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

**INTERIM APPLICATION NO.2606 OF 2023
IN
SUIT NO.277 OF 2019**

Shivaji Kanthappa Puthran & Ors. ...Applicant

In the matter between

Sagar Shivaji Puthran ...Plaintiff

vs.

Shivaji Kanthappa Puthran & Ors. ...Defendants

Mr. Vikram Garewal with Vikrant Zunjarrao with Vibha Joshi i/b
Zunjarrao & Co. for the Applicant/Defendant Nos.1 to 3.

Mr. S. K. Dhekale, Court Receiver present.

CORAM : S. M. MODAK, J.

DATED : 1ST SEPTEMBER 2023

P.C. :

1. Heard learned Advocate for the Applicant-Defendant Nos.1
to 3.

2. Though Application is served on learned Advocate for the
Plaintiff on 11th February 2023, neither reply is filed nor anyone
is present.

3. The relationship is not disputed. Defendant Nos.1 and 2,
are the husband and wife. The Plaintiff is their son whereas

Defendant No.3 is their daughter. The Plaintiff has filed suit as to declaration of ownership in respect of various properties, and one of them is a flat in Ratna Cooperative Housing Society, A-15, Mahim, Mumbai. The Defendants have filed written statement and denied the claim. So far as Mahim flat is concerned, it is their contention that earlier the flat was owned by the Plaintiff and his father Shivaji/present defendant no.1 whereas the Plaintiff has gifted his share in favour of Shivaji.

4. During the pendency of this suit, these defendants filed certain Interim Applications. Their details are as follows:--

- (a) There is an order passed on 18th March 2019 (Coram : K. R. Shriram, J.). The Plaintiff was enjoined from interfering in life of these Defendants.
- (b) The Plaintiff has breached this order and that's why Interim Application (L) No.15034 of 2021, was filed. It was for dismissal of the suit and for appointment of the Court Receiver.

5. This Court has appointed the Court Receiver as per order dated 21st July 2021. Plaintiff has agreed to handover

possession of the flat (para 9) passed in Interim Application (L) No.15034 of 2021. There is further order dated 21st September 2021, wherein the order of Receivership was continued until further orders. The other directions are also there, they are not relevant for deciding present Application.

6. The physical possession was taken by the Court Receiver on 27th July 2021. He also prepared inventory.

7. The Defendants intend to appoint a licensee in respect of this flat as Defendant Nos.1 and 2 are in need of finance, considering their age and financial difficulties. Two prayers are made in this Interim Application. They are reproduced as follows :-

“(a) That this Hon’ble Court be pleased to allow the Defendant Nos.1 to 3 to **amend the Written Statement** in terms of the Schedule of Amendment annexed to this Application.

(b) That this Hon’ble Court be pleased to **discharge the Court Receiver** appointed with respect House Number A-15, Ratna Co-op. Housing Society Ltd. Caddel Road, Mahim, Mumbai 400 016 situated on

land bearing CTS No.676 of Mahim Division of Mumbai City vide the order dated 27th July 2021.”

8. It is no doubt true that if the Defendants are in need of finance, there is no point in continuing the appointment of the Receiver. Plaintiff has left India and now, he is residing in Russia. So, the Defendants are having no more apprehension from the plaintiff. In addition to that, the Defendants want to describe the documents in respect of suit properties. Already, there is pleading about stand of the Defendants. So for explaining that the Defendants want to carry out amendment as per schedule of amendment, no new case is set out.

9. The charges of the Court Receiver needs to be paid. Already, the Defendants have deposited Rs.50,000/-. So if any deficit is there, the Defendants undertake to deposit that amount. In the inventory undertaken by the Court Receiver, there are certain articles lying in the flat which consists of some furniture and other articles. They can be handed over in custody of the Defendants at the time of handing over possession. In view of that the following order is passed :-

- (i) Interim Application is allowed in terms of prayer clauses
(a) and (b).
- (ii) The Court Receiver to handover physical possession to Defendant Nos.1 to 3, within a period of two weeks from today. The date can be fixed mutually.
- (iii) Defendant Nos.1 to 3 to pay necessary charges to the Court Receiver, if any deficit is there.
- (iv) Movable properties described in the report of the Court Receiver be handed over to Defendant Nos.1 and 2.
- (v) Amendment be carried out within four weeks from today, and the amended copy be served on the Plaintiff within four weeks. Reverification is dispensed with.
- (vi) The Court Receiver is discharged without passing accounts but upon payment of his costs, charges and expenses.

[S. M. MODAK, J.]