

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.2460 OF 2016
IN
SUIT NO.187 OF 1993**

Smt.Sheela Ram Vidhani & Anr.Plaintiffs

V/s.

M/s.S.K.Trading Co. & Ors.Defendants

Ms.Deepti Panda a/w Mr.Ganesh Ambekar i/by Thakore Jariwala & Associates for plaintiffs.

Mr.Jay Joshi a/w Mr.Nitesh M. i/by I.R.Joshi & Co. for defendant nos.1 to 3.

Mr.S.U.Kamdar, Senior Advocate i/by M/s.Wadia Ghandy & Co. for defendant nos.4 to 6.

CORAM : K.R.SHRIRAM,J

DATE : 14.10.2016

P.C.:-

1 The defendant nos.1 to 3 have taken out this Notice of Motion seeking certain additional issues to be added to the issues settled on 22.8.2016. The additional issues are mentioned in the schedule annexed to the Notice of Motion.

2 Mr.Kamdar for defendant nos.4 to 6 tenders a draft of two additional issues which according to him, requires to be incorporated in the issues settled on 22.8.2016.

3 Having heard the parties the issue no.2 as settled on

22.8.2016 is recast as under :-

“2. Whether the defendant nos.4 to 6 prove that the plaint does not disclose any cause of action and hence requires to be rejected ?

4 The following issue is to be inserted after issue no.4.

“4A. Whether defendant nos.4 to 6 prove that the agreement dated 7th October, 1985 between defendant no.1 and defendant no.4, wherein defendant no.4 agreed to surrender its tenancy for a consideration payable by defendant no.1 to defendant no.4 is unlawful, illegal and contrary to the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which was in force at the relevant time ?

5 The following issue which is at no.14 to be renumbered as 4(B).

“4B Whether defendant nos.1 to 3 prove that it was mutually agreed between the plaintiffs and defendant nos.1 to 3 that the said agreement Exh.”B” to the plaint be treated as cancelled by mutual consent as recorded in the letter dated

4.9.1991 addressed by Advocates of defendant
nos.1 to 3 ?

6 For the sake of convenience, all the issues are reproduced
as under :-

ISSUES

(1) *Whether the plaintiffs prove that this court has jurisdiction to receive, try and dispose of the suit ?*

(2) *Whether the defendant nos.4 to 6 prove that the plaint does not disclose any cause of action and hence requires to be rejected ?*

(3) *Whether the plaintiffs prove that the suit is filed within limitation ?*

(4) *Whether the plaintiffs prove that the agreement dated 7.12.1985 constitute a concluded and binding contract with the defendants ?*

(4A) *Whether defendant nos.4 to 6 prove that the agreement dated 7th October, 1985 between defendant no.1 and defendant no.4, wherein defendant no.4 agreed to surrender its tenancy for a consideration payable by defendant no.1 to defendant no.4 is unlawful, illegal and contrary to the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which was in force at the relevant time ?*

(4B) Whether defendant nos.1 to 3 prove that it was mutually agreed between the plaintiffs and defendant nos.1 to 3 that the said agreement Exh."B" to the plaint be treated as cancelled by mutual consent as recorded in the letter dated 4.9.1991 addressed by Advocates of defendant nos.1 to 3 ?

(5) Whether the defendant nos.1 & 3 prove that the plaintiffs did not perform their obligations under the agreement dated 7.12.1985 and hence the question of fulfilling any obligations under the said agreement did not arise ?

(6) Whether the plaintiffs prove that they were and are ready and willing to perform their share of the obligations under the agreement dated 7.12.1985 ?

(7) Whether the plaintiffs prove that the defendants have committed breach of the agreement dated 7.12.1985 ?

(8) Whether the plaintiffs prove that they are entitled to specific performance of the agreement dated 7.12.1985 ?

(9) If the issue no.(8) is held in the negative, then whether the plaintiffs, in the alternative, are entitled to a decree against the defendants in the sum of Rs.1,55,25,000/- together with interest @ 21% p.a. compounded quarterly from the date of the suit until payment/realization ?

(10) Whether the plaintiffs prove that they are entitled to repayment of Rs.19,25,000/- together with interest @ 21% p.a. compounded in quarterly rests from the date of filing of the suit till payment/realization and that this amount be secured by a valid and subsisting charge on the property described in Exhibit-A to the plaint, with structures standing thereon and charge be enforced towards the satisfaction of the plaintiffs' claim in the suit ?

(11) What decree ? What order ?

7 The counsel for the plaintiffs states that since issues have been recast, she would like to consider whether any further affidavit in lieu of examination in chief is required to be filed or not.

8 The plaintiffs to file their list of witnesses, affidavit in lieu of examination in chief together with compilation of documents and serve a copy thereof upon the defendants within 4 weeks.

9 Stand over to 25.11.2016 for marking of documents on which date the plaintiffs' first witness to remain present in Court. Notice of Motion accordingly stands disposed.

(K.R.SHRIRAM,J)