

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1684 OF 2015
IN
SUIT (L) NO. 654 OF 2015

Floyd D'Souza & 2 Ors.	...Plaintiffs
<i>Versus</i>	
Willingdon Catholic Gymkhana & 15 Ors.	...Defendants

Mr. Chirag Bulsara, a/w Mrs. Nair, i/b M/s. Diamondwala & Co.,
for the Plaintiffs.

Mr. Rakesh Kumar, i/b Mr. Vijendra Jabra, for Defendants Nos. 2 to
10, 12, 13, 15 and 16.

CORAM: G.S. PATEL, J
DATED: 27th July 2015

PC:-

1. By consent, the Notice of Motion and Suit are disposed of with the following order:

- (a) Both parties agree that the enquiry report dated 8th June 2015, Annexure "B" is not be acted upon in any manner.

- (b) Both parties agree that a fresh enquiry will be conducted by Mr. Justice D. K. Deshmukh (Retired Judge of this Court).
 - (c) The fees of the learned Judge will be borne by the Plaintiff, except for the fees pertaining to any date on which an adjournment is sought by any of the Defendants.
 - (d) Both sides, i.e., the Plaintiffs and all the Defendants agree and undertake to this Court that they will abide by the findings and outcome of the enquiry as also the recommendations (if any) made by the learned Judge.
 - (e) Both Plaintiffs and the Defendants further agree and undertake that they will, on no account, make any grievance about the procedure adopted by the learned Judge, it being clarified the learned Judge will have the fullest liberty to decide his own procedure. No allegations of any kind whatsoever will be made by either the Plaintiffs or any of the Defendants against the learned Judge or his conduct of the enquiry under any circumstances.
2. All these statements are accepted as undertakings to the Court.
3. Defendant No. 1 shall provide to the Plaintiffs a digital copy of the CC TV recordings for 12th January 2015 from 7 to 8 p.m. as

also a copy of the guest register for the month of December 2014. This material will be provided on or before 7th August 2015. It is clarified that it is for the learned Judge to decide on the relevance and probative value of this material.

4. In addition, the learned Judge will be at liberty to order a disclosure from either side of any material that the learned Judge thinks necessary.

5. Both sides will be entitled to apply to the learned Judge for leave to be represented by their Advocates. It will be for the learned Judge whether to entertain such an application or not.

6. Both the parties request that the enquiry be completed as soon as possible and preferably on or before 5th September 2015. However, the Plaintiffs and all the Defendants specifically agree and consent to such extensions of time as the learned Judge may require for the completion of the enquiry.

7. Within seven days of the receipt of the enquiry report, the Managing Committee will hold a meeting and pass the necessary resolutions for implementation of the findings as also the recommendations (if any) of the enquiry.

8. It is clarified that certain criminal proceedings have been initiated by the 16th Defendant (the Complainant) against the Plaintiffs. Those proceedings will follow the due process of law and are not automatically stayed as a result of this order. In the event that the enquiry report is in favour of the Plaintiffs, liberty to the

Plaintiffs to apply for suitable reliefs in relation to those criminal proceedings.

9. With this, Mr. Bulsara seeks leave to withdraw the Notice of Motion and the Suit. Leave granted. Refund of Court fees, if any, in accordance with Rules.

10. Liberty to both sides to apply, but only for clarification of this order.

(G. S. PATEL, J.)