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

COURT RECEIVER'S REPORT NO.60 OF 2023
WITH
COURT RECEIVER'S REPORT NO.28 OF 2024
WITH
INTERIM APPLICATION NO.2951 OF 2022
IN
SUIT NO.3005 OF 2008

Mahendra Girdharilal Mehta and Ors. ...Plaintiffs

Versus

Atul Builders and Estate Ltd. and Ors. ...Defendants

Mr. Vivek Kantawala with Mr. Manav Kantawala i/b. Mr. Shanay Bafna for the Plaintiffs.

Mr. Rubin Vakil, Mr. Manlik Vora and Ms. Akshata Pawar i/b. Pramodkumar and Co. for Defendant No.1.

Mr. Aseem Naphade with Mr. Vishal Bobde i/b. Mr. Wasim H. Hassan for Defendant No.7.

Mr. S.K. Dhekale, Court Receiver with Mr. N.C. Pawar, OSD are present.

CORAM : R.I. CHAGLA J.

DATE : 24TH MARCH, 2025.

ORDER :

1. The issue which requires determination is as to whether the costs / expenses for appointment of security guards provided by

Escorts Protection Detection and Security Services is to be borne by the Plaintiff or Defendant No.1.

2. Mr. Rubin Vakil, the learned Counsel appearing for the Defendant No.1 has submitted that at the instance of the Plaintiff, the Court Receiver was appointed on 5th December, 2022. The Court Receiver thereafter took symbolic possession of the Suit property on 15th December, 2022. He has submitted that the expenses for carrying out the construction on the Suit property by the Defendant No.1, is the subject matter of adjudication.

3. Mr. Vakil has submitted that for the maintenance of the construction carried out on the Suit property a sum of Rs.21,61,00,000/- has been expended. He has submitted that there are earnings from the Suit property of an amount Rs.96,26,00,000/- and out of which an amount of Rs.5,53,00,000/- has been paid to the Plaintiffs by Defendant No.1. He has submitted that till the leave and license agreement is executed in respect of the building standing on the Suit property, the Plaintiffs are required to bear the expenses of the security guards appointed.

4. Mr. Vivek Kantawala, the learned Counsel appearing for the Plaintiffs has submitted that although the Defendants No.1 has earned from the Suit property an amount of Rs.96,26,00,000/-, 20% of the earnings were to be paid over to the Plaintiffs, which amount according to him is Rs.19,00,00,000/-, and a substantial part of which is yet to be paid. He has submitted that the Defendant No.1 has earned substantially from the Suit property and the protection of the Suit property also enures to the benefit of Defendant No.1. Accordingly, the expenses of the security guards appointed is required to be shared between the Plaintiffs and Defendant No.1.

5. Having considered the submissions, in my view, considering that the Defendant No.1 has also benefited from the Suit property by developing the Suit property and earning therefrom, Defendant No.1 is required to share in the expenses of appointment of security guards by Escorts Protection Detection and Security Services.

6. Accordingly, the Plaintiffs and Defendant No.1 shall share the costs of security personnel which are being deployed in the Suit property.

7. The Court Receiver has in the Court Receiver's Reports sought direction for safeguarding the Suit property as the tin sheet fencing at the Suit Property is frequently found removed and / or broken. It is the Court Receiver's contention that there was lack of cooperation from the Plaintiff and Defendant No.7, when communication was addressed to them in this context.

8. Mr. Kantawala for the Plaintiffs and Mr. Naphade for the Defendant No.7 both state that the Plaintiffs and Defendant No.7 will provide the assistance and cooperation to the Court Receiver in taking steps to safeguard the Suit property by repairing the tin sheet fencing which has been removed and / or broken.

9. The expenses for repairing and / or erecting the tin sheet fencing in the Suit property shall be borne equally by the Plaintiffs, Defendant No.1 and Defendant No.7 as per the Order dated 2nd March, 2023 and 5th February, 2025.

10. Considering that there are encroachments on the Suit property, the Commissioner of Police of the concerned Police Station where the Suit property is situated shall provide adequate police

assistance to the Court Receiver for taking physical possession of the Suit property by removal of the encroachment on the Suit property and thereby safeguarding the Suit property. This shall be carried out with the further assistance of the security personnel who have been deployed inside the Suit property.

11. Prior to the Court Receiver taking physical possession of the entire Suit property, the Plaintiffs and Defendant No.1 shall take steps to demarcate the Suit property through the City Survey Officer. The representative of the Court Receiver shall be present during the demarcation of the Suit property.

12. Further, the Mumbai Municipal Corporation is directed to cooperate during the demarcation of the Suit property.

13. The Court Receiver shall, after the removal of the encroachments on the Suit property with the police assistance and security personnel as directed, take physical possession of the entire Suit property.

14. The cost of these Court Receiver's Reports shall be borne

by the Plaintiff.

15. The Court Receiver's Reports are accordingly disposed of.

16. Place the Suit for directions on 4th April, 2025.

[R.I. CHAGLA J.]