

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2110 OF 2009
IN
SUIT NO. 761 OF 2009**

Russian Federation (Govt. of Russia) .. Plaintiff

Vs.

1. Sovfracht & Ors. .. Defendants

Mr.G.S. Godbole, advocate a/w. Mr.A.V. Jain i/b A.V. Jain Associates for plaintiff.

Ms.Uma Palsule-Desai, Addl. G.P. for defendant nos.4 to 7.

Mr.Shyam Mehta, senior advocate a/w. Mr.M.S.Bodhanwalla, Mr.Rushabh Sheth, Ms.Pooja Batra i/b M/s. Bodhanwalla & Co. for defendant no.3.

**CORAM : K.R.SHRIRAM, J.
DATE : 1ST SEPTEMBER, 2016**

P.C.

1 This notice of motion has been taken out by the plaintiff, *inter-alia*, for (a) appointment of Court Receiver of the suit property described in Schedule I, II and III of the plaint (suit property) with all powers under Order 40, Rule 1 of the Code of Civil Procedure, 1908 (CPC); (b) pending hearing and final disposal of the suit, defendant no.7 be restrained from giving possession of the suit property to any person except the plaintiff; (c) restraining defendant no.3 from executing any document or agreement or instrument in respect of the suit property.

2 When the plaintiff moved for ad-interim relief, on 10th January 2011, the following order was passed :-

“The learned Advocate appearing for the Defendant No.3 states that even if the Division Bench of this Court allows the Writ Petition filed by the Defendant No.3 and directs the police to hand over possession of the Suit property to the Defendant No.3, the Defendant No.3 without prejudice to his rights and contentions in the present Suit shall not take possession of the Suit premises from the police until further orders. The statement is accepted.

Stand over to 8th February 2011.”

The Writ Petition, that was filed by defendant no.3, was disposed by a judgement pronounced on 24th April 2013 whereby a Division Bench of this Court came to a conclusion that the Police could not have seized the suit property. Paragraphs 4, 5 and 6 of the said order read as under :--

“4 The present petitioner, who is defendant no.3 in Suit No. 761 of 2009, had made a statement before the learned Single Judge of this court in Notice of Motion No. 2110 of 2009. The order passed by the learned Single Judge is accordingly reproduced below:-

“ The learned Advocate appearing for the Defendant No.3 states that even if the Division Bench of this Court allows the Writ Petition filed by the Defendant No.3 and directs the police to hand over possession of the suit property to the Defendant No.3, the Defendant No.3 without prejudice to his rights and contentions in the present Suit shall not take possession of the suit premises from the police until further orders. The statement is accepted.

Stand over to 8th February, 2011.”

5 Mr. Jethmalani, learned Senior Counsel for the petitioner states, on instructions from the petitioner, that the

petitioner would abide by the order passed by the learned Single Judge and would not take possession from the police in the event the seizure and the consequent sealing of the suit property is quashed. The statement made by the learned Senior Counsel, on instructions from the petitioner, is accepted as an undertaking to this court.

6 *In the light of the judgment of the Full Bench, it is clear that the immovable property i.e. Marine House could not have been seized and could not have been sealed by the police during the course of investigation. We, therefore, allow this petition and quash and set aside the sealing of the suit property as well as its seizure. We further direct that the question of possession would be subject to the decision in Notice of Motion No. 2110 of 2009 in Suit No. 761 of 2009. We have accepted the statement made on behalf of the petitioner by Mr. Jethmalani, learned Senior Counsel for the petitioner that the petitioner would abide by the orders passed in Notice of Motion No. 2110 of 2009 in Suit No. 761 of 2009 and would not take possession of the suit premises from the police. The said statement is accepted by us as an undertaking to the court.”*

3 Shri Mehta, counsel for defendant no.3 submitted that in view of the Division Bench of this Court having come to a conclusion that sealing of the suit property was illegal and since the Police seized the suit property only in 2006 and from 2004, defendant no.3 was in possession, the Police should be directed to handover the possession of the suit property to defendant no.3 and defendant no.3 will give an undertaking to this Court not to create any third party rights on the suit property. The counsel also submitted that at the same time he has no objection if the Court Receiver is appointed to take symbolic possession.

4 Shri Godbole, counsel for the plaintiff submitted that the Court Receiver should take physical possession from the Police and whoever wants to be in possession, whether the plaintiff or defendant no.3 or any other party, should be appointed as agent of the Court Receiver and the Court Receiver should fix the compensation to be paid to the Receiver by such agent.

Therefore, the controversy was narrowed down to (a) Whether the Court Receiver should take only symbolic possession and give possession to defendant no.3; or (b) The Court Receiver should take actual physical possession and appoint any party, including the plaintiff or defendant no.3, whoever is willing to offer the best terms and pay the maximum compensation, as the agent of the Court Receiver until the disposal of the suit.

The counsels also stated that the suit can proceed expeditiously.

5 I heard the counsels and also went through the pleadings. The suit property comprises of two plots with building thereon. The first plot bears C.S.No.2/332 and the other bears C.S.No.3/332. Admittedly, the land bearing C.S.No.2/332 which is admeasuring 987.27 sq.mtrs. is a lease-hold land and the land bearing C.S.No.3/332 admeasuring 357.54 sq.mtrs. is a freehold land. Admittedly, no leave to transfer of lease from the State

Government has been taken as far the plot of land bearing C.S.No.2/332 is concerned. Both the plots of land are situated at Mount Pleasant Road with a building standing thereon. The building is the third property. The entire suit property is high-end and commands large value.

6 In City Survey register prepared and maintained under Section 282 of the Maharashtra Land Revenue Code, 1966, the name of the Government of Union of Soviet Socialist Republic (USSR) represented by Trade Representative of USSR in India was entered in the Survey Register of islands of Bombay by the order of the Assistant Superintendent of Land Records. In 1991, the disintegration of USSR took place. In November 1992, defendant no.1 was registered as a Joint Stock Company in Russia. On this day, there was no agreement between the constituent republics of the USSR on the sharing of the rights and liabilities in the properties of the erstwhile USSR including immovable properties situated outside the USSR. Therefore, the suit properties at that stage could not belong to either Russia or any other Russian entity since they belonged to the constituents of the USSR. Admittedly, in the revenue records for plot bearing C.S.No.2/332, defendant no.3 is not shown as the lessee.

7 On 8th February 1993, it is alleged in the plaint that the then President of Russian Federation Mr.Boris Yeltsin issued decree no.201 by which the Russian Federation assumed all rights in the real estate and property abroad of the erstwhile USSR. On 9th April 2001, defendant no.8 claiming to sign on behalf of the Trade Representative of the USSR in India made an application to the Superintendent of Survey and Land Records that since the USSR had disintegrated in 1991, the name of defendant no.1 be shown in the title to the property. A declaration on similar lines was made on 2nd June 2001 by defendant no.8 claiming to represent the Trade Representation of the USSR in India that defendant no.1 was seized and in possession of the lease hold land. In the declaration, he has annexed a purported certificate issued by the Supreme Soviet of the Russian Federation. It is the case of the plaintiff that this certificate is a forged and fabricated document.

Further declarations were made and lodged by defendant no.8 in the office of the Joint Sub-Registrar on 2nd June 2001 and 14th June 2001 based on which on 21st June 2001, the name of defendant no.1 was entered into the column no.10 “*a person in beneficial ownership of Schedule II property*”.

8 On 28th December 2014, defendant no.3 is supposed to have transferred from Dubai, a sum of US\$ 500,000 to the account of defendant no.1 with a Bank in Moscow. On 30th December 2004, an Articles of

Agreement was signed between defendant no.1 and defendant no.3 whereby defendant no.3 is supposed to have purchased the lease-hold rights of the land bearing C.S.No.2/332 and a Deed of Conveyance of even date which is signed between defendant no.2 and defendant no.3 in respect of the land bearing C.S.No.3/332 along with the building standing thereon for a lump-sum consideration of US\$ 500,000 on as is where is basis. Curiously, in the Agreement, it is the defendant no.3-buyer who has issued indemnity to defendant no.1 that they will not have recourse to defendant no.1 if the Maharashtra Government does not accord any permission to complete the transfer. Defendant no.2 also executed a a Power of Attorney in favour of defendant no.3 conforming various powers.

9 Sometime in year 2005, the Ambassador of the plaintiff in India visited the site and the building and the officials from the Consulate of the plaintiff were prevented from entering the suit property by the security guards posted outside. The Consul General of the plaintiff lodged police complaints based on which sometime in July 2006, the suit property was seized by the Police. Red Corner Notice has also been issued against defendant no.2 and defendant no.8, both Russian nationals, and both are still absconding.

10 This is the case on which the plaintiff has approached this Court and the reliefs sought in the plaint, *inter-alia*, is for a declaration that the plaintiff is the lessee of the land bearing C.S.No.3/332 and owner of the land bearing C.S.No.2/332. The plaintiff is also claiming damages in the sum of Rs.9 crores against defendant no.3 with interest.

11 The counsel for the plaintiff submitted that defendant no.3 got possession of the suit property illegally and therefore the Court Receiver should be appointed with all powers under Order 40 Rule 1 of the CPC. Shri Mehta, counsel for defendant no.3 submitted that first of all the plaintiff should establish that the plaintiff is entitled to ask for such a declaration because the whole basis of the plaintiff's claim to be so declared is actually an unilateral decree dated 8th February 1992 issued by the plaintiff's then President Mr.Boris Yeltsin; whereas defendant no.3 was in possession from 2004. Therefore, defendant no.3 should be in possession though the Court Receiver could take symbolic possession and there should not be any direction regarding compensation to be paid as agent of Court Receiver against defendant no.3.

12 In my view, there are many of issues in this matter that require to be considered in trial,, viz.,(a) whether the plaintiff is entitled to claim

ownership of the suit property, (b) Whether Sovfracht could have applied for transfer of the suit property in their name; (c) whether the consideration allegedly paid by defendant no.3 to defendant no.1 amounting to US\$ 500,000 from Dubai to Russia directly was legal in view of Regulation 3 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 etc. Even the compensation paid by defendant no.3 to defendant no.1 of US\$ 500,000 equivalent to Rs.2.19 crores, as declared, is way below the then market value, which from the documents annexed to the plaint, is in excess of Rs.12 crores. The issue of ownership of the suit property is rather murky.

13 Both the parties have agreed that Receiver is required to be appointed for the suit property. The suit property is very very valuable. If an agent is appointed with compensation to be paid to the Court Receiver, it will enure to the benefit of either the plaintiff or defendant no.3, whoever would succeed in the end of the day.

14 In my view, in view of what is stated above, it would be in the interest of all parties, if the notice of motion is disposed with the following order :

- (a) Pending the hearing and final disposal of the present suit, the Court Receiver, High Court, Bombay is appointed as a

Receiver in respect of the suit property described in Schedule I, II and III of the plaint with all powers under Order 40 Rule 1 of the Code of Civil Procedure, 1908 including the power to take physical possession of the suit property from defendant no.7 and remove the seal put up by defendant no.7 and keep it under seal of the Court Receiver.

(b) After inviting bids, the Court Receiver can appoint either the plaintiff or defendant no.3 as the agent of the Court Receiver, depending on who offers the best terms and higher compensation.

(c) Defendant no.3 shall not execute any document or Agreement or any other instrument of whatsoever nature in respect of the suit property described in Schedule I, II and III of the plaint thereby purporting to or agreeing to create any rights in respect of the suit property.

15 The Notice of Motion stands disposed accordingly.

16 The main contesting party is defendant no.3. Defendant nos.1, 2 and 8, though served, are absent and have not entered any appearance either. By an order dated 21st July 2010, the Prothonotary and Senior Master has recorded having taken on record affidavit of service, dated 16th July 2010. The written statement of defendant no.3 is on record.

17 Shri Mehta states that defendant no.3 has been advised to take out an application for amending the written statement. In view of the ensuing holidays, Shri Mehta states that within three weeks from today, defendant no.3 will take out a chamber summons for amendment of the written statement and serve a copy thereof upon the plaintiff.

18 The counsel for defendant no.3 states that Notice of Motion bearing (lodging) No.2591 of 2016 on behalf of defendant no.3 has been taken out for rejection of the plaint under Order VII, Rule 11 of the CPC on the ground that the plaintiff themselves could not have maintained this action based on a purported decree dated 8th February 1993.

19 Though this notice of motion is not listed today, taken up for hearing with the consent of parties.

As mentioned above, this itself will be an issue which has to be decided at the trial. It is a pure question of fact on which evidence will be required to be led.

20 In the circumstances, notice of motion (lodging) No.2591 of 2016 is rejected.

Notwithstanding the disposal of the notice of motion, the applicants to

remove all office objections and have the motion numbered within one week from today.

21 The suit be listed on 23rd September 2016 for directions.

(K.R. SHRIRAM, J.)