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

COURT RECEIVER'S REPORT NO.378 OF 2022

IN

SUIT NO.314 OF 2016

Yehoshua Reuben Naor @ Nowgharkar

...Plaintiff

Versus

Abigael @ Rahel Jacob Pezarkar & Ors.

...Defendants

Mr. Shanay Shah, Ms. Soniya Putta and Mr. Karan Mehta i/b. M/s.
Solomon & Co. for the Plaintiff.

Mr. D.M. Tailor, for Defendant No.3.

Mrs. Rekha Rane, 2nd Asstt. to Court Receiver is present.

K.H. Mastakar, for Defendant – MCGM.

CORAM : R.I. CHAGLA J

DATE : 20 FEBRUARY, 2023

ORDER :

1. The Court Receiver's Report No.378 of 2022 is placed before this Court. The learned Counsel appearing for the Plaintiff has tendered the Affidavit dated 2nd February, 2023 which has been notarised in Israel where the Plaintiff resides. The Affidavit in Reply dated 2nd February, 2023 is taken on record.

2. The learned Counsel appearing for the Defendant No.1 has tendered Affidavit in response to the letter dated 24th January, 2023 addressed to the Court Receiver by the Brihanmumbai Municipal Corporation.

3. The Court Receiver has in the Report sought directions in 'a' with regard to the steps to be taken for calculation of rent in respect of room No.G/R07, G/R14 and I/R19 as the original tenant had expired. In the tabular form at paragraph 17 of the Court Receiver's Report, it is mentioned that in so far as the Room no. G/R07, Ms. Rozy D'Souza, the original tenant was paying rent of Rs.237/- p.m. With regard to Room no.G/R14, Mrs. Ganga Sawant, the original tenant was paying rent from January, 2017 to October, 2022 @ Rs.217/- p.m. With regard to Room No. I/R19, Mr. Lawrence Alies Silvester Briganza was the original tenant, who was paying rent from March, 2020 to October, 2022 @ Rs.465/- p.m. These details have been obtained by way of letter dated 17th October, 2022 from M/s. Rane and Company, Rent Farming Contractor. However, the legal heirs of these tenants who are now occupying the aforementioned premises are required to be ascertained. Accordingly, the Court Receiver shall carry out verification by visiting the

aforementioned rooms and verify as to who is occupying the rooms and since when. This is in order to determine the outstanding rent payable in respect of the aforementioned rooms.

4. With regard to the directions 'b' sought for by the Court Receiver as to the steps to be taken with regard to the three new structures viz. Shop No.G/S06, Godown No.37 of ground floor and terrace room at the second floor found in the Suit building which are not reflected in Municipal Plan, it is for the BMC to take requisite action against the three new structures in accordance with law. The learned Advocate appearing for the BMC shall take requisite instructions with regard to the three new structures and for BMC to proceed in accordance with law.

5. With respect to directions sought in 'c' of the Court Receiver's Report i.e. regarding steps to be taken with respect to locked room Nos. G/R08, G/R09, G/R17 and G/R27 as tenants have not paid arrears of rent to the Rent Farming Contractor, the Court Receiver is directed to take physical possession of the aforementioned rooms by breaking open the locks of these rooms and putting the notice of the Court Receiver. This shall be done within a period of

two weeks from the date of this Order.

6. With respect to the directions sought for in 'd' of the Court Receiver's Report as to the steps to be taken in respect of the property tax bills of Rs.4,81,346/- and repair cess bill of Rs.9,68,896/- which has been mentioned in the letter of the BMC dated 24th January, 2023 is concerned, the Court Receiver is directed to break the fixed deposit which is stated to be in the amount of Rs.11,20,000/- in paragraph 18 of the Court Receiver's Report. Further, the amount lying in the Suit account being the sum of Rs.2,20,802/- is also mentioned in Paragraph 18 of the Court Receiver's Report. These amounts shall be utilized to make payment of the property tax bills and repair cess to the BMC. The Court Receiver shall also call upon the Plaintiff to deposit the requisite sum with the Court Receiver in view of the aforementioned amounts being utilized for payment of property tax bills and repairs cess. The property tax bills and repairs cess is from the year 2017 when the Court Receiver was appointed by this Court. The Defendant No.3 has sought clarification with regard to the property tax bills prior to 2017 when the Defendant No.3 was collecting rent from the tenants occupying the respective rooms, shops and godowns in the Suit

building. He shall obtain the requisite information from the Court Receiver. Though the BMC has given certain details in the letter dated 24th January, 2023, the breakup of penalty and other charges are required to be provided by the BMC.

7. The BMC has issued notice under Section 353 B on 12th July, 2022 and thereafter no steps have been taken. The learned Counsel for the BMC shall also take instructions with regard to notice dated 12th July, 2022 issued under Section 353B of the Municipal Corporation Act.

8. The Court Receiver shall accordingly file compliance Report with regard to compliance of this Order. The costs of the report is awarded in the sum of Rs.5,000/- to be appropriated from the funds available in the Suit account.

9. The Court Receiver shall call upon the tenants mentioned in the tabular form at paragraph 17 of the Court Receiver's Report to make payment of the arrears of rent as per the statement forming part of the letter dated 17th October, 2022 of M/s. Rane and Company, Rent Forming Contractor addressed to the Court Receiver.

This is particularly in view of the break up including municipal tax and repairs cess which are payable by the respective tenants as mentioned in the statement of M/s. Rane and Company, Rent Farming Contractor vide letter dated 17th October, 2022.

10. The Defendant No.3 shall inform the Court Receiver regarding room Nos.6 and 18 of which they are in occupation and for which rent is to be collected as per the order dated 29th November, 2019 without prejudice to the Plaintiffs rights and contentions.

11. The Court Receiver's Report No.378 of 2022 is accordingly disposed of. The fresh Court Receiver's Report of compliance being filed along with Court Receiver's Report No.82 of 2019 shall be placed before this Court on 20th March, 2023 at 2.30 p.m.

[R.I. CHAGLA J.]