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

NOTICE OF MOTION (L.) NO.277 OF 2015

IN

WRIT PETITION (L.) NO.1515 OF 2014

The Senior Manager (Admin) (W-II),
Mahanagar Telephone Nigam Limited, ... Applicant

In the matter between

The Senior Manager (Admin) (W-II),
Mahanagar Telephone Nigam Limited ... Petitioner

Vs.

The Municipal Commissioner and Ors. ... Respondents

WITH

NOTICE OF MOTION (L.) NO.330 OF 2015

IN

WRIT PETITION NO.1816 OF 2014

Lavina Estates Pvt. Ltd. ... Applicant

In the matter between

The Senior Manager (Admin) (W-II),
Mahanagar Telephone Nigam Limited ... Petitioner

Vs.

The Municipal Commissioner and Ors. ... Respondents

WP (L.) NO.330 OF 2015

Mr. Atul G. Damle, Senior Counsel with Mr. S.J. Chaurasia i/by M/s. Ashoka Law Point, for the Applicant in NM(L) No.330 of 2015 and Orig. Respondent No.4 in WP No.1816 of 2014 and Petitioner in CP(L) No.45 of 2015.

WP (L.) NO.277 OF 2015

Mr. Vishal Kanade a/w Mr. Gobindram D. Talreja and Ms. Barkha Sugand i/by Mr. Gobindram D. Talreja & Associates, for Petitioner in WP No.1515 of 2014.

Mr. Vinod Mahadik, for Applicant in NM (L.) No.277 of 2015 and Respondent – BMC.

**CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.**

DATE : 30th JUNE, 2015

PC.

. Notice of Motion (L.) No.277 of 2015 is taken out by the Petitioner in Writ Petition (L.) No.1515 of 2014. Notice of Motion (L.) No.330 of 2015 is taken out by the fourth Respondent in the main Writ Petition.

2. The Petitioner in the Writ Petition is the Mahanagar Telephone Nigam Limited. The challenge in the Writ Petition filed by the Mahanagar Telephone Nigam Limited was to the action initiated by the Mumbai Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888. The Petitioner in Writ Petition was inducted by the fourth Respondent in the Writ Petition in the building subject matter of the Petition on the basis of a Leave and Licence Agreement. The Leave and Licence Agreement is of 24th March, 2003. Though the term of the Licence expired in the year 2008, the Petitioner did not vacate and therefore, a suit for eviction was filed by the fourth Respondent against the Petitioner. On 13th June, 2014, when the Petition came up before this Court, a statement of the Petitioner was recorded that except the equipment/machinery, the premises have been

already vacated. It was stated that a reasonable time be granted to vacate the premises so that the Petitioner shall be in a position to shift the equipment/machinery. It was pointed out that the equipment was providing connections to about 8000 telephone subscribers and about 4000 broadband subscribers. The same order records a statement of the learned counsel appearing for the Municipal Corporation that a roof portion of the building has been partly removed. This Court granted protection to the Petitioner. Ultimately, the Petition was disposed of by order dated 24th July, 2014 on the basis of an amicable settlement between the Petitioner and the fourth Respondent. Paragraphs 2 and 3 of the said order read thus :-

“ 2. The Petitioner and Respondent No.4 have now arrived at an amicable settlement and accordingly agreed for following terms:

- (a) The Petitioner viz. the Senior Manager (Admin) (WII), MTNL undertakes to this Court that he shall handover peaceful vacant possession of the subject matter of the present proceeding viz. building situated on a plot bearing CTS No.33/B, at Shyam Nagar near Brook Heaven building, Majas village, Jogeshwari (E) Mumbai (“the said building” for short) to Respondent no.4 i.e. Lavina Estates Pvt. Ltd. within the period of 9 months from today.
- (b) The Petitioner shall not seek any further extension of time for handing over peaceful possession of the said building to Respondent no.4.
- (c) Respondent nos.1, 2 and 3 shall consent and cooperate to the quashing of the criminal proceedings against all the accused persons including Respondent no.4 pending before the Metropolitan Magistrate 39th Court, Vile Parle, Mumbai vide Court Case No.9451/SS/2012.

(d) On handing over the vacant and peaceful possession by the Petitioner to Respondent no.4 on the expiry of 9 months from today, Respondent no.4 shall withdraw the proceedings filed in the Small Causes Court at Bombay bearing No.L.E & C Suit No.46/66 of 2006.

3. The statement is already recorded in earlier orders that except the equipments and machineries, the officers of Petitioner had already vacated the building and there are only two security guards to protect the same. The statement is also recorded that even if the building collapses, there will be no harm to the neighbours or other persons. We make it clear that the Petitioner shall occupy the premises at their own risk and consequences. The Respondents shall in no manner liable, in case of event of collapse of the said building. In view of the above, no coercive steps be taken by the Respondent Corporation for 9 months from today. The Petitioner to take all safety measures including propping and barricades, if required.”

3. Notice of Motion (L.) No.277 of 2015 has been taken out by the Petitioner for extension of time granted under the aforesaid order by a period of twelve months. The second prayer therein is for relieving the Petitioner of the undertaking recorded in paragraph 2 of the order dated 24th July, 2014. Notice of Motion (L.) No.330 of 2015 has been taken out by the fourth Respondent for inviting the attention of the Court to the fact that the Petitioner has failed to abide by the undertaking given to this Court. Therefore, the prayer is to allow the fourth Respondent to take forcible possession of the premises in possession of the Petitioner with police assistance. The second prayer is for a direction to the Petitioner to implement the order of this Court.

4. In Notice of Motion (L.) No.277 of 2015, an affidavit has been filed by One Shri Bhumidhar Ram, the Deputy General Manager, Marol (W) – II of the Petitioner. The reasons have been stated as to why the equipment/ machinery inside the premises could not be shifted. It is contended that the Municipal Corporation does not grant permission to do digging work for laying of cables during the monsoon. In the said affidavit, it is stated that the Petitioner has no objection if the Court Receiver, High Court, Bombay is appointed of the premises in possession of the Petitioner. The prayer in the said affidavit is to extend the time to vacate till 31st January, 2016.

5. The submission of the learned counsel appearing for the fourth Respondent is that the reasons which are set out in paragraphs 3 and 4 of the affidavit of Shri Bhumidhar Ram tendered today were pleaded before this Court when ad-interim relief was granted on 13th June, 2014 and when the Writ Petition was disposed of by order dated 24th July, 2014. He submitted that taking into consideration the said reasons that the fourth Respondent agreed to grant time of nine months to the Petitioner to vacate the premises. He urged that there is a complete failure on the part of the Petitioner to comply with the undertaking. He pointed out that clause (b) of paragraph 2 of the order dated 24th July, 2014 clearly records that the Petitioner shall not seek

any further extension of time. He urged that the Petitioner is bound by the said statement. The learned Senior Counsel appearing for the fourth Respondent further submitted that the conduct of the Petitioner shows that assurances and undertakings given by them to this Court are meaningless.

6. We have perused the orders dated 24th July, 2014 and 13th June, 2014 passed by this Court in the Petition. It is true that the reasons which are set out in the affidavit tendered today were the reasons pleaded by the Petitioner in June and July, 2014. Perhaps after considering the said reasons that time to vacate of nine months was granted to the Petitioner. It is true that in normal course, the Writ Court would not have shown any indulgence especially in view of the clause (b) of the order dated 24th July, 2014 wherein undertaking of the Petitioner was recorded that they will not seek any extension of time. The learned Senior Counsel representing the fourth Respondent has rightly made a grievance about the conduct of the Petitioner.

7. However, if the Petitioner is made to vacate immediately, 8,000 landline telephone subscribers and 4,000 Broadband subscribers will be directly affected. That is the only reason why we are inclined to show indulgence to the Petitioner. Moreover, the Petitioner has agreed

to the appointment of the Court Receiver, High Court, Bombay as the Receiver of the premises.

8. The learned counsel appearing for the Petitioner stated that though the premises are not used except for storage of equipment/machinery, the Petitioner is depositing a sum of Rs.3 Lakhs pm in the Small Causes Court. As stated earlier, licence granted to the Petitioner expired long back in the year 2008. Therefore, till the Petitioner vacates, additional compensation to the fourth Respondent will have to be paid. Moreover, the Court Receiver, High Court, Bombay will have to be appointed with a direction to take formal possession initially and to take actual physical possession on 31st January, 2016, if by that time, the Petitioner fails to vacate. Additional compensation payable by the Petitioner is quantified at Rs.75,000/- pm. Time granted to the Petitioner to vacate under the order dated 24th July, 2014 expired on 23rd April, 2014. Therefore, we propose to quantify additional amount of compensation at Rs.75,000/- which will be payable from 1st May, 2015 onwards. Moreover, the cost and charges of the Court Receiver will have to be borne and paid by the Petitioner. The learned counsel appearing for the Petitioner tried to submit that a condition of payment of additional compensation may not be imposed in view of the fact that the premises are not being actually used.

9. We must note here that the building has been declared as a dangerous and dilapidated by the Municipal Corporation long back. We have already noted the undertaking given by the Petitioner. Though the Petitioner was aware that the premises are required to be vacated on or before 23rd February, 2015, no application was made to this Court for extension of time before the time expired. Notice of Motion (L.) No.277 of 2015 was lodged on 24th April, 2015 i.e. after the expiry of the period granted by this Court as per the undertaking of the Petitioner. Therefore, considering the said conduct of the Petitioner and considering the fact that the Petitioner was not even entitled to seek extension of time, additional compensation will have to be made payable by the Petitioner.

10. Hence, we dispose of both the Notices of Motions by passing the following order :-

ORDER

- (i) We appoint the Court Receiver, High Court, Bombay as Receiver of the premises in possession of the Petitioner in the Writ Petition. The Court Receiver shall take formal possession of the premises within a period of 15 days from the date on which an authenticated copy of this order is produced in his office. The cost and charges of the Court Receiver shall be paid by the Petitioner;

- (ii) The Mumbai Municipal Corporation shall not take action of demolition till 31st January, 2016 subject to condition of the authorised officer of the Mahanagar Telephone Nigam Limited filing an undertaking in this Court containing the following statements :-
- (a) The Petitioner shall vacate the premises in question as expeditiously as possible and in any event, on or before 31st January, 2016;
 - (b) The Maharashtra Telephone Nigam Limited shall continue to occupy the premises at its own risk; and
 - (c) In the event, the building or any portion thereof collapses and any loss is caused to any third party, the Petitioner shall be solely responsible for such loss or damage.
- (iii) Such undertaking shall be filed within a period of four weeks from today;
- (iv) On failure to file the undertaking within a period of four weeks from today, the Court Receiver, High Court, Bombay shall take physical possession of the premises in possession of the Petitioner;
- (v) We direct the Petitioner to pay additional compensation

at Rs.75,000/- pm to the fourth Respondent from 1st May, 2015 till the date of handing over physical possession of the said premises to the Municipal Corporation;

- (vi) The amount of additional compensation payable for the months of May and June, 2015 shall be paid by the Petitioner to the fourth Respondent within a period of one month from today;
- (vii) Additional compensation payable from July onwards shall be paid directly by the Petitioner to the fourth Respondent on or before 10th day of every calendar month;
- (viii) If the Petitioner fails to vacate the said premises and hand over the same to the Municipal Corporation on or before 31st January, 2016, even without further directions from the Court, the Court Receiver, High Court, Bombay shall proceed to take actual physical possession of the premises in possession of the Petitioner within a period of one week from 31st January, 2016;
- (ix) The order dated 24th July, 2014 stands modified to the aforesaid extent. The Petitioner is relieved from undertakings recorded in the said order to the aforesaid

extent. We make it clear that all the other undertakings of the Petitioner including the undertaking recorded in clause (c) of paragraph 2 of the order dated 24th July, 2014 shall continue to bind the Petitioner;

- (x) The Mumbai Municipal Corporation shall grant permission to the Petitioner in the Writ Petition for the purposes of carrying out digging work for laying down the cables. Permission shall be granted with effect from 15th October, 2015. We clarify that the Petitioner shall not be liable to pay any royalty to the Court Receiver;
- (xi) Both the Notices of Motions are disposed of on above terms;
- (xii) We direct that the proceedings of Criminal Case No.9451/SS/2012 pending before the learned Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai shall remain stayed till the end of January, 2016;

(REVATI MOHITE DERE, J)

(A.S. OKA, J)