

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 120 OF 2013
IN
SUIT NO. 4 OF 2013**

Ishwar A. Dialani

.. Plaintiff

Vs.

Suleman Shaurat Ali Shaikh & Ors.

.. Defendants

Mr.Mahesh Londhe a/w. Mr.Netaji Gawade i/b Sanjay Udeshi & Co. for plaintiff (in both suits).

Mr.Sushil Upadhyay i/b Ashok M. Saraogi for defendant no.1 (in both suits).

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 18th October 2012. On 18th 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. Defendant no.1, who is the main contesting defendant, has filed the written statement whereas the suit as against defendant nos.3 and 4 has been transferred to the list of undefended suit.

3 In my view, it will be in the interest of justice of parties if the suit proceeds further than getting stuck at this notice of motion stage. The defendants have suffered this order for more than four years. The status-quo has been maintained for four years.

4 In the circumstances, 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 18th October 2012 and the order dated 2nd November 2012 is confirmed as order in the notice of motion and notice of motion accordingly disposed.

5 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.

(K.R. SHRIRAM, J.)