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

INTERIM APPLICATION NO.875 OF 2022
WITH
COURT RECEIVER'S REPORT NO.263 OF 2021
IN
COMM SUIT NO.227 OF 2017

Nirupama Yogesh Kanani & Anr. ...Applicants/ Plaintiffs

Versus

Deven Yogesh Kanani & Anr. ...Defendants

Mr. Aditya Udeshi with Mr. Netaji Gawde i/b. M/s. Sanjay Udeshi & Co. for the Applicants / Plaintiffs.

Ms. Jyoti Bhasin, for Defendant No.1.

Ms. K.M. Rane, 1st Asstt. to C.R. is present with Ms. Rekha Rane, 2nd Asstt. to C.R.

CORAM : R.I. CHAGLA J
DATE : 7TH MARCH, 2022

ORDER :

1. Interim Application No.875 of 2022 is not on board. Taken on board.

2. The learned Advocate appearing for the Applicant / Defendant No.1 seeks leave to withdraw Interim Application. Leave is granted. Interim Application is disposed of as

withdrawn.

3. The Court Receiver's Report has been considered by this Court. By a prior order dated 3rd January, 2022, this Court had noted the issues which arise in Court Receiver's Report. The Court Receiver had been directed by order dated 19th December, 2019 to take detailed photographs of the machinery and other articles lying within the premises and preserve the same as part of the Receiver's record and make a compliance report accordingly. The physical possession of the partnership firm assets were required to be taken and professional expert to be appointed by Court Receiver namely V.J.T.I. or IIT for inventory and disposal of goods which were lying in the property of the said partnership firm.

4. The first direction in the Court Receiver's Report is with regard to the payment made towards bill of the professional photographs which has been engaged by the Plaintiff. Considering that professional photographer has been arranged by the Plaintiff, the Plaintiff shall make payment of the bill amounting to Rs.7,300/- which shall be paid to the photographer by the Plaintiff within a period of one week from

uploading of this order.

5. In so far as the vehicle Indigo Manza bearing registration No. MH-02-BR 9960, the said vehicle has admittedly been sold by the Plaintiff and which vehicle was part of the partnership firm assets. Considering that the vehicle has been sold for a sum of Rs.90,000/-, the said sum of Rs.90,000/- shall be deposited in this Court within a period of two weeks from uploading of this Order.

6. With regard to a direction sought in clause (c) of the Court Receiver's Report as to whether the Court Receiver is to take possession of the vehicles namely Chevrolet Cruz (Car No.283) and Maruti SX4 (Car No.9912) being assets of M/s. Hiena Pharma, the learned Advocate appearing for the Defendant No.1 has objected to the taking of possession by the Court Receiver as according to her the vehicles are in the name of Defendant No.1. The learned Advocate for the Defendant No.1 states that it came out of the capital amount of Defendant No.1. However, there is no proof of the same. The fact is that the account of the partnership firm M/s. Hiena Pharma was being used for making payment for purchase of these vehicles. In

view of this fact, the Court Receiver shall take possession of Chevrolet Cruz (Car No.283) and Maruti SX4(9912), within a period of two weeks from uploading of this Order.

7. With regard to clause (d), the Court Receiver shall write to the Saraswat Bank, Juhu Branch, Bank of Baroda, Vile Parle Branch, Bank of Maharashtra, Borivali East branch and State Bank of India, Mira Road, East Branch and obtain the disclosures from respect banks as to the monies lying in these accounts in the name of M/s. Hiena Pharma. In the event that these accounts are in the name of the partnership firm M/s. Heina Pharma, the Court Receiver shall take possession of those accounts. The outstanding amount in the account of partnership firm M/s. Heina Pharma will be transferred to the Suit account with the Court Receiver. The Court Receiver is directed to invest these amounts in fixed deposit.

8. In so far as clause (e) of the Court Receiver is concerned, there is some dispute regard to payment of Sales Tax dues which have been raised by notice of the Asstt. Commissioner of Sales Tax (D-917) Nodal Division 6 vide notice dated 5th June, 2017 regarding MVAT 2002 bearing TIN

No.27180004602V. The learned Advocate for the Defendant No.1 states that though the fixed deposit A/c No.04200300105645 with Bank of Baroda, has lien marked against the said notice of the Asstt. Commissioner of Sales Tax, the sales tax dues claimed by the Asstt. Commissioner of Sales Tax are disputed. However, considering that the fixed deposit account belongs to the partnership firm M/s. Hiena Pharma, the Court Receiver shall take possession of the fixed deposit account and prior to which the sales tax dues shall be paid under protest from the said fixed deposit account and subject to challenge being made by the parties to the Asstt. Commissioner of Sales Tax.

9. With regard clauses (f), (g) and (h) are concerned, in view of the IIT, Mumbai being unable to take inventory of the goods lying in the suit factory premises of the partnership firm M/s. Hiena Pharma, the refund of Rs.80,000/- + 18% GST which IIT, Mumbai has offered to refund as observed in order dated 3rd January, 2022 shall be accepted by the Court Receiver and credited to the Suit account. These amounts shall be utilized by the Court Receiver for appointing another expert who shall take inventory and disposal of goods in the Suit factory

premises of partnership firm M/s. Hiena Pharma.

10. With respect to directions sought in clause (i) of the Court Receiver's Report, the Court Receiver's Report shall take physical possession of the Suit factory premises of the partnership firm M/s. Hiena Pharma. Prior to taking possession the Court Receiver shall hold meeting on 10th March, 2022. The Advocates for parties shall remain present and Court Receiver shall issue necessary directions for making payment for repair of the wall of the property which has been damaged and which shall be from the monies lying in the Suit account. Further, if there is a shortfall lying in the suit account, the money shall be paid equally by the parties. The Court Receiver shall take physical possession of the property of the partnership firm M/s. Hiena Pharma within a period of one week of repair of the Wall of the Suit factory premises.

11. With respect to clause (j) of the Court Receiver's Report, the costs of and incidental to this Report fixed at Rs.5,000/- shall come out of the funds lying in the hands of the Court Receiver.

12. With these directions, the Court Receiver's Report is disposed of.

[R.I. CHAGLA J.]