

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

**INTERIM APPLICATION NO. 2261 OF 2020
WITH
CONTEMPT PETITION (L) NO. 28645 OF 2021
IN
SUIT NO. 924 OF 2001
WITH
COURT RECEIVER'S REPORT NO. 396 OF 2022**

1 Dharmil A. Bodani ...Applicants/
2 Shyamal A. Bodani Plaintiffs

In the matter between

1 Dharmil A. Bodani and anr. ...Plaintiffs

Versus

1 Manju Meadows Pvt. Ltd. and ors. ...Defendants

And

Equus Stud Pvt. Ltd. ...Respondent

Mr. Ashish Kamat, a/w Ms. Akanksha Saxena, Ms. Jigisha Vadodaria, Mr. Vikrant Makhare, i/b M/s. Negandhi Shah and Himayatullah, for the Plaintiffs.

Mr. Rahul Narichania, Senior Counsel a/w Mrs. Uma Kshirsagar – Wagle, for the Respondent.

Mr. Reehan Ajmerwalla, i/b M/s. Manilal Kher Ambalal & Co., for Defendant No.11.

Mr. E. B. Sivakumar, 1st Asst. to Court Receiver, present.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 22nd DECEMBER, 2022

PRONOUNCED ON: 5th JUNE, 2023

ORDER:-

1. Since the contempt petition and the Court Receiver's Report have the genesis in the interim application, all were heard together and are being decided by this common order.

2. Background facts necessary for the determination of application and petition can be summarized as under:

(a) The parents of the applicants – original plaintiffs instituted the instant suit seeking, *inter alia*, specific performance of a Share Purchase Agreement dated 27th October, 1998 and challenging the alleged unlawful takeover of Manju Meadows Pvt. Ltd., defendant No.1 – Company, by defendant Nos.2, 8, 9, 10 and 11. The principal asset of defendant No.1 - Company comprises a Stud Farm situated at village Shirgaon, off Somatane Phata, Taluka Maval, District Pune (“the subject Stud Farm”). Pursuant to the orders passed by the learned Single Judge and the Appeal Bench, Court Receiver came to be appointed in respect of the subject Stud Farm and the original plaintiffs were appointed as the agents of the Court Receiver upon payment of royalty. Eventually, upon demise of the original plaintiff, the applicants have been impleaded as the plaintiffs and continued to occupy and operate the subject Stud Farm as agents of the Court Receiver.

(b) The subject Stud Farm is connected to Somatane – Kasarsai road, which, in turn, is connected to the main Talegaon – Shirgaon Highway, by a road which has, according to the applicants, at all times been in use by the original plaintiffs

since their appointment as an agent of the Court Receiver. Defendant No.1 and its predecessor-in-title, their employees and staff were also using the common road to access the subject Stud Farm ("subject road"). The subject road, according to the plaintiffs, is the only motorable road to the subject Stud Farm. Representatives of the Court Receiver and the veterinary consultant appointed by the Court Receiver have been using the subject road for the purpose of carrying out periodical inspection of subject Stud Farm. The applicants thus assert that the applicants, defendant No.1 and its predecessor-in-title had been in open, uninterrupted and peaceful use of the subject road.

(c) The applicants assert, in the middle of the year 2016, the respondent company, which has a Stud Farm alongside the subject road illegally and with *mala fide* intention erected a huge iron gate at the entry point of the subject road from Somatane – Kasarsai road and posted its security guards. The respondent, however, did not disturb the use of the subject road either by the applicants or by their employees, staff etc. and other plot holders in the said area. In the month of January 2018, the respondent made known its intent to prevent the use of the subject road.

(d) In the month of August, 2018 the respondent instituted a suit being Regular Civil Suit No.68 of 2018 in the Civil Court at Vadgaon against defendant No.1, without impleading the plaintiffs, despite being fully aware of the plaintiffs long standing possession over the subject Stud Farm. With the permission of this Court, the plaintiffs filed an intervention application seeking their impleadment as party defendants to the said suit. However, the respondent filed an application seeking to withdraw the said suit with liberty to institute a fresh suit in respect of the same cause of action. Civil Court Vadgaon, by an order dated 5th August, 2019, permitted the respondent to only withdraw the suit simplicitor without granting any liberty to institute a fresh suit.

(e) As the things thus stood, in the month of March 2020, the respondent started to obstruct the plaintiffs access to the subject Stud Farm by digging up the subject road. By 11th March, 2020, the respondent had widened the dug up area even further making it impossible for even a two-wheeler to use the subject road for accessing the subject Stud Farm. On 13th March, 2020, the respondent put up another gate thereby completely cutting off the applicants only access to subject Stud Farm. On 14th March, 2020, the employees of the applicants

were restrained from approaching to the subject Stud Farm by the security guards posted at the entry point iron gate.

(f) The applicants were thus constrained to file the instant application asserting, *inter alia*, that the subject road to the subject Stud Farm is the only motorable access road and to the knowledge of the respondent *custodia legis* and yet the respondent has deliberately, contemptuously and *mala fide* obstructed and cut off Court Receiver's access to the subject Stud Farm and thereby committed a willful, deliberate, gross contempt of this Court. The applicants moved for an ad-interim order of injunction restraining the respondent from obstructing and/or interfering with the use of the subject road to access the subject Stud Farm and to direct the respondent to remove all obstructions from the subject road.

(g) On 20th March, 2022 when the application was listed before the Court, without prejudice to its rights and contentions, the following statement in writing was made on behalf of the respondent:

“Without prejudice to the contentions raised in the short reply filed today, as well as without prejudice to the rights and contentions as raised in the pending litigation in respect of this said road at Shirgaon/Vadgaon and reserving rights to file or defend appropriate proceedings regarding the subject matter, the respondent agrees to fill in the dug up patch of road on their plot within 3-days and shall permit the applicant's to use the same pending the hearing

and final order on the above application of the plaintiff for access to their stud farm.”

(h) Based on the aforesaid statement, this Court passed the following order:

“3. In view of the aforesaid statement, the learned Counsel for the applicants/plaintiffs submits that for the present the aforesaid ad-interim arrangement would take care of immediate concern of the applicants/plaintiffs to have access to the suit property. In view of the above, the statement made in the written submission is accepted as statement made to the Court. The respondent shall act in conformity with the aforesaid statement. The interim application be listed for consideration after four weeks.

4. It is hereby made clear that the aforesaid interim arrangement is without prejudice to the rights of all the parties.”

(i) While the application awaited adjudication, the applicant preferred contempt petition alleging that, on 15th July, 2020, the respondent obstructed the petitioners Veterinary Doctor from using the subject road by refusing to open the iron gate installed by the respondent. Upon being reasoned, vide letter dated 18th July, 2020, the respondent discontinued its obstruction and allowed user of the subject road to the petitioners – applicants. However, on 4th September, 2020, in a communication addressed on behalf of the respondent, the latter falsely and illegally alleged that the subject road was a private road and restrictions had been put in view of the

pandemic situation. The applicants – petitioners remonstrated by reply dated 11th September, 2020.

(j) Yet in the month of December, 2020, the respondent erected on the opposite side of the respondent's Stud Farm, on the edge of the road going towards the subject Stud Farm and running along the fields belonging to the villagers, a concrete wall of around 2 feet in height and around 9 inches thick and a metal fence (jali) of about 7 feet mounted on it. Moreover, on the top of the metal fence "Y" shaped iron angles or girders were fixed. The petitioners – applicants alleged that the width of the subject road which was originally 16 feet has now been reduced by the respondent to around 12 to 13 feet by building walls on either side of the subject road. Resultantly, it was not possible for the trucks carrying horses, feed or fodder or for an ambulance or fire engine to reach the subject Stud Farm.

(k) The petitioners – applicants assert that the respondent has been falsely claiming that the subject road is a private road despite the suit instituted in the Civil Court at Vadgaon for such a declaration and injunction having been withdrawn. In fact, on an application moved by some of the adjoining landholders the Tahsildar directed the respondent to remove obstruction from Gat No.58 and 59. The respondent,

however, obtained an *ex parte* stay order from the Sub-Divisional Officer, Maval – Mulshi.

(1) The aforesaid obstruction to the common subject road by erecting walls on either side thereof is in breach of orders passed by this Court and the statement made before this Court and the order passed believing the said statement. Hence, the petition to take action against the respondent under the provisions of Contempt of Courts Act, 1971 and also direct the respondent to remove the obstruction by demolishing the wall and repair the subject road and allow uninterrupted and undisturbed use of the common subject road to access the subject Stud Farm.

3. When the contempt petition was listed before the Court on 21st December, 2021, a statement was made on behalf of the respondent that the statement made before the Court on 20th March, 2020 would hold good till the final disposal of the Interim Application No.1 of 2020 and the Court was reassured that unrestricted access would be given to the petitioners – applicants, to the subject Stud Farm. The Court directed the respondent to file a written undertaking of its Director and affidavit-in-reply to the interim application as well as contempt petition. Thereupon an undertaking came to be filed by Mr.

Ashok Shinde, the Director of respondent, that the respondent reassures this Court that unrestricted access would be given by the respondent to the petitioners to Manju Meadows Pvt. Ltd's. property and that the said statement would be honoured and there would be no occasion to complain breach of the said statement.

4. In the affidavit-in-reply to the interim application the respondent assailed the tenability of the application on the ground that the cause of action pleaded in the suit was totally different from the alleged cause of action pleaded in the application. The reliefs claimed in the interim application were stated to be outside the scope of the suit. Since the respondent was not the party to the suit no relief could be granted against the respondent as the interim reliefs could only be granted in aid of the final relief in the suit.

5. The respondent claimed that it is the owner of the land bearing Gat No.36 along with land bearing Gat No.98 as well as Gat Nos.41 to 47, 49, 53, 55, 58, 77, 78, 79, 80 and 98. The respondent has constructed a 20 feet wide private road which passes through the land bearing Gat No.98 from southern side and curved to the East side of the land bearing Gat No.98 and the same road passes through the land bearing Gat No.97 from

western side which turns to the East side. The respondent on its own cost and effort constructed a 20 feet wide private road on its own land and on the land to which it has exclusive right. The private road has been used by the respondent exclusively. Neither the owners of the abutting properties nor any outsider has any right of use of the said private road.

6. In particular, the applicant has no right in law to use or have access through the said private road. In fact there are two alternate access road to reach the Manju Meadows Pvt. Ltd. - defendant No.1. Both the access roads are through the other property of defendant No.1 bearing Gat No.118 which has also been in possession of the applicants. It was further contended that the applicants have entered into agreement with Birla School permitting them user of alternate road No.1. Heavy vehicles and school buses easily pass through the said road No.1.

7. The respondent contended that it was constrained to institute a suit before the Civil Court, Vadgaon, as defendant No.1 failed to comply with the demand in Notice dated 14th February, 2018 to cease and desist from using the subject road. As the plaint required extensive amendments, permission was sought to withdraw the suit with liberty to institute a fresh suit.

However, since permission was not granted to institute a fresh suit, the respondent has been pursuing remedies against the said order.

8. The respondent denied that the subject road is *custodia legis* and has been in possession of the Court Receiver. In any event, the Court Receiver could not have been appointed in respect of the subject road, which is the private property of the respondent, who has no concern with the dispute in the suit. It was contended that the concession that the subject road would be restored and access of the applicants – petitioners would not be obstructed, was made in the exigency of the situation where the Courts were not working on account of Covid-19 Pandemic. That, however, does not imply that the respondent accedes to the claim of the applicants.

9. In the affidavit-in-reply to the contempt petition, while denying that the respondent has been in contempt of either the undertaking given to the Court or the order passed by the Court, it was contended that the respondent has constructed wall/fence on its own land. The undertaking and order dated 20th March, 2020 do not preclude or prohibit the respondent from constructing the fence on its own property. The said wall/fence does not in any manner prevent or cause hindrance

to the vehicles that pass through the subject road leading to the subject Stud Farm. It was denied that width of the said road has been substantially reduced and access obstructed.

10. It was further contended that since the petitioners claim that the wall/fence was constructed in the month of December, 2020 the petition was barred by limitation as it was filed after one year of the alleged contempt. With regard to the alleged incident dated 15th July, 2020, the respondent asserts that on account of stringent lockdown restrictions to ensure safety the respondent was constrained to keep the main gate closed for the time being. That, however, does not amount to willful disobedience of the order passed by the Court. On these, amongst other grounds, the respondent prayed for dismissal of the petition.

11. Further affidavits and counter affidavits, rejoinder and sur-rejoinder were filed controverting the assertions and counter assertions. Alongwith an additional affidavit dated 20th June, 2022, the respondent placed on record a copy of the judgment and order passed by the Sub-Divisional Officer in RTS Appeal No.813 of 2021 purportedly under Section 23(2) of the Mamlatdar's Courts Act, 1906, whereby the revision application came to be allowed and the order passed by the Tahsildar,

Maval, directing the respondent to remove the obstruction from Gat Nos.58 and 98 came to be set aside. In response thereto, an affidavit-in-rejoinder came to be filed by the petitioners – applicants contending that the said order was passed by the Sub-Divisional Officer without jurisdiction.

12. It would be contextually relevant to note that pursuant to the order of the Court, the Court Receiver has filed report dated 16th December, 2022, being Court Receiver's Report No.396 of 2022, asserting, *inter alia*, that pursuant to the directions of the Court the Court Receiver inspects the subject Stud Farm periodically once in every four months. From the year 2021 onwards the office representative of the Receiver and the Veterinary Doctor have to pass through the iron gate which is installed on the subject road connecting to subject Stud Farm to Somatane – Kasarsai road. The said iron gate is monitored by the security guards of the respondent.

13. I have heard Mr. Kamat, the learned Counsel for the applicants – petitioners and Mr. Narichania, the learned Senior Counsel for the respondent, at some length. With the assistance of the learned Counsel for the parties, I have perused the pleadings, documents and the material on record.

14. Mr. Kamat strenuously submitted that the respondent has not only committed willful breach of the order dated 20th March, 2020 but even assurance given to the Court and recorded in the order dated 21st December, 2021 has not been scrupulously honoured. Laying emphasis on the fact that this Court had passed the order dated 20th March, 2020 on the strength of a statement voluntarily made on behalf of the respondent, Mr. Kamat would urge that having voluntarily invited the order of the Court it is nothing but contemptuous to commit willful breach of the said order. Taking the Court through the pleadings in the suit instituted by the respondent in the Civil Court, Vadgaon, wherein a categorical statement has been made that the width of the road was 20 feet and comparing and contrasting the same with the photographs of the subject road, Mr. Kamat would urge that the fact that the width of the subject road had been progressively reduced by building walls on the either side of the subject road can be said to have been established beyond the pale of controversy. It was further submitted that placing of “Y” shaped angles over the iron mesh, so as to further restrict the width of the subject road and thereby prevent the vehicles from entering into the subject Stud

Farm, has been with an oblique motive to prevent the Court Receiver/applicant's access to the subject Stud Farm.

15. Mr. Kamat urged with a degree of vehemence that it is trite law that there can be no interference with the possession of the property which is *custodia legis*. Access to the subject Stud Farm through the subject road, according to Mr. Kamat, is also a subject matter of the Court Receiver's possession. Therefore, the objection on behalf of the respondent that the subject matter of the suit is quite distinct from the subject matter of the instant application and petition is of no significance. It was further submitted that once there is an order of the Court it commands complete obedience and it is not open to the party who is alleged to be in breach of the said order to question correctness thereof. Mr. Kamat would further urge that what exacerbates the situation, in the case at hand, is the fact that the order was invited by the respondent voluntarily.

16. Taking the Court through the photographs of the subject road and the condition of the vehicles, which attempted to pass through the subject road, Mr. Kamat would urge that there is no scope for manoeuvring of the vehicles at all. The jurisdictional fire brigade has submitted a report that its vehicle cannot navigate through the subject road.

17. In opposition to this, Mr. Narichania would submit that there is not an iota of evidence to show common historical access. In none of the affidavits, the applicants – petitioners have disclosed as to through whose land the subject road passes. Nor the applicants – petitioners have pleaded an easementary right. In contrast, according to Mr. Narichania, the respondent has placed on record the documents which show proprietary title of the respondent over the land through which the subject road passes.

18. Mr. Narichania would further urge that the instant application, having regard to the nature of the suit, is wholly misconceived. The suit represents a grievance by a shareholder of the alleged mis-management of the affairs of the company. In the said suit, no final relief regarding the subject road is conceivable, by any stretch of imagination. If that be the case, according to Mr. Narichania, no interim relief can be granted as interim relief has always to be granted in aid of the final relief.

19. To bolster up this submission, Mr. Narichania placed reliance on the judgments of the Supreme Court in the cases of *State of Orissa vs. Ram Chandra Dev and another*¹, *Cotton Corporation of India Limited vs. United Industrial Bank Limited*

1 AIR 1964 Supreme Court 685.

*and others*², *Ritona Consultancy Pvt. Ltd. and others vs. Lohia Jute Press and others*³, *Bachhaj Nahar vs. Nilima Mandal and another*⁴.

20. Mr. Narichania would further submit that the Sub-Divisional Officer has recorded a finding that the subject road passes through the land owned by the respondent. The order passed by the Tahsildar, Maval, directing the respondent to remove the alleged obstruction has been set aside. Once the competent Revenue Authority has recorded such a finding, it is not open to the applicants to establish the right of access that too in a suit which is based on a materially distinct cause of action. If the applicants – petitioners intend to establish the said right, appropriate proceedings are required to be instituted.

21. On the aspect of the alleged contempt of the order of the Court, Mr. Narichania submitted that there was no restraint on the respondent erecting a compound wall on its own land. In any event, there is no willful disobedience of the order of the Court. It was urged that in the matter of contempt of Court the standard of proof is required to be that of the criminal proceedings and the breach shall have to be proved beyond

2 AIR 1983 Supreme Court 1272.

3 (2001) 3 Supreme Court Cases 68.

4 (2008) 17 Supreme Court Cases 491.

reasonable doubt. To this end, reliance was placed on the judgment of the Supreme Court in the case of *Mrityunjoy Das and another vs. Sayed Hasibur Rahaman and others*⁵.

22. To begin with the nature of the suit in which the Court Receiver came to be appointed deserves to be kept in view. Apparently, the suit represents an action by the shareholders apprehending alleged unlawful take over of defendant No.1 Company by defendant Nos.2 to 8, 9, 10 and 11. Indisputably, respondent is not a party to the said suit. Nor it has any concern with the subject matter of the said suit. Undoubtedly, the Court Receiver came to be appointed in respect of the subject Stud Farm and the plaintiffs have been appointed as the agents of the Court Receiver.

23. The question that wrenches to the fore is the effect of the appointment of receiver. It is evident that the dispute in the instant application does not touch upon the receiver's possession over the subject Stud Farm. It pertains to the access to the subject Stud Farm by the receiver and, by implication, the applicants – petitioners. Whether the right of access is also a matter *custodia legis*?

5 (2001) 3 Supreme Court Cases 739.

24. It is trite that with the appointment of the Court Receiver the property does not vest in the Court Receiver. Nor the appointment of the Court Receiver extinguishes the third party rights or otherwise affect the rights of the parties, who are not the parties to the proceedings in which the Court Receiver has been appointed. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of *Anthony C. Leo V/s. Nandlal Bal Krishnan and Ors.*⁶

“28. Giving our careful consideration to the facts and circumstances of the case and submissions made by the learned counsel for the parties, it appears to us that a receiver is appointed by the court when the court entertains a view that for preservation of the properties in suit, till the rights of the parties to the suit are finally adjudicated, such properties should be preserved by exercising control and supervision of the same through the officer of the court, the receiver. The court becomes custodia legis of the properties in suit in respect of which the receiver is appointed. Such de jure possession of the court through its receiver, however, does not bring about vesting of the properties in the receiver or in court free from encumbrances even pendente lite. Despite appointment of a receiver, rights and obligations of third parties in respect of properties in custodia legis remain unaffected. Where a receiver appointed by the court is in actual physical possession of a property, no one, whoever he may be, can disturb the possession of the receiver and the court may hold such person who disturbs the receiver’s possession as guilty for committing contempt of court. A man, who thinks he has a right paramount to that of the receiver, must, before he takes any step of his own motion, apply to the court for leave to assert his right. Grant of leave in such case is the rule and refusal to grant leave is an exception (Everest Coal Co. (P) Ltd. V/ s. State of Bihar⁷). The rule that the receiver’s possession will not be disturbed without leave of the court is, however, not applicable if the receiver is not in actual physical possession of the property.”

6 (1996) 11 SCC 376.

7 (1978) 1 SCC 12.

(Emphasis supplied)

25. In the light of the aforesaid position in law, the controversy sought to be raised in the instant application deserves to be appreciated. On facts, there does not seem much controversy over the existence of the subject road, as such. The applicants – petitioners, or for that matter the adjoining property holders, allege that the subject road is the only subject road to the subject Stud Farm. In contrast the respondent asserts it is the private road of the respondent and runs through the lands which are owned by the respondent.

26. As between the applicants – petitioners and the respondent there is also a controversy over the fact as to whether the subject road is the only motorable access road to the subject Stud Farm. The applicants – petitioners have put oath behind the said statement. The respondent contends that there are two other motorable roads by which the subject Stud Farm can be reached.

27. Evidently, the controversy is rooted in facts. It would warrant adjudication on facts as to the proprietary title over the subject road, the longstanding user, alleged by the applicants – petitioners, and exclusive ownership claimed by the respondent. Having regard to the nature of the instant suit, this proceeding

cannot be converted into a proceeding for determination of these questions, as the Court would then be required to delve into the thickets of facts.

28. Mr. Kamat would submit that the respondent having not succeeding in establishing its exclusive claim of ownership and user over the subject road as the suit in which the respondent – plaintiff therein sought to restrain defendant No.1 from using the subject road came to be disposed of as withdrawn, the respondent cannot be heard to claim exclusive ownership over the subject road. Mr. Kamat further submitted that the Tahsildar, Maval, based on the site inspection recorded that the site inspection revealed that there had been access through the subject road for 50 years. The respondent thus cannot be permitted to unilaterally restrain the access in a high-handed manner, that too without establishing its legal right, urged Mr. Kamat. Mr. Narichania in contrast, banked upon the observations in the order of the Sub-Divisional Officer.

29. I am afraid, in this proceeding, this Court would be justified in delving deep into the legality and correctness of the orders passed by the Revenue Authorities, especially when the order passed by the Sub-Divisional Officer is also stated to be a subject matter of challenge in a writ petition before this Court.

30. Nonetheless, the situation which emerges is that the existence of the subject road, as such, can hardly be put in contest. It is the positive case of the respondent that the respondent has been using the subject road to access its own property. Subject Stud Farm is located beyond the property of the respondent. There are reports to indicate that the Court Receiver had been using the subject road to access the subject Stud Farm to carry out periodical inspections. Thus, *prima facie*, both the existence of the subject road and the access thereof by the Court Receiver can be said to have been made out.

31. The aforesaid factor is required to be appreciated in the light of the averments in the plaint of the respondent in RCS No.68 of 2018 instituted against defendant No.1. In paragraph 7 of the said plaint, purported to be lodged in the month of March, 2018, it was averred that the defendant, with an ulterior motive, alongwith the farm employees as well as other staff was illegally using the subject road, exclusively belonging to the plaintiff. This constituted the cause of action to the plaintiff to approach the Civil Court. Nay, it was categorically asserted that a legal notice was addressed to defendant No.1 Manju Meadows Pvt. Ltd. on 14th February, 2018 calling upon the defendant No.1

stop the user of the subject road and the failure of defendant No.1 to comply with the demand therein constrained the respondent to institute a suit to perpetually restrain defendant No.1 from using the subject road, either by itself or through its agent or employees etc.

32. The aforesaid stand of the respondent lends *prima facie* support to the claim of the applicants – petitioners that they have been using the subject road to access the subject Stud Farm.

33. It is imperative to note that the respondent does not profess to contest the factum of either erection of the gates or wall/fence. Instead it is the plain defence of the respondent that it is entitled to do so being the owner of the subject road. This *prima facie* justifies the apprehension on the part of the applicants – petitioners of breach of obligation by the respondent.

34. It is true that an interim relief is required to be granted in aid of, and as ancillary to, the main relief which may be available to a party on final determination. It is also true that the relief sought in the instant application may not flow from the main reliefs in the suit. However, the peculiar facts of the case cannot be lost sight of. The Court Receiver has been

appointed to ensure that the subject Stud Farm remained a going concern. If access to the subject farm is totally blocked, the property which is *custodia legis* would be rendered inaccessible and its value would also diminish. I may hasten to note that, at this stage, the Court is not delving into the aspect of existence of alternate access to the subject Stud Farm as alleged on behalf of the respondent.

35. I am, therefore, persuaded to hold that till the conflicting rights asserted by the applicants – petitioners and the respondent over the subject road are determined in an appropriate proceeding before the appropriate forum, the Court Receiver/applicant's - petitioner's access to the subject Stud Farm through the subject road deserves to be adequately protected.

36. As regards the allegations of deliberate breach of the order passed by this Court on 20th March, 2020 on the basis of the statement made on behalf of the respondent, extracted above, again it is a matter of adjudication of disputed questions of fact. In the statement made on behalf of the respondent (extracted above) the respondent had undertaken that it shall permit the applicants to use the subject road pending the hearing and final order on the instant application for access to the subject Stud

Farm. The substance of the contempt alleged on behalf of the petitioners is that in the month of December, 2000, the respondent constructed walls/fence alongside the subject road and thereby the width of the road had been reduced. In addition, a “Y” shaped angle is fixed on the fence thereby further reducing the width, which is an hindrance for the free movement of large vehicles.

37. Mr. Kamat made an endeavour to draw home the point that it was the case of the respondent before the Civil Court, Vadgaon, that the width of the road was 20 feet. The material on record would show that, with the construction of the wall, the width of the road has been substantially reduced. Thus a clear case of contempt is made out.

38. I am afraid to accede to this submission. As noted above, the remit of the inquiry in the instant application and the petition is required to be kept in view. In this proceeding, it would be impermissible to delve into the aspects like the proprietary title over the subject road, the original width thereof, whether there has been a substantial reduction in width etc. These are the matters for adjudication in an appropriate proceeding before an appropriate forum. In this proceeding, the Court is primarily concerned with the aspect of

ensuring access to the Court Receiver and applicants to the subject Stud Farm. As the necessary corollary it has to be seen whether the respondent has committed breach of the undertaking given before the Court on 20th March, 2020 and on the strength of which this Court has passed the order that the respondent would permit the applicants to use the subject road for access to the subject Stud Farm.

39. Viewed through the aforesaid prism, I do not find that the respondent can be hauled up for a willful disobedience of the order of the Court. The construction of the wall/fence alongside the road, *prima facie*, does not seem to cause hindrance to access the subject Stud Farm. Whether the respondent is obligated to maintain 20 feet width of the road, as alleged, throughout its stretch, is a matter for adjudication.

40. However, in my view, two directions deserve to be issued to ensure that there is no hindrance in the movement of the heavy and large vehicles. One, the respondent shall ensure that the gate(s) constructed on the road remain open for access to the Court Receiver and the applicants at all the times. Two, the respondent shall remove the “Y” shaped angles which protrude on the road and thereby hinders the movement of the vehicles.

41. The aforesaid directions, in my view, would ensure that the Court Receiver's access to the subject Stud Farm is unobstructed. By way of abundant caution, it is clarified that the parties are at liberty to agitate the rival claims to the subject road in an appropriate proceeding before the appropriate forum and for that purpose the parties may move the Court to implead the Court Receiver, if required.

42. Hence, the following order:

: O R D E R :

- (I) The interim application stands partly allowed.
- (II) The respondent shall not restrain the Court Receiver and/or the applicants from using the subject road to access the subject Stud Farm either by itself or through its employees, servants and agents, in any manner whatsoever.
- (III) The respondent shall ensure that the gate(s) placed on the subject road are open whenever the Court Receiver and/or the applicants use the subject road to access the subject Stud Farm.

(IV) The respondent shall remove the “Y” shaped angles fixed on the fence, protruding on the subject road within four weeks from today.

(V) The contempt petition stands dismissed.

(VI) It is hereby made clear that the parties are at liberty to agitate their claims over the road, as regards proprietary title thereto as well as the right of user thereof, in an appropriate proceedings before the appropriate forum and such proceedings, if instituted, be decided on its own merits without being influenced by any of the observations made hereinabove, which are confined to the determination of the instant application and petition.

(VI) Costs in cause.

(VII) In view of disposal of the application and contempt petition, Court Receiver’s Report also stands disposed.

[N. J. JAMADAR, J.]

At this stage, Mr. Narichania, the learned Senior Counsel for the respondent, seeks stay to the execution and operation of this order. The learned Counsel submits that the respondent

would abide by the statement which was made by Mr. Shinde on behalf of the respondent on 20th March, 2022.

Since the order by and large proceeds on the same line, there is no need to stay the execution and operation of this order. Hence, the oral application for stay stands rejected.

Mr. Narichania, without prejudice to right to file the appeal against this order, seeks further time to remove 'Y' shaped angles fixed on the fence.

The request being reasonable, 'Y' shaped angles be removed within a period of six weeks.

[N. J. JAMADAR, J.]