

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 121 OF 2013
IN
SUIT NO. 5 OF 2013**

Simran Ishwar A. Dialani

.. Applicant/Plaintiff

In the matter between :

Simran Ishwar A. Dialani

.. Plaintiff

Vs.

Salim Sayed & Ors.

.. Defendants

Mr.Mahesh Londhe a/w. Mr.Netaji Gawade i/b Sanjay Udeshi & Co. for plaintiff.

Mr.Sushil Upadhyay i/b Ashok M. Saraogi for defendant no.1.

CORAM : K.R.SHRIRAM, J.

DATE : 8TH DECEMBER, 2016

P.C.

1 This suit filed is for a declaration that the Deed of Mortgage and Deed of Declaration dated 25th August 2011 are illegal and unlawful and defendant no.1 be declared as a trespasser and be ejected and there are other reliefs also sought in the suit.

2 When this notice of motion came up for hearing on 12th October 2012, this Court was pleased to pass an order directing the defendant not to alienate, encumber, part with possession and/or create any third party rights in respect of the suit flat until 15th October 2012. On 15th October 2012, the

order was extended until further orders. On 2nd November 2012, the status-quo was continued until further orders. It is more than four years since the said order was passed. The defendants have lived with this order for over four years. It will be in the interest of the parties if this order is confirmed as order in the notice of motion and the suit proceeds to trial. Therefore, the order dated 12th October 2012 read with order dated 15th October 2012 and the order dated 2nd November 2012 is confirmed as order in the notice of motion and notice of motion accordingly disposed. Shri Londhe, counsel for the plaintiff states that the suit has been transferred to the list of undefended suits against all the defendants. Shri Sushil Upadhyay, Advocate instructed by Shri Ashok Saraogi for the defendant no.1 states that within two weeks from today, they will file written statement.

3 Shri Londhe states that defendant no.1 should explain by taking out a notice of motion as to why they did not file the written statement all these days and explain each day's delay.

4 In the interest of justice, I am not inclined to insist upon defendant no. 1 to take out an application as by way of notice of motion and then hear it, because that itself will take few months to come up for hearing. The progress of the suit will also get stalled.

5 I am granting defendant no.1 time upto 22nd December 2016 to file the written statement and serve a copy thereof upon the plaintiff.

Defendant no.1 shall also give a donation of Rs.10,000/- to National Association of Blinds, Mumbai. This amount also be paid within two weeks from today.

6 The suit be listed for issues on 16th January 2017. In the meanwhile, the parties to file their respective affidavits of documents, complete discovery and inspection and exchange their statements of admission and denial with reasons for denial.

On the next date, parties also to come with agreed issues and a separate list of issues on which they are unable to agree. The above directions have to be strictly and meticulously followed, failing which the parties will be put to terms.

The notice of motion stands disposed accordingly.

(K.R. SHRIRAM, J.)