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

**NOTICE OF MOTION NO. 2265 OF 2010
IN
SUIT NO. 2194 OF 2010**

M/s Nesco Limited ...Plaintiff
VS
M/s Indo American Industries & Ors. ...Defendants

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Mr Venkatesh Dhond Sr. Advocate, Adv. Thite a/w Ms Leena Shah i/b Shah &
Furia Associates for the Plaintiff
None for the Defendants.

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**CORAM : S.C. GUPTA, J.
NOVEMBER 16, 2015**

P.C. :

Plaintiff's suit is for a decree of possession in respect of an area of 3590.89 sq.ft. shown in the sketch annexed as Exh "I" to the plaint which is situated at NSE Estate, Western Express Highway, Goregaon-East, Mumbai 400 063. This area, which is owned by the Plaintiff, is said to have been encroached by the Defendants.

2 By a Leave and Licence agreement dated 6 September 1971, the Plaintiff (formerly known as New Standard Engineering Co. Ltd.) permitted Defendant Nos.1 to 4 to use a structure admeasuring 1743 sq.ft. area at a monthly licence fee or compensation. It is the Plaintiff's case that subsequently in or about April 1987 the Plaintiff granted permission to use additional area of 537 sq.ft. to Defendant Nos.1 to 4. The total area in permitted use and occupation of the Defendants thus aggregated to 2280 sq.ft. since April 1987. The Plaintiff relies on correspondence in this behalf exchanged between parties. The property is even assessed by the Municipal Corporation on the basis of an area of 2280 sq.ft. Having regard to the fact that Defendant Nos.1 to 4 had a subsisting licence as of 1 September 1973, Defendant Nos.1,2 and 3 claimed to be deemed tenants of the Plaintiffs. Defendant Nos.5 and 6, who also claimed to be in possession of area of 2280 sq.ft., claimed the status of protected tenants of the

Plaintiff. These Defendants have, accordingly, filed a declaratory suit being RAD No. 459 of 1991 in the Court of Small Causes at Mumbai. By an order dated 2 January 2003, that suit was dismissed for default by the court of Small Causes. There is also an application filed by these Defendants for fixation of standard rent in respect of this area. By an order dated 5 May 2015, the Small Causes Court fixed standard rent for the area of 2280 sq.ft. The Plaintiff has filed its own eviction suit against the Defendants seeking a decree of possession in respect of the area of 2280 sq.ft. This suit was decreed by the court of Small Causes at Mumbai. The Defendants' appeal from the decree is pending before the Appellate bench of the court of Small Causes. It is the Defendants' case before the Appeal Court that the mesne profits during the pendency of this appeal should be restricted to the compensation referable to the area of 2280 sq.ft.

3 In these facts, the Plaintiff prays for interim relief in respect of the area of 3590.89 sq.ft. which, according to the Plaintiff, has been encroached upon by the Defendants over and above the area of 2280 sq.ft. occupied by them under the Agreement of Licence as aforesaid. The main prayers in the suit are for a decree of possession in respect of this encroached area of 3590.89 sq.ft. By way of an interim order, the Defendants seek appointment of a Court Receiver in respect of the encroached area of 3590.89 sq.ft.

4 On the last many dates, none appeared for the Defendants. However, a reply was filed by the Defendants as of 13 September 2010. In the Written Statement as also in their affidavit in reply to the Notice of Motion, Defendant Nos. 1,2,5 and 6 have claimed that at the request of the Defendants, the Plaintiff let out an additional area admeasuring about 3200 sq.ft. to the Defendants over and about the original licenced area of 1745 sq.ft. The Defendants submit that when the additional area was allotted by the Plaintiff for the Defendants' use in 1987, they were allotted 3200 sq.ft. and not 537 sq.ft. as suggested by the Plaintiff. That appears to be the main controversy between the parties.

5 It is, however, material to note that in the proceedings before the

Small Causes Court, the standard rent has been fixed by the court of Small Causes only for the area 2280 sq.ft. Even the eviction suit of the Plaintiff herein seeks a decree of possession against the Defendants for this area of 2280 sq.ft. The decree of possession granted by the court of the Small Causes in the eviction suit has been appealed from by the Defendants. In pendeing appeal, the Defendants want the mesne profits to be restricted for this area of 2280 sq.ft.

6 Learned Counsel for the Plaintiff is right in his submission that on these facts, the Defendants cannot be allowed to use additional area of 3590.89 sq.ft., which is claimed to be the encroached area according to the Plaintiff and which is claimed to be an area additionally allotted by the Defendants (though the Defendants put an aggregate area at about 5000 sq.ft.), without payment of any compensation. It will be an oddity to permit the Defendants to use the originally allotted area of 2280 sq.ft. on payment of compensation by way of mesne profits after the eviction order, whilst allowing them to use the purportedly encroached additional area of 3590.89 sq.ft. without any compensation.

7 The Notice of Motion is, accordingly, disposed of by appointing a Court Receiver in respect of an area of 3590.89 sq.ft. shown in the sketch annexed as Exh 'I' to the plaint. The Receiver shall however not disturb the physical possession of the Defendants. The Defendants shall continue to use and occupy this area as agents of the Court Receiver on payment of such compensation as may be determined by the Court Receiver by way of royalty (though without security). The Court Receiver shall also, before fixing the compensation, measure the entire area in occupation of the Defendants through a valuer on his panel and also obtain a report of the Valuer for payment of royalty. Both parties shall be heard before such royalty is fixed.

8 Learned Counsel for the Plaintiff informs the Court that the Municipal Corporation of Greater Mumbai has taken steps towards demolition of illegal structures within the encroached area of 3590.89 sq.ft. It is clarified that the order of appointment of Receiver shall not come in the way of Municipal Corporation continuing to take such steps as it may be advised in respect of the

structures standing within the area of 3590.89 sq.ft.

(S.C.GUPTE J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.