

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

**NOTICE OF MOTION NO. 1256 OF 2015
IN
SUIT NO. 3299 OF 2003**

Mr. Khairulla Abdul Wahid Shaikh ... Applicant.
(Defendant no.33)

In the matter of :

Haji Ismail Haji Habib & Ors. ... Plaintiffs.

V/s.

Mr.Yusuf Saleh Mahammad Jafarani & Ors. ... Defendants.

Ms. Apeksha Munot i/by M/s. Wadia Gandhi & Co. for the Applicant.

Ms. J.A. Sarkhot i/by R. V.Govilkar for the Plaintiffs.

Espy N. Fernandis i/by Ivor Peter D'Cruz for the Defendants.

**CORAM : K. R. SHRIRAM, J.
DATE : 16th OCTOBER, 2015**

P.C. :

1 This notice of motion is taken out on behalf of the Defendant No.33 for the following reliefs :

- a) That the Defendant No. 33 be permitted to hand over quiet, peaceful and vacant possession of Suit Premises i.e. 1st Floor (Passage), 33, Pakmodia Street, Mumbai -400 003 to the Court Receiver;

b) That after handing over of possession of Suit Premises i.e.1st floor (Passage), to the Court Receiver, the Court Receiver be directed to hand over possession of the said room to the Plaintiffs;

c) That after handing over of possession of Suit Premises i.e.1st floor (Passage), to the Court Receiver, the Court Receiver be directed not to collect any amount of royalty from the Defendant No.33;

d) That after handing over of possession of Suit Premises i.e.1st floor (Passage), to the Court Receiver, the Plaintiff be directed to delete the name of the Defendant No.33 in Suit No. 3299 of 2003 as no cause of action survives against Defendant No.33 and to carry out consequential amendments.

2 The counsel for the plaintiffs has no objection, if all the reliefs are granted and particularly prayer clauses (c) and (d). In view thereof and for the reasons mentioned in the affidavit in-support, the Notice of Motion is allowed in terms of prayer clauses (a), (b), (c) and (d).

3 The plaintiffs to amend the cause title within two weeks from today. In the order dated 28th August, 2015, this court had directed the plaintiffs to amend the plaint and

proceedings within a period of two weeks. That period is also extended by a period of two weeks from today.

4 The Court Receiver shall, however, continue to be the Receiver of the entire property and shall only hand over the area related to the defendant no. 33 to the plaintiffs.

(K.R.SHRIRAM,J.)

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