

(1991) 10 BOM CK 0008

In the Bombay High Court

Case No : Notice of Motion No. 1026 of 1991 in Suit No. 1092 of 1991

20th Century Finance and Consultancy Services Limited

APPELLANT

Vs

Khanna Rayon Industries Ltd.

RESPONDENT

Date of Decision : 24-10-1991

Acts Referred:

Contract Act, 1872 — Section 148

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(1)

Transfer of Property Act, 1882 — Section 3

Citation : (1991) 4 BomCR 301

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : Virendra Tulzapurkar, Ashok Paranjpe and Farzana Madon, instructed by Wadia Ghandy and Co, for the Appellant; S.H. Doctor and Shyam Diwan, instructed by Mehta Girdharial and Co., for the Respondent

Judgement

D.R. Dhanuka, J.—The plaintiff has taken out this notice of motion for appointment of Court Receiver, High Court, Bombay, as receiver of the suit equipments described in Schedule (Exhibit "F" to the plaint) with all powers under Order XI, Rule 1 of the CPC including the power to take actual physical possession of the said equipment and to hand over the same to the plaintiff and for various orders of interim injunctions. The defendant has resisted the notice of motion on several grounds.

2. By an order dated 26th April, 1991, Jhunjhunwala, J., appointed the Court Receiver, High Court, Bombay, as ad interim receiver in terms of prayer (f) of the notice of motion and also granted limited interim injunction in terms of prayer (g) thereof. Being aggrieved by the said order, the defendant preferred an appeal, being Appeal No. 521 of 1991. Pursuant to the orders passed by the Hon"ble Division Bench, the Court Receiver has taken symbolic possession of the abovereferred equipments. The notice of motion is heard as some length.

3. The relevant facts emerging from the record are as under :---

(a) By a master agreement of lease No. TCF/24/1986 dated 28th April, 1986, the plaintiff leased the suit equipments/machineries to the defendant on the terms and conditions set out therein. A supplementary lease schedule/indemnity certificate was also executed by and between the plaintiff and the defendant forming part of the same transaction. Under the said agreements, copies whereof are annexed to the plaint as Exhibits "A-1" and "A-2", the defendant agreed to pay certain amount to the plaintiff as "rental" for the use of the said machines. The duration of the lease agreement in the first instance was stipulated to be 108 months. The said agreement in terms provided that the plaintiffs were the sole owners of the suit equipments and machinery. The said agreement conferred right on the plaintiff to terminate the said agreement if the defendant committed default in payment of rental and take back possession of suit equipments and exercise various rights and remedies as set out therein.

(b) Particulars of the said equipments/machineries are set out in the Schedule at Exhibit "F" to the plaint.

(c) The defendant paid the agreed amount of lease rent to the plaintiff only for the period upto March 1988. In view of the defaults committed by the defendant, the plaintiff called upon the defendant to pay a sum of Rs. 3,78,158/- towards instalments which had already become due and certain other amounts towards delayed payment charges etc. within 14 days of the receipt of the said letter. It was also stated in the said letter that in the event of the defendant failing and neglecting to comply with the requisitions contained in the said letter, it will be treated that the defendant was in default. It was stated in the said letter, that in that event the plaintiff will be entitled to enforce the remedies available under the abovereferred lease agreement dated 28th April, 1986. The defendants failed and neglected to pay the said amount or any part thereof. By a letter dated 25th January, 1991 addressed to the defendant, the plaintiff declared that in view of the defaults committed by the defendant, all the sums due under the lease agreement for the full term of the lease had become due and payable by the defendant to the plaintiff forthwith. By the said letter, the plaintiff called upon the defendants to pay sum of Rs. 5,78,015/- including Rs. 41,703/- being rentals due from February 1991 to the end of the lease tenor within 14 days from the receipt of the said letter. It was stated in the said letter that in default, the plaintiff shall be constrained to terminate the lease agreement and demand the return of the said equipment. By a letter dated 30th January, 1991 (Exhibit "D" to the plaint), the defendant informed the plaintiff that the defendant was registered as a sick unit with the Board for Industrial and Financial Reconstructions under Registration No. 188/89 dated 22nd December, 1989. It was stated in the said letter that no proceedings could be taken against the defendant as "threatened" in view of the provisions contained in section 22 of the Sick Industrial Companies (Special Provision) Act, 1985. It was stated in the said letter that all Agreements, recoveries, attachment and appointment of Receiver were suspended in view of the said provisions. The defendant did not deal with the claim of the plaintiff on merits.

(d) By a letter dated 26th February, 1991, the plaintiff terminated the said lease agreement as the plaintiff was left with no other alternative. The plaintiff thereafter filed this suit on 29th March, 1991 and took out the present notice of motion.

4. At the outset it is necessary to refer to some of the provisions of the above-referred lease agreements copies whereof are annexed as Exhibits A-1 and A-2 to the plaint. The said lease agreement was initially for a duration of 108 months. The said agreement in terms provided that no right title or interest in the equipment was passed to the lessee by virtue of the said agreement. The said agreement in terms provided that the plaintiff alone had sole and exclusive right, title and interest in the said equipment. It was further provided in the said agreement as under :--

"The lessor and the lessee hereby confirm that their intent is that the equipment shall at all times remain the property of the lessor."

By the said agreement, the defendant agreed and undertook not to sell, assign, sublet, pledge, hypothecate or otherwise encumber or suffer a lien upon or against the equipments or remove the equipment from the factory, office or site where originally put to use or located without prior consent of the plaintiff in writing. The said agreement conferred an option on the lessee to renew the lease for further periods as may be decided by the lessee subject to the proviso that such further extension of the lease period shall not provide for renewal exceeding five years at a time.

5. It was provided that the lessee had made the selection of the equipments based upon their own judgment. The plaintiff agreed that the defendant shall be entitled to benefits of the warranties provided by the manufactures of the said equipment. It was provided that during the term of the lease and any renewal thereof, the plaintiff shall not be called upon to keep the equipment in good repair condition or working order. It was provided that the defendant shall get the equipment insured. Subject to the right of the plaintiff to create hypothecation of the said equipments in favour of their own bankers for any loan or any other financial facilities which may be obtained by the plaintiff, it was provided that the plaintiff shall not transfer the said equipments to anyone during the subsistence of the lease except as and by way of hypothecating or creating a charge in favour of the bank or financial institutions etc. The said agreement in terms provided that in the event of the defendant committing any default in paying the amount of lease rentals and the same remaining unpaid for 14 days after notice of demand was served on the defendants or any other default set out therein, the plaintiff shall be entitled to terminate the lease agreement and take back possession of the equipments and also recover the arrears of rent and damages etc. as more particularly referred to in the said agreement.

6. Prima facie, the suit agreement provides that the plaintiff is the owner of the

suit equipments and the defendant has no title thereto. Prima facie, the suit agreement entitles the plaintiff to take back possession of the said equipments in the event of the defendant committing default in payment of the agreed rentals and the said default remaining nursemaids within a period of 14 days from the date of service of notice of demand. The defendant has contended in the affidavit in reply for the first time that the suit machinery is the property of the defendant industrial company. This plea of the defendant appears to be an afterthought. The defendant has further contended in the said affidavit in reply that on a true construction of the said agreements, the alleged lease agreement is nothing but hire purchase agreement or loan finance agreement. The first question, therefore, which arises for consideration of the Court is as to what is the true nature of the suit transaction, at least prima facie.

7. In *D.V. Corporation v. State of Bihar* AIR 1961 SC 449, the Honourable Supreme Court held that a mere contract of hiring, without more, was a species of the contract of bailment which did not create a title in the bailee. The suit contract is nothing but a contract of hiring the movable making it clear that the plaintiff shall at all times remain the sole and exclusive owner of the suit equipments. Even a contract of hire purchase is nothing but a species of the contract of bailment. Law makes clear distinction between a transaction of leasing of movable and the transaction of hire purchase inasmuch as in case of hire purchase, the hirer has at least an option to purchase the equipment on the terms set out in the Hire Purchase agreement whereas in a leasing agreement, the lessee or the hirer has no such option.

8. Shri Tulzapurkar, the learned Counsel for the plaintiff, invited my attention to the statement of law formulated in Halsbury's Laws of England, 4th Edition, Volume 2, paragraph 1551. In the said paragraph of the above standard work, it is stated as under :--

"Hire of chattels.---Hire is a class of bailment. It is a contract by which the hirer obtains a right to use the chattel hired in return for the payment to the owner of the price of the hiring. The proprietary interest in the chattel is not changed, but remains in the owner..."

Thus, the transaction of lease of a movable can be properly described as a contractual transaction whereunder the lessee acquires merely a contractual right to use the equipment during the subsistence of the contract and subject to his observing the terms and conditions of the contract without any title to the equipments. The lessee acquires no proprietary right or title of any nature whatsoever in the equipments which can be described in law as "the proprietary interest". In paragraph 1553 of the same volume, the learned authors have formulated the statement of law in respect of nature of a hire purchase transaction. In case of hire purchase, the owner of chattel lets it out on hire and undertakes to sell it to the hirer on the hirer exercising the necessary option and on the hirer making the agreed number of payments. Several new developments have taken place in the commercial life of the community and there are certain

global aspects of lease financing which have grown with the change of times during recent decade. Lease financing is an accepted norm in the business world and its incidents are well settled.

9. Shri Tulzapurkar, the learned Counsel for the plaintiff, also invited my attention to a passage from Halsbury's Laws of England, Fourth Edition, Volume 27. After referring to several English cases, the learned authors have formulated the statement of law to the effect that the term "lease" is properly restricted to corporeal and incorporeal hereditaments. Having regard to the commercial usage and practice, which has gone up in recent years, the learned authors have, in paragraph 16 of the said volume, stated that "agreements conferring right of exclusive possession of goods for a limited time are sometime called leases. "In modern commercial parlance, hire agreements in respect of furniture, T.V. sets, motor cars, machinery, equipments and other chattels are styled as leases and cognate expressions are used accordingly. A very useful statement is to be found in Note 11 appended to paragraph 16 of the said standard work. It is clearly stated in the said Note that these agreements which are styled as leases in modern commercial parlance are not true leases. In my judgment, it makes no difference as to whether these transactions as in substance the agreements are nothing but transactions of bailment as defined in section 148 of the Indian Contract Act.

10. It is of some relevance to refer to the unreported judgment dated 3rd and 6th July, 1987 delivered by Shah and Pendse, JJ., in Letters Patent Appeal No. 99 of 1980, Coal India Ltd. v. Tata Engineering & Locomotive Co. Ltd. & others, In this matter, the question before the Hon"ble Division Bench was as to whether the vehicles taken by Bharat Mining Corporation Ltd. on hire purchase from Tata engineering & Locomotive Co. Ltd. had vested in Coal India Ltd. on passing of the Coal Mines (Nationalisation) Act, 1973. It was contended by the learned Counsel appearing for Coal India Ltd. that the transaction in substance was not of hire or hire purchase. Pendse, J., speaking on behalf of the bench, held that ordinarily the agreement must be interpreted according to its own terms and conditions. The appellant before the Division Bench of our High Court relied upon the ratio of the judgment of the Supreme Court in the case of Sundaram Finance Ltd. Vs. State of Kerala and Another, , and submitted that the true nature of the transaction must be determined on construction of the terms of the written agreement in light of the surrounding circumstance. In the case before the Supreme Court it was held that the transaction in question was a transaction of loan and not of sale and the same was therefore not eligible to sales tax. After applying the ratio of the division Bench judgment referred to above and the test laid down by the Supreme Court in the above case, I have no hesitation in holding that a strong prima facie case is made out to construe the transaction as a transaction of hiring or leasing truly and properly so called and it cannot be considered as a colourable transaction or a financing transaction or as a transaction of hire purchase or as a transaction of loan. Throughout, the plaintiff has shown the suit equipments as of their ownership in their balance-sheet and

rightly so. The defendants have never shown the suit equipments/machinery of their ownership in balance sheet or otherwise. The plaintiff has been claiming depreciation in respect of the suit machinery as owners thereof as permissible under Income Tax Act, 1961. The defendant had been paying rental as agreed to the plaintiff till March 1988.

11. Lease financing is a well-recognised form of legal transaction whereunder the lessor remains the owner of the equipment leased throughout. The implications of a financial lease are different than a mere transaction of loan. T.M. clerk, one of the most authentic writers on the subject, has distinguished the concept of Financial Lease with that of operating lease and other categories of leases as are recognised in the commercial world throughout. Without discussing anything more for constraint of time and having regard to the various clauses of the suit agreement, I hold that prima facie the plaintiff is the owner of the suit equipments and the true nature of the transaction is that of hiring of the movables. Admittedly the defendant has committed defaults in respect of payment of rentals. After giving several opportunities to the defendant to rectify the default and after serving requisite 14 days' notice, the plaintiff has terminated the lease, Act 1 of 1986 known as the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the "1985 Act") does not impose any restriction on the right of the plaintiff to terminate the said lease. Prima facie, the termination of the lease is lawful. The plaintiff has remained the owner of the suit equipments throughout. On termination of the lease, the contractual right of the defendant to use the said equipments conferred by the plaintiff on the defendant under the said contract came to an end. Accordingly, a strong prima facie case is made out by the plaintiff for appointment of the Court Receiver, High Court, Bombay, as the receiver of the suit equipments. It is just and convenient to do so. The defendants do not have any title to or proprietary interest in the suit equipments and then contractual right of user is lawfully terminated.

12. Shri S.H. Doctor, the learned Counsel for the defendants, has submitted that application of the plaintiff for appointment of receiver cannot be proceeded with further as the plaintiff has not obtained the consent of the Board and section 22(1) of the 1985 Act (Act-I of 1986) imposes an absolute bar on the power of the Court to continue with the proceeding of a winding up of a company or for execution of distress or the like against any of the properties of the company or for appointment of receiver in respect thereof. The learned Counsel has submitted that having regard to the object of the 1985 Act, (Act-I of 19686) the expression "any of the properties of the industrial company" must be construed in the widest possible sense. The learned Counsel for the defendant has further submitted that the suit machineries are an integral part of the manufacturing activity of the defendant. The learned Counsel has submitted that it is the intention of the Legislature that during the pendency of the enquiry and consideration of the proposal for rehabilitation scheme, the properties of the sick industrial company concerned whether owned by the company or otherwise

should remain intact. An enquiry into the affairs of the defendant company within the contemplation of section 16 of the 1985 Act is undoubtedly pending. No order is yet passed by the Board u/s 17(3) of the said Act.

13. Section 22(1) of the 1985 Act reads as under :-

"Suspension of legal proceedings, contracts, etc.:- (1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending then notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

Section 22(3) of the said Act provides that during the period of consideration of any scheme u/s 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended. It is common ground that no order has been passed by the Board suspending the contract or suspending any of the rights thereunder or otherwise. Shri S.H. Doctor, the learned Counsel for the defendant, has heavily relied on the ramble to the provisions of the said Act. The said preamble reads as under:-

"An Act to make in the public interest, special provisions with a view to securing the timely decision of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto."

14. In my judgment, the language of section 22 of the Act is plain and simple. During the pendency of the enquiry u/s 16 or other situations contemplated under the said section, no application for appointment of receiver can be proceeded with "in respect of any of the properties of the sick industrial company concerned", i.e. the properties owned by the company or at least the properties in which company has proprietary right or interest. The question therefore which

arises is as to whether the suit equipments which were merely leased to the defendant by the plaintiff are the properties of the defendant in any sense of the term. The suit agreements provided that the plaintiff shall be the sole and exclusive owner of the said equipments. The suit agreements are lawfully terminated by reason of non-payment of rentals by the defendant for a period of about three years after serving requisite notices of demand. Prima facie, it is impossible to hold that the suit equipments are the properties of the defendant and not the properties of the plaintiff. In cases where leases of immovable property are granted by the lessor and such leases are validly terminated and the lessee enjoys the protection of the rent legislation, perhaps the matter may be different. The statutory Board constituted under the 1985 Act can frame a scheme after taking into consideration all the properties owned by the defendant company. Assuming for the sake of argument that a contractual right to use the hired machinery is to be construed as property within the meaning of the said expression used in section 22(1) of the said Act, even then such right is lawfully terminated in this case and it cannot be said that the defendant has any proprietary right in the suit machineries or suit equipments at all. In a given case, if the Board is satisfied that all the rights and obligations of the parties under the pending contract must be suspended, the Board is required to pass a specific order making specific declaration to that effect a contemplated u/s 22(3) of the Act supported by valid reasons. Section 22(1) and section 22(3) operate in different fields. A mere section 22(1) of the Act cannot be construed so as to make section 22(3) of the Act nugatory. The defendants have no contractual right to use the machinery after the termination of the contract. Thus, the defendants have no right, title or interest in the suit machinery/equipments in any sense of the term.

15. Shri S.H. Doctor, the learned Counsel for the defendant, has invited my attention to the judgment of the Supreme Court in the case of Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, . In this case, the Supreme Court was concerned with interpretation of section 2(e) of the Wealth Tax Act, 1957 defining the expression "assets". Since the definition of the expression "assets" in the said Act provided for inclusion of property of every description in the world "asset" for the purpose of the Wealth Tax Act, the Court observed that the word "property" used in the said definition clause of the word "asset" was a term of the widest import. With respect, the said judgment is of no relevance whatsoever to this case where the defendants had merely hired the suit machineries and the hiring agreement is terminated due to non-payment of agreed rentals. It does not appear to be necessary to refer to any more authorities on this subject except the latest judgment of the high Court of Andhra Pradesh in the case of The Andhra Cement Company Ltd., Secunderabad Vs. A.P. State Electricity Board and others, . In this case, The Hon'ble Court was concerned with the interpretation of section 22(1) of the said Act. The Andhra Pradesh State Electricity Board had threatened to disconnect electric supply of the company which had already approached the statutory Board under Act I of

1986. The question before the Court was as to whether the Board could be compelled to supply electricity to the sick unit or whether the proceedings threatened to be taken by the Board were barred u/s 22 of the said Act. Relying upon the judgment of the Supreme Court in *The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others*, , the statement of objects and reasons appended to the said Act and also the judgment of the Supreme Court in the case of *Navnit R. Kamani and Others Vs. R.R. Kamani*, , it was submitted that the provisions constructed in section 22 of the said Act be liberally constructed. It was held by the Division Bench of the Andhra Pradesh High Court that the provisions of section 22(1) of the said Act could not be extended beyond what was actually intended by the legislature by invoking the principle of liberal construction and the Court was bound to decide the question of amplitude of the provision having regard to the language used in the said provision. It was observed by the Court that the rule of beneficent legislation must be read reasonably and justly and without interfering with the rights of third parties. Shri S.H. Doctor also referred to the observations made by the Supreme Court in the case of *Navnit R. Kamani and Others Vs. R.R. Kamani*, . In my judgment, the ratio of the said case is not relevant for our purpose. Shri Tulzapurkar, the learned Counsel for the plaintiff, has submitted that section 22(1) of the said Act should be interpreted to mean that application for appointment of receiver in respect of a property would not lie. It is not possible to accept this submission of Tulzapurkar as formulated. Certain properties may not be saleable. The same may not be alienable. Accordingly, such properties may not be liable to attachment u/s 60 of the Civil Procedure Code. Even then an application for appointment of a receiver of the property belonging to the industrial company concerned or owned by it would not lie. It is however imperative that the asset in question must belong to the industrial company concerned in order that the bar created by section 22(1) of the Act can operate.

16. An exactly identical view as taken by Brother Justice Chaudhari of our Court while deciding an application for ad interim relief in Suit No. 2790 of 1990, *First Leasing Company of India Ltd. v. Orsen Electronics Ltd.*, The learned Judge observed that he was prima facie of the opinion that the properties concerned were owned by the leasing company and the same could not be described as properties of the defendant company in that suit. The learned Judge observed that section 22(1) could not create any bar in the way of the Court appointing receiver. By his said order the learned Judge appointed the Court Receiver, High Court Bombay, as ad interim receiver of the assets in question that case. I have arrived at my conclusion independently of the said observations and on my own analysis of the provisions of Act I of 1986. I am reinforced in the view taken by me by the abovereferred precedents.

17. The learned Counsel for the defendant then submitted that the suit machinery was embedded to the earth and had therefore acquired the character of immovable property. Shri Sharad Khanna has filed his affidavit dated 8th October, 1991 on this aspect and submitted that section 22 of the Act I of 1986

was attracted as the suit machines had become of the ownership of the defendant after the same were embedded to earth even if the same were not so at the time when the contract of lease was executed between the parties. The averments made in the said affidavit were controverted in the affidavit of Sanjay Kulkarni, being affidavit dated 9th October, 1991. On this aspect, my prima facie conclusions are as under :-

(a) The nature of the suit transaction must be decided in light of the contract between the parties of the date of the transaction and their intention as disclosed under the contract. On the date of the transaction, the suit machineries were not embedded in earth. Accordingly it is impossible to hold that the suit transaction be viewed as a transaction of lease of immovable property merely because of subsequent error. In any event, such embedding was temporary and was for beneficial of machinery and not as permanent addition to the immovable property.

(b) If the machinery is temporarily fixed to the ground for the benefit of the machinery itself and not as a measure of permanent improvement of the premises, the machinery is liable to be treated as movable property. In any event, the rights of the lessor of the machinery to remove the machinery on termination of the contract or hiring or leasing are not affected by reason of such embedding of the machinery.

18. Shri S.H. Doctor, the learned Counsel for the defendant, has cited large number of English and Indian cases on the subject. In my judgment, the correct proposition of law to be followed in our country is clearly set out in the judgment of the High Court of Madras in *S.P.K.N. Subramanian Firm Vs. M. Chidambaram Servai*, . Most of the English cases cited by the learned Counsel before me were also cited before the High Court of Madras and the same have rightly been distinguished by Wadsworth, J. I am in respectful agreement with the view taken by the High Court of Madras. In the abovereferred Madras case, the tenant had executed a security bond pledging an oil engine installed as a part of a cinema. The question before the Court was as to whether the transaction could be considered as a transaction of creating security in respect of an immovable property. The learned Judge held that the English law relating to fixtures did not apply into India. The learned Judge rightly held that it was not an absolute rule in India that whatever was fixed to the soil belonged to the owner of the soil. The learned Judge further observed that the test to be applied was as to what was the object for which the engine was fixed with nuts to a concrete platform. After applying the test laid down by Lord Lindley in *Reynolds v. Ashby*, (1904) A.C. 466, the learned Judge held that the attachment of the engine with the fixed nut to a concrete platform was with an object that the machinery itself could be better utilised and not with an object of creating a permanent improvement to the premises in question. Applying the test laid down by the High Court of Madras in the abovereferred case, which has been followed in several other Indian cases also, I hold that there is no substance in this

contention of the defendant and the suit transaction is not a transaction of hiring of a chattel or, movable, but is a transaction of lease of an immovable property.

19. Having regard to the overall view of the matter, it is just and convenient to appoint the Court Receiver, High Court, Bombay, as receiver of the suit equipments with all powers under Order XL, Rule 1 of the Code of Civil Procedure, excluding the power of sale. The defendant has made an offer to deposit in Court a sum of Rs. 5,000/- per month. I am not persuaded to accept the said offer. It would be unjust of the plaintiff. I direct the Court Receiver to appoint the defendant as his agent to use the suit machinery on payment of monthly royalty as stated hereinafter without taking any security and without imposing any other conditions, save and except taking the usual undertakings.

(1) During the period commencing from 1st November, 1991 till 30th April, 1992, the defendant shall be liable to pay monthly royalty at the rate of Rs. 25,000/- the first of such payment to be made on or before 30th November, 1991 and each subsequent payment on or before 30th of each succeeding month.

(2) During the period between May 1992 and February 1993 the Court Receiver shall stipulate payment of royalty by the defendant at the rate of Rs. 50,000/- per month, first of such payment to be made on or before last day of each month.

(3) Thereafter the defendant shall not be liable to deposit any further amount with the Court Receiver under this order. At that stage the parties shall be at liberty to apply to the Court for further directions. The Court may then discharge or continue the receiver with the agency of the defendant to use the machinery as agent of the receiver on reduced amount of compensation as deemed fit or pass some other appropriate order.

20. The Notice of Motion is finally disposed of. There shall be no order as to costs.

21. On application of Mr. Doctor, it is hereby directed that the Court Receiver shall not require the defendant to execute the agency agreement till 20th of November, 1991.

22. It is hereby clarified that this order shall not prevent the Board from performing its statutory functions under Act I of 1986 in accordance with law.

23. Issue of certified copy is expedited.