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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1610 OF 2016
IN
SUIT NO. 487 OF 2016**

Dalichand Thakarshi Shah & 3 Others ...Plaintiffs
Versus
Dharmesh Dalichand Shah & Another ...Defendants

Mr. Vipul Shukla, *i/b Jayesh R. Vyas, for the Plaintiffs.*
Mr. Akshay Vani, *i/b MLS Vani & Associates, for Defendant No. 1.*
Mr. Shubro Dey, *i/b Sudapa Saha, for Defendant No. 2.*

CORAM: G.S. PATEL, J
DATED: 5th October 2016

PC:-

1. The two Plaintiffs are, respectively, father and son. The 1st Defendant is another son of the 1st Plaintiff and the brother of the 2nd Plaintiff. The 2nd Defendant is a construction or development firm. The dispute is about the premises in a property that is under redevelopment under DCR 33(7) of the Development Control Regulations, 1991 (*i.e.*, as redevelopment of a cessed building).

2. As is usual in such cases, the developer, in this case the 2nd Defendant, pays to the existing tenants a certain amount as compensation in lieu of temporary alternate accommodation for a

temporary period while the redevelopment is under progress. This is to enable those entitled to the premises in the redeveloped building to take a transit accommodation of their choice. The flat in question is or was Flat No. 15 on the First Floor of a structure at 114, VP Road, Girgaum, Mumbai. The 2nd Defendant has entered into Articles of Agreement dated 29th April 2015. It is this agreement that governs the reconstruction or redevelopment of a cessed tenanted structure.

3. The 1st Plaintiff's wife was a recorded tenant of the premises. She died on 2nd May 2015. The 1st Defendant claims that she left a Will dated 9th December 2014 bequeathing her entire estate to him and directing a payment of Rs. 10 lakhs to her other son, Plaintiff No. 2. The 1st Defendant claims to be both an executor and a beneficiary under this Will. He has filed Testamentary Petition No. 421 of 2016. In that matter, citations are yet to be issued and served. The 3rd and 4th Plaintiffs are the sisters of the 1st Defendant and the 2nd Plaintiff. Thus, on intestacy, the deceased mother's estate would be shared amongst five persons, i.e., the four Plaintiffs and the 1st Defendant.

4. What is of immediate concern in the present Suit for administration is the flat itself. The Plaintiffs claim that the 1st Defendant has received entire compensation from the 2nd Defendant in lieu of temporary alternate accommodation up to March 2016. On account of these disputes since April 2016 the 2nd Defendant has not paid any compensation to any party, and in my view, quite wisely so.

5. In this order, I propose to make an arrangement in regard to future payments of compensation in lieu of temporary alternate accommodation as also for the allotment of alternate premises in lieu of the previous tenanted premises once the reconstruction/redevelopment is complete. I note only at this stage that this development is yet to commence. All parties are broadly in agreement with this proposal. I will also today separately, by consent, pass directions in Testamentary Petition No. 421 of 2016, so that that matter is not further delayed.

6. I clarify that there is no order being made today in respect of the compensation that the 1st Defendant has already received from the 2nd Defendant till March 2016.

7. For the compensation that is payable in lieu of temporary alternate accommodation since April 2016, the 2nd Defendant will deposit the entire amount up to October 2016 with the Court Receiver, High Court, Bombay on or before 26th October 2016. The 2nd Defendant will thereafter deposit the amount of Rs. 18,000/- payable monthly with the Court Receiver on or before the 10th day of each month. The Court Receiver will invest the entire amount in accordance with his usual norms and practice.

8. The question of which of the parties is entitled to this amount will be decided later. I only note that this may be subject to the outcome of the Testamentary Petition itself, for, evidently, the respective shares of the parties will depend on that outcome.

9. It also goes without saying that as regards the compensation that has already been paid to the 1st Defendant by the 2nd Defendant, whether the 1st Defendant is liable to make payment of all or any part of this to any of the Plaintiff, is also a matter that is left open to the final determination of the Suit.

10. As regards the flat itself and the premises to be offered in the new building, it is not possible to appoint the Court Receiver of the physical premises simply because they no longer exist, the old building having been pulled down and the new construction yet to commence. The Court Receiver is, however, appointed of the entitlement or allotment in respect of the permanent alternate premises in the new building.

11. Consequently, therefore, none of the parties are entitled to create any third party rights in respect of that entitlement or to encumber it in any way. The 2nd Defendant is not to make an allotment to any of the parties, *i.e.*, the four Plaintiffs or the 1st Defendant without leave of the Court. Any of the parties are at liberty to make an application to Court after at least five days' notice to the other side as regards the question of allotment, once the redevelopment/reconstruction is ready for possession and occupation.

12. All contentions in that behalf are expressly kept open, subject only to the rival contentions in the Testamentary Petition.

13. In view of this, no further orders are necessary on the Notice of Motion at this stage.

14. By consent, the Notice of Motion is disposed of in these terms with liberty to the parties to apply.

(G. S. PATEL, J.)