

GAYATRI SHIMPI

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

COURT RECEIVER REPORT NO. 267 OF 2023

IN

SUIT NO. 4913 OF 2000

Nadeem Majid Oomerbhoy

.. Plaintiff

Versus

Riyad Rashid Oomerbhoy & Ors.

.. Defendants

WITH

NOTICE OF MOTION NO. 482 OF 2014

IN

SUIT NO. 2955 OF 2009

WITH

NOTICE OF MOTION NO. 609 OF 2015

IN

SUIT NO. 2955 OF 2009

WITH

COURT RECEIVER REPORT NO. 268 OF 2023

IN

SUIT NO. 548 OF 2013

WITH

INTERIM APPLICATION NO. 2406 OF 2021

IN

SUIT NO. 548 OF 2013

WITH

INTERIM APPLICATION NO. 3001 OF 2023

IN

SUIT NO. 2955 OF 2009

WITH

INTERIM APPLICATION NO. 3006 OF 2023

IN

SUIT NO. 4913 OF 2000

WITH

NOTICE OF MOTION NO. 1698 OF 2016

IN

SUIT NO. 2955 OF 2009

WITH

COURT RECEIVER REPORT NO. 389 OF 2022

IN

SUIT NO. 548 OF 2013

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- Mr. Kirti Munshi a/w Mr. Z. N. Jainwala, Mr. Ganesh Ambekar i/b MDP Partners, Advocate for Plaintiff.
- Mr. Kalpesh Joshi a/w Nisha Shah i/b Kalpesh Joshi
- Mr. Chaitanya Chavan a/w Mr. Rahul Singh & Mr. Yash Naik i/b Legal Catalyst, Advocate for Defendant Nos. 2, 3, 4(a) & 4(c).
- Mr. Kunal Dwarkadas a/w Mr. Nikhil Dutta i/b Wadia Ghandy & Co., Advocate for Defendant Nos. 4(b)(i) to 4(b)(iv) in Suit No. 4913 of 2000.

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 02, 2023

P.C.:

- 1.** Heard learned Advocate for the respective parties.
- 2.** Interim Application No. 1282 of 2023 seeks direction to the Court Receiver to pay outstanding amounts towards bills of the Security Agency for guarding the Madanpura factory property from the amounts lying with the Court Receiver which are claimed to be refunded by the Applicant.
- 3.** I have heard the learned Advocates, perused the Report and considered the pleadings. After hearing the parties, they have consented for passing the following directions in the interim:-

1. The Court Receiver, High Court, Bombay appointed as Receiver in Suit No. 4913 of 2000 is directed to pay to the Plaintiff the aggregate amount of Rs. 12,60,918/- being the total amount prayed for

originally when the Application was filed. Further Affidavit dated 9th October 2023, filed today is taken on record. The above amount would cover the claim made in paragraph Nos. 4(a) to 4(e) therein according to Mr. Munshi. Other claims from paragraph No. 4(f) onwards to be considered on the next date after replies to the further Affidavit are filed.

2. This order is being passed without prejudice to all rights and contentions of all the parties relating to refund of royalty paid by Mrs. Nargis Majid Oomerbhoy in respect of Flat No. 12A, Nariman Building, M.K. Road, Mumbai and Flat No. 501, Cupid Apartments, Santacruz (West), Mumbai 400 054 to the Court Receiver. This question will be decided independently on its own merits in accordance with law.

3. The Court Receiver is directed to make payment of Rs. 12,60,918/- immediately and in any event not later than 10th November, 2023 to the Plaintiff by NEFT in ICICI Bank Account No. 104301506740, IFSC Code - ICIC0001043. Mr. Munshi on receipt shall reimburse the balance outstanding security charges

payable to the Security Agency guarding the Madanpura factory premises.

4. This order will not operate as a precedent and is passed only in the peculiar facts and circumstances of the present case.

4. Mr. Munshi tenders Draft Amendments which are taken on record and marked “X” for identification. He would submit that the Draft Amendment is in view of seeking release of certain further amounts which are entirely to the benefit of the Applicant as explained in the further Affidavit filed on behalf of the Applicant / Plaintiff dated 09.10.2023.

5. I have perused the Draft Amendment and further Affidavit. Draft Amendment stands allowed. Amendment is permitted to be carried out within a period of two weeks from today. Re-verification stands dispensed with.

6. Service of Draft Amendment / amended copy of Interim Application stands dispensed with. Draft Amendment is given in advance to all parties. All learned Advocates for the contesting parties are present before me. Respondents are directed to file Affidavit-in-reply to the amended Interim Application before the next date.

7. Mr. Chavan seeks leave to file Affidavit-in-Reply with respect to release of any further amounts than that was originally prayed for when the Application was filed in February, 2023.

8. *Prima facie*, I see no impediment as to why the said amounts cannot be released but it is contended by parties that one of the grounds would be that one Administration Suit wherein Consent Terms have been filed is still pending for resolution of the final accounts and in that view of the matter, they would like to place their say on record.

9. In paragraph No. 4, details of the amounts are noted and explained by the Applicant and in their usual fairness learned Advocates appearing for the respective parties would submit that in so far as amounts contained in paragraph No. 4(a) to 4(e) are concerned the same can be released and they would have no objection whatsoever considering that there are previous orders passed by this Court directing release of amounts for the reasons stated therein.

10. In so far as release of any further amounts are concerned, as delineated in the further Affidavit, it shall be open to Respondents to file appropriate Affidavit-in-Reply.

11. It is directed that original bills which are not traceable today pertaining to Classic Advertisements with the Court Receiver, the same cannot be disputed now at this stage and considering the facts, parties

are exempted from producing the original bills. Court Receiver is thus directed to consider the photocopies of the bills and accordingly release the amounts without insisting on production of the original bills.

12. In the event if Fixed Deposit is required to be broken, Court Receiver to break the Fixed Deposit in order to pay of the above amounts.

13. Stand over to 14th December, 2023.

G.R.SHIMPI

[MILIND N. JADHAV, J.]