pass any order of vacant possession and simply directed physical possession to be taken over by the Court Receiver.

5 When this court ordered dispossession of the Defendant for non-payment of royalty, what this court meant was dispossession of the Defendant together with her belongings. It cannot be that the Defendant is physically dispossessed and yet, can continue to keep her belongings, including furniture and fixtures, within the suit premises. The Plaintiffs'

prayer for directions to seek vacant possession, accordingly, is in order. So also is the Plaintiffs' prayer that the premises should be allowed to be let out to third parties on leave and license basis. It is, however, not necessary for this court to appoint the Plaintiffs as agents of the Court Receiver for that purpose, since the property is already *custodia legis* and the Court Receiver, who is in physical possession of the property, can very well rent out the same on leave and licence basis to third parties. So far as the Plaintiffs' third prayer, namely, directions for discharge of electricity and water bills by the Defendant, is concerned, the Defendant in her reply has offered to pay the electricity and water bills on production of such bills. The Plaintiffs have already handed over bills of water charges to the Defendant. The Defendant would have to clear these bills in accordance with her commitment in the affidavit in reply. As for electricity charges, the Plaintiffs do not have in their possession electricity bills issued by the distribution licensee and these bills would have to be accessed from the internet or by seeking copies from the electricity distribution company and would have to be cleared by the Defendant accordingly.

6 The observations of the court in **Mukund Ltd.** (supra) concerning Section 9A of the CPC ought not to come in the way of the Plaintiffs seeking the present interim relief. Firstly, the objection to the jurisdiction of the court based on limitation is no longer treated as a preliminary objection under Section 9A and secondly, and at any rate, Section 9A has now been repealed by a legislative enactment. The preliminary issue of limitation raised in this suit, accordingly, can only be heard along with the other issues in the suit.

8 Accordingly, the interim application is disposed of in terms of

the following order :

(i) The Court Receiver is directed to take all necessary steps for removing articles, things, goods, furniture and fixtures of the Defendant lying within the suit premises within a period of two weeks from today.

(ii) The Defendant shall, in accordance with the statement made in her affidavit in reply, clear water charges for the period upto 19 November 2019 when she was in use, occupation and possession of the suit premises as agent of the Court Receiver in accordance with the bills furnished by the Plaintiffs to her.

(iii) As for electricity charges, pending bills should be accessed from either the site of the electricity distribution company or from the company itself. These bills shall be cleared by the Defendant within a period of four weeks from today.

(iv) In case the Defendant does not clear the pending bills, including penalty, if any, in accordance with this order, without prejudice to other remedies of the Plaintiffs may have against the Defendant, the Court Receiver may proceed to discharge the outstanding bills from out of the funds that may be available with the Receiver's office and thereafter, have the electricity and water connection to the suit premises restored. Such payment shall be to the account of the Defendant and shall be recoverable from her.

(v) The Court Receiver shall advertise licensing of the suit

premises through a leave and license agreement and call for offers from third parties and after ascertaining the highest bidder, shall give out the suit premises on licence to such party, on payment of such royalty and subject to furnishing of such security as the Receiver may determine. Licence fees and security amount paid by the third party licensee shall be held by the Court Receiver to the account of the suit and shall abide by further orders that may be passed by this court in the suit. Pending such orders, the amount shall be invested by the Court Receiver in appropriate fixed deposit/s of Nationalised Bank/s.

(vi) As regards the other prayers in the interim application, the statement of learned Counsel for the Applicants/Plaintiffs that his clients are not pressing these reliefs as of now, is noted and accepted.

(S.C. GUPTE, J.)