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

INTERIM APPLICATION NO. 259 OF 2021
WITH
INTERIM APPLICATION NO. 1550 OF 2021
WITH
INTERIM APPLICATION NO. 2492 OF 2023
IN
SUIT NO. 3 OF 2014

Ripusudan Mehra & Ors. ...Applicants/
Original Defendants

IN THE MATTER BETWEEN :

Runwal Developers Private Limited ...Plaintiff

Versus

Ripusudan Mehra & Ors. ...Defendants

***

- Mr. Rohaan Cama i/b Ashish Gatagat and Archana Gupte, for Original Plaintiff.
- Ms. Apurva Gupte a/w Ms. Amita Jasani and Mr. Devansh Bheda, for Applicant/Original Defendants.
- Mr. E.B. Sivakumar, Ist Assistant to Court Receiver.

***

CORAM : MANISH PITALE, J.
DATE : 27th OCTOBER, 2023.

P. C. :

1. By this application, the Applicants (Original Defendants) have approached this Court praying for a direction to the Court Receiver to refund entire balance amount lying with the Court Receiver alongwith interest. While seeking such a direction, the Applicants rely upon clauses of the Consent Terms dated 26th September, 2019, on the basis of which, the suit was disposed of by an order also passed on 26th September, 2019.

2. According to the learned Counsel appearing for the Applicants, proper reading of the clauses of the Consent Terms, particularly clauses 1.13 and 1.24 thereof, would show that the liability towards arrears of non agricultural tax payable on the suit property was to be shared in the proportion of $^2/_3$ and $^1/_3$ between the Plaintiff and the Defendants. In that context, the learned Counsel for the Applicants referred to order dated 18th November, 2021, passed by the Sub Divisional Officer (SDO), Eastern Suburban, Mumbai, whereby an Appeal filed by the Applicants in respect of demand towards arrears of non agricultural tax issued by the Tehsildar, Kurla was disposed of, specifically directing that the Plaintiff i.e. Respondent herein and the Applicants i.e. Original Defendants would bear the liability of the arrears of such non agricultural tax in respect of the suit property in the proportion of $^2/_3$ and $^1/_3$. It is submitted that the Applicants have discharged their liability to the extent of $^1/_3$ and that the Plaintiff is liable to make good to balance $^2/_3$ amount, without touching the amount lying with the Court Receiver. On this basis, it is submitted that as per clause 1.24 of the aforesaid Consent Terms dated 26th September, 2019, the Court Receiver should be directed to disburse the entire amount along with accrued interest to the Applicants.

3. It is further submitted that as per the report submitted by

the Court Receiver, all statutory dues have been already paid and that therefore, the amount specifically stated in Court Receiver's Report No. 157 of 2023, should be disbursed in favour of the Applicants. It is specifically contended that the issue of non agricultural tax payable on the suit property ought not to be brought-in, in respect of the amount lying with the Court Receiver and that the same ought to be disbursed in its entirety in favour of the Applicants.

4. The learned Counsel appearing for the Original Plaintiff and the Respondent in the present application submitted that the aforesaid Consent Terms ought not to be interpreted in the manner in which the Applicants are insisting, for the reason that the entire background of the litigation and the orders passed by this Court need to be taken into consideration.

5. In that context, attention of this Court was invited to order dated 29th July, 2013, passed in Notice of Motion (Lodging) No. 1443 of 2013, wherein this Court recorded that a *prima facie* case was made out by the Plaintiff in its favour, as a consequence of which, the Applicants (Original Defendants) were restrained from creating any third party rights in respect of $^{2}/_{3}$ share of the Plaintiff in the suit property. Ancillary directions were also given in the said order.

6. Subsequently, the Notice of Motion was itself disposed of

on the basis of Minutes of Order tendered before this Court. Attention of this court was specifically invited to Paragraph No. 2 of the minutes of order placed before this court, indicating that the Court Receiver appointed on the suit property was to collect rents and discharge statutory dues necessary to maintain, protect and preserve the suit property. Further directions were also given with regard to the manner in which the surplus amount, if any, with the Court Receiver was to be invested.

7. Thereafter, the suit itself stood disposed of by the aforesaid order dated 26th September, 2019, as per Consent Terms, also executed on the same date. It was submitted that although clause 1.13 of the Consent Terms does stipulate that all past and future liability of taxes, including non agricultural tax, shall be borne by the Plaintiff and the Defendants in the proportion of $^{2}/_{3}$ and $^{1}/_{3}$, it was submitted that clause 1.24 of the Consent Terms also referred to adjustment of all statutory charges, and then the balance amount being made available to the Applicants.

8. It was emphasized that when the aforesaid orders were passed by this Court, the Applicants did not bring to the notice of either this Court or the Court Receiver about the liability concerning non agricultural tax. It was the Plaintiff who informed the Court Receiver in August, 2021, about the dispute regarding non

agricultural tax pending between the parties and in that background, he requested that the prayer made in the present application may be deferred. It is submitted that when the order passed by the SDO is appreciated in this backdrop, it becomes clear that even if the Plaintiff is to bear the burden to the extent of $^2/_3$ in respect of the liability pertaining to non agricultural tax, it ought to be disbursed from the amount lying with the Court Receiver and then the balance could certainly be disbursed to the Applicants.

9. This Court has considered the rival submissions in the context of the material placed on record. A perusal of the chronology of events in the present case indicates that in the order dated 29th July, 2013, passed by this Court in the Notice of Motion filed on behalf of the Plaintiff, this Court reached a finding that a *prima facie* case was made out and in that context, interim directions were issued restraining the Applicants (Original Defendants) in the manner noted hereinabove. Subsequently, the notice of motion itself stood disposed of as per Minutes of order dated 16th February, 2018. Paragraph Nos. 1 to 3 of the Minutes of Order are relevant and they read as follows :

> *"1. By consent of the parties, the Court Receiver, High Court Bombay, is hereby appointed as the Receiver in respect of the property being all that piece and parcel of land bearing CTS No. 68 situated at Village Vikhroli, Taluka,Kurla, Mumbai Suburban District admeasuring about 22,633.80 sq. mtrs known as*

"Samrat Silk Mills Compound" ("Suit Property"). The Court Receiver shall forthwith take actual and physical possession of the Suit Property without disturbing in any manner the occupation of any of the structures situated on the Suit Property. The Court Receiver shall prepare a list of all occupants/ tenants found in possession of the structures on the Suit Property and shall not transfer and/or create any tenancy in respect of any portion of the Suit Property or structures situated thereon, without leave of the Court and after giving notice to the parties.

2. The Court Receiver shall collect rent, discharge statutory dues and otherwise maintain, protect and preserve the Suit Property under the supervision and directions of this Hon'ble Court. The surplus, if any, of the income over and above the expenditure incurred by the Court Receiver in maintenance and protection of the Suit Property including the cots, charges and expenses of the Receiver then the same shall be invested by the Court Receiver on a six monthly basis in the Fixed Deposit of any Nationalized Bank. If the income generated by the Suit Property is not sufficient for payment of statutory dues and for maintenance and preservation of the Suit Property including the costs, charges and expenses of the Receiver, then such deficit shall be shared by the Plaintiff and the Defendants in the ratio of 2/3rd : 1/3rd.

3. It is, however, clarified that the parties hereto shall *independently be entitled to prosecute and/or defend the legal proceedings in respect of the Suit Property, a list whereof is annexed hereto as* ***<u>Schedule 1,</u>*** *without any reference to or interference by the Court Receiver. The cost incurred by the party for prosecuting and/or defending the legal proceedings (Schedule 1 hereto) shall be borne by the respective parties alone. Further, the parties shall not claim rebate/refund of the legal expenses incurred by them from the Court Receiver. Any other legal proceedings pertaining to the Suit Property and/or the tenants/occupants thereon besides the ones mentioned in Schedule 1 hereto shall only be prosecuted and/or defended by the Court Receiver."*

10. It is significant to note that the Court Receiver was appointed by the consent of the parties and Paragraph No. 2 of the above quoted portion of the Minutes of Order specifically records that the Court Receiver was to collect rent and discharge statutory dues to maintain, protect and preserve the suit property. It is significant that in Paragraph No. 3, the parties agreed that legal proceedings pertaining to the suit property would be prosecuted or defended by the Court Receiver. This Court is of the opinion that reference to discharge of statutory dues would certainly include liability towards payment of non agricultural tax. It is evident that if the Court Receiver was made aware about the dispute regarding payment of

non agricultural tax and the legal proceedings concerning the same, they would have been prosecuted or defended by the Court Receiver.

11. As noted hereinabove, subsequently in the light of the Consent Terms executed on 26th September, 2019, the suit itself was disposed of.

12. Clauses 1.13 and 1.24 of the Consent Terms have been commented upon by the learned Counsel for the rival parties and therefore, it would be appropriate to refer to the two clauses. The said clauses read as follows :

> *"1.13 All past and future liability of taxes including property tax and NA tax shall be borne and paid by the Plaintiffs and Defendants in proportion to their ratio in the suit Property i.e. the Plaintiffs shall pay 2/3rd proportion and the Defendants shall pay 1/3rd proportion.*
>
> *1.24 The Court Receiver, High Court Bombay, appointed by this Hon'ble Court vide order dated 16 February 2018 shall after adjusting the statutory charges including electricity bills, property taxes and the costs, charges and expenses incurred by the office of the Ld. Court Receiver refund the balance amount alongwith interest, if any to the Defendants within a period of 30 days from the date hereof. Subsequent thereto, the Ld. Court Receiver shall stand discharged. The Plaintiffs shall not claim any right in respect of such amount refunded/paid to*

the Defendants by the Court Receiver."

13. This Court is of the opinion that although clause 1.13 does specifically refer to liability towards non agricultural tax and the proportion in which the rival parties would be liable to pay the same, clause 1.24 refers to adjustment of statutory charges and thereupon balance amount, if any, lying with the Receiver to be refunded to the Applicants (Original Defendants). It is significant that this Court in the subsequent order dated 29th November, 2019 passed in Court Receiver's Report No. 178 of 2019, categorically observed that reading of clause 1.24 of the Consent Terms left no manner of doubt that till the discharge of the Court Receiver all dues would be borne out of the amount lying with the Court Receiver and that the balance could be available for distribution.

14. In this context, when the order dated 18th November, 2021, passed by the SDO is perused, this Court is inclined to come to the conclusion that the liability towards payment of non agricultural tax, which stood confirmed by the order of the SDO had to be borne in the proportion of $^{2}/_{3}$ and $^{1}/_{3}$ between the Plaintiff and the Applicants (Original Defendants). Since the aforesaid liability is clearly covered under the expression "Statutory Dues" stated in paragraph no. 2 of the Minutes of Order dated 16th February, 2018 and "Statutory Charges" in clause 1.24 of the Consent Terms dated 26th September,

2019, the contention raised on behalf of the original Plaintiff deserves to be accepted. This Court is of the opinion that the Court Receiver was to receive rents and discharge all statutory dues/charges and thereupon the amount available with the Court Receiver was required to be disbursed/refunded to the Applicants as per clause 1.24 of the Consent Terms.

15. Therefore, this Court is unable to accept the contention raised on behalf of the Applicants that the entire amount available with the Court Receiver, along with accrued interest, must be disbursed in favour of Applicants.

16. At this stage, this Court called upon the learned Counsel for the parties to make submissions on the aspect of payment of interest, if any, on the amount due towards non agricultural tax. The learned Counsel for the Applicants informed this Court that the Applicants have already deposited $^{1}/_{3}$ of the amount demanded towards non agricultural tax as per notice dated 17th March, 2021, issued by the Tehsildar, Kurla. Therefore, this Court is of the opinion that the balance $^{2}/_{3}$ amount, which comes to the share of the Plaintiff ought to be disbursed from the amount lying with the Court Receiver. At the same time, the burden of paying interest, if any, due on the said amount ought not to be disbursed from the amount lying with the Court Receiver and the burden of interest towards payment of $^{2}/_{3}$

liability, if any, after order dated 18th November, 2021 passed by the SDO, must be borne by the Plaintiff.

17. This Court is informed that as per the notice dated 17th March, 2021, issued by the Tehsildar, Kurla, $^{2}/_{3}$ liability towards non agricultural tax would come to Rs. 24,15,937.59.

18. The Court Receiver is directed to disburse the aforesaid amount in favour of the Tehsildar, Kurla, towards non agricultural tax payable in respect of the suit property. Thereupon, the Court Receiver shall disburse the balance amount along with accrued interest in favour of the Applicants at the earliest. The same shall be disbursed to each of the Applicants in the proportion agreed between the Applicants, which is recorded in Court Receiver's Report No. 157 of 2023.

19. Interim Application No. 259 of 2021 stands disposed of in above terms.

20. In the light of the order passed in the present application, Court Receiver's Report No. 157 of 2023, also stands disposed of.

21. The cost of the report as per prayer clause (d) of the said report is allowed to be deducted from the suit amount.

22. Interim Application No. 1550 of 2021 and Interim

Application No. 2492 of 2023, shall be taken up for consideration on **07th December, 2023.**

(MANISH PITALE, J.)