

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 1380 OF 2014****IN****SUIT NO. 2292 OF 2008**

Balraj Parmanand Mehra

...Plaintiff / Applicant

vs.

Opera Properties Pvt.Ltd. & Ors.

....Defendants

Dr.Brij Mohan Dhir for Plaintiff.

Mr.Mandar Soman for Defendant Nos.1 and 3.

Mr.D.V. Deokar with Dhruvesh Parimal i/b. Parimal K. Shroff & Co. for Defendant No.4.

CORAM : S.C. GUPTE, J.**6 JANUARY 2016****P.C. :**

This notice of motion is taken out by the original Plaintiff seeking a temporary injunction against Defendant Nos.1 to 7, and 9 and 12 from entering upon, or from creating third party rights in, the suit property, namely, Plot No.250-C, Scheme No.52, New Cross Road, Worli, Mumbai – 400 030 together with the building Mehra House standing thereon, or any part thereof. The notice of motion also seeks a direction against Defendant Nos.10 and 11 and 13 to handover vacant and peaceful possession of premises nos.3 and 4 in Mehra house after breaking open the lock and seal thereon or in the alternative, appointment of Court Receiver in respect of these premises.

2 The notice of motion is opposed by Defendant Nos.1 and 3 *inter alia* on the ground that a similar notice of motion taken out by the original Plaintiff, namely, Notice of Motion No.2624/2008, has been dismissed by this Court for default on 11 September 2014 and that the Plaintiff having not taken any steps for setting aside that order of dismissal, he is estopped from claiming the same reliefs under Section 11 of the CPC or principles analogous thereto. It is also submitted by Defendant Nos.1 and 3 that the dismissal of that motion is not

disclosed in the present notice of motion.

3 Whilst it does appear that the earlier notice of motion, namely, Notice of Motion No.2624/2008, was broadly in respect of the same subject matter as the present notice of motion, an important event has transpired since the filing of the earlier notice of motion. On the date when Notice of Motion No.2624/2008 was taken out, the premises, namely, premises nos.3 and 4 in Mehra House, were under the seal of the police in pursuance of an order passed by the Executive Magistrate in breach of peace proceedings pending in respect of the premises under Section 145 of the Cr.P.C. Initially, as and by way of an ad-interim order, this court had directed that sealing to continue, at the same time allowing the Executive Magistrate the liberty to continue the criminal proceedings and consider the application of Defendant Nos.1 and 3 for desealing of the premises. It appears that after this Court passed its order on 14 August 2008 and clarified it on 17 September 2008, there was a “C” summary report prepared by the Senior Police Inspector observing *inter alia* that the matter was of civil nature and no offence was committed by Defendant Nos.1 to 4 before the Magistrate. On this report of 2 December 2013, an application was made by the Plaintiff for investigation of the “C” summary report. Though this “C” summary report is not still accepted by the Magistrate, there is a clear possibility of the breach of peace proceedings being dropped by the Magistrate. Besides, the dispute between the parties is clearly civil in nature. As a matter of fact, the parties are already before this Court in such dispute. The very jurisdiction of the criminal court, under Section 145, is to make only a temporary order, pending settlement of the rights of the parties by a competent civil court. In fact, the Supreme Court has held that it is desirable that the Magistrate should decline to make an order under Section 145 when the matter can be fully and finally determined by the civil court or where the civil litigation is already pending. (See, **Ram Sumer Puri Mahant vs. State of U.P.**¹) Now that the parties are before this court and the interlocutory application has reached final hearing, it is essentially for this court to make an appropriate order for possession, custody and management of the property in dispute. There is hardly any occasion for the Magistrate now to continue to exercise further

¹ AIR 1985 SC 472

jurisdiction in the matter.

4 It is, therefore, important for this Court to consider the *prima facie* merits of the respective cases of the parties before it and accordingly make appropriate orders concerning the possession and interim management of the property. The Plaintiff is admittedly the owner of the suit property. The contesting Defendants claim a right to possess and occupy the suit property on the basis of a Deed of Assignment of 21 April 2007 in favour of Defendant No.1. This Deed of Assignment is executed on behalf of the Plaintiff by Defendant No.2 purportedly under a Power of attorney dated 24 March 2000. *Prima facie* the Power of Attorney does not confer the power of transferring the property on the donee. The powers concern development of the property and not its conveyance. It is claimed by the Plaintiff that within two days of the alleged Deed of Assignment the balance consideration was fraudulently and dishonestly deposited in the Plaintiff's bank account and within a few days thereafter Defendant No.1 took forcible possession of the property including premises Nos.3 and 4. That is how the breach of peace proceedings came to be initiated. There is *prima facie* merit in what the Plaintiff alleges before this Court. Whilst the remaining portions of the suit property are occupied, premises Nos.3 and 4 are vacant and under the lock and seal of the police for the last over seven years. In the premises, even if this Court were not to make any protective arrangement in respect of the other property at this belated point of time and considering particularly that there was no ad-interim relief all these days in respect of the other property in Notice of Motion No.2624 of 2008 (the Plaintiff having restricted his application for interim relief to only premises nos.3 and 4), which has since been dismissed, as noted above, there is a clear case for appointment of Court Receiver, and protection and management of the property through him insofar as premises nos.3 and 4 are concerned.

5 Considering the fact that keeping the premises under a seal does not inure to the benefit of either of the parties, pending disposal of the suit, it is in the interests of justice that the premises are licensed to third parties under a Court Receiver, so that the premises are properly looked after and also earn

income during the pendency of the suit. Such income may conveniently be invested by the Prothonotary & Senior Master of this court and the funds may be held for the benefit of the party, who ultimately succeeds in the suit. In the premises, whilst I am not inclined to consider any other relief in the notice of motion *inter alia* on the ground that similar reliefs were prayed for (but not pressed) in a notice of motion, which has since been dismissed, I am inclined to appoint a Court Receiver of premises Nos.3 and 4 with all powers including the power to open the seal of the premises and take over physical possession thereof and thereafter appoint third parties as agents of the Court Receiver on payment on such royalty and on such security as may be deemed fit and proper.

6 In the premises, the following order is passed :

- (i) The Court Receiver, High Court, Bombay, is appointed a receiver of premises nos.3 and 4 in Mehra House, situated at Plot No.250-C, Scheme No.52, New Cross Road, Worli, Mumbai – 400 030, with power to open the seal of the premises and take over physical possession thereof;
- (ii) The Court Receiver shall appoint a valuer on his panel for determining the royalty and security amounts for licensing the premises to third parties as agents of the Court Receiver. All the parties to the suit shall be heard on such royalty amount and security charges;
- (iii) After determination of such charges, the Court Receiver shall grant licence/s in respect of the premises on usual terms and conditions of agency agreement and against payment of such royalty and on furnishing of such security as may be determined in accordance with this order;
- (iv) The Court Receiver may seek such assistance from Worli Police Station which has put its lock and seal on the premises as the Receiver may deem fit;

- (v) The Court Receiver shall, before taking over possession of the premises, make an inventory of the articles lying within the premises, after which, by consent of parties, such articles shall be made over to Defendant Nos.1 and 3;
- (vi) The notice of motion is disposed of accordingly.

(S.C. Gupte, J.)