

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 2576 OF 2016
IN
SUIT NO. 894 OF 2015**

Saurabh Subhash Pawse ...Plaintiff
Versus
Nikhil Subhash Pawse & Pratima Nikhil Pawse ...Defendants

Mr. Pradeep J. Thorat, *for the Plaintiff/Applicant.*
Mr. Nikhil S. Pawse, *Defendant No. 1 in person, present.*

CORAM: G.S. PATEL, J
DATED: 25th October 2016

PC:-

1. There has been a long standing dispute between the two brothers over a property in this partition Suit. Ultimately, the dispute in respect of one of the properties, Flat No. 21, Bhavya Heights, Vakola, Santacruz (East), Mumbai 400 055 was resolved by two orders dated 2nd September 2016 and 14th September 2016. The Plaintiff was put in possession. The Defendant No. 1 and his wife, Defendant No. 2, delivered possession. This was required to be done in the presence of the Court Receiver. Having regard to the circumstances of the case, Defendants will pay to the Court Receiver costs quantified at Rs. 5,000/-. These expenses are to be

paid by 18th November 2016 by an instrument drawn in favour of the Court Receiver, High Court, Bombay.

2. As regards prayer clause (d), Mr. Thorat for the Plaintiff is correct in saying that his client has had incurred an additional one month's license fees of Rs.30,000/- and this only on account of refusal of Defendants to adhere to and abide by their agreement and orders of the Court.

3. However, having regard to the fact that this is a dispute between brothers; and since the Defendants agreed to hand over possession by 13th November 2016; and did so ahead of time on that day, I will not grant Mr. Thorat the relief that he seeks and request instead that both parties bear their own costs as they now stand and move on.

4. For these reasons also, I will not make an order in terms of prayer clause (e), which is for interest at the rate of 9% on an amount paid by the Plaintiff to the Defendants.

5. There remains the question of what is to be done in respect of other property, a Row House No. 75, Lotus, Florista Valley, Village Kunenama, Taluka Maval, District Pune. This has two bedrooms, a hall and a kitchen. Both sides have agreed that the Row House will be sold by the Court Receiver. The Title Deeds to this Row House were deposited with the Court Receiver. The Court Receiver will immediately make a report and place it on reopening on the basis of valuation already done and suggest the terms and conditions of the

sale and the reserved or offset price to be fixed by the sale of public auction.

6. The Notice of Motion itself is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J.)