

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

**NOTICE OF MOTION NO.4308 OF 2009
WITH
NOTICE OF MOTION (L) NO.1435 OF 2016
IN
SUIT NO.3247 OF 2009**

Exotic Investments & Trading Co. Pvt. Ltd.Plaintiff

V/s.

K.M. Developers & Ors.Defendants

Mr. Snehal Shah a/w. Ms. Deepti Panda & Adv. Ishita Shah i/b. Mayur D. Bhatt for the plaintiff.

Dr. Abhinav Chandrachud i/b. J.P. Consultia for the defendant nos.2, 4 and 5.

CORAM : K.R.SHRIRAM,J

DATE : 7th JULY, 2016

P.C.:-

1 By an order dated 18th December, 2009 read with order dated 15th January, 2010 and 5th August, 2011, this court was pleased to grant ad-interim relief in notice of motion no.4308 of 2009 in terms of prayer clause (b), which reads as under :-

“(b) that pending the hearing and final disposal of the suit, the defendants by themselves, their servants and agents be or restrained by an order and injunction of this Hon'ble Court from in any manner disposing of, alienating, transferring or encumbering the suit premises, or entering into any agreement with any third party for creating any other right, title or interest to or in or parting with possession of the suit premises described in Exhibit 'A' to the plaint or any part thereof.”

2 The defendants have taken out notice of motion no.1435 of 2016 seeking modification of the ad-interim order. Prayer clause (a) of the said notice of motion reads as under :-

“(a) pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to modify the ex-parte ad-interim order dated 18th December, 2009, passed in Notice of Motion No.4308 of 2009 in Suit No.3247 of 2009; which was subsequently corrected and clarified by this Hon'ble Court vide its order dated 5th August, 2011, “that there will be an ad-interim order in terms of prayer clause (b) of the Notice of Motion No.4308 of 2009”; to a limited extent and allow the defendants to let out the suit premises being office space bearing no.B-2 on the 3rd Floor of Gold Filled Plaza, admeasuring 2484 sq.ft. carpet area at Dharavi, Mumbai to any suitable lessee/tenant/licensee subject to such terms and conditions this Hon'ble Court deems fit and proper and further subject to the outcome of the present suit bearing no.3247 of 2009.”

3 It should be noted that this notice of motion has been taken out only on 25th April, 2016 more than about six years after the ad-interim order was passed. The defendants suffered the order for more than five years.

4 Mr. Shah, counsel appearing for the plaintiff fairly submits that the plaintiff is agreeable for modification of the ad-interim order as requested by the defendants provided the Court Receiver is appointed and the premises are let out through the Court Receiver to safeguard the property. Dr. Chandrachud, counsel for the defendant nos.2,4 and 5 states that even the defendants are in need of office

premises and they should be permitted to use the office premises. Dr. Chandrachud further states that there is no need to appoint a Receiver.

5 Having considered the facts and circumstances of the case, it would be in the interest of justice if the premises are let out through the Court Receiver. It will safeguard the interest of both the parties. It will also be open for the defendants to apply for the premises to be given on leave and license to the defendants through the office of the Court Receiver.

6 In the circumstances, the notice of motion bearing no.4308 of 2009 and notice of motion no.1435 of 2016 are disposed of with the following order :-

“(a) pending the hearing and final disposal of the suit, the Court Receiver, High court, Bombay is appointed as Receiver in respect of the suit premises described in Exhibit “A” to the plaint;

(b) the Court Receiver is permitted to call for offers to occupy the suit premises on leave and license basis from any third party and obtain the best possible license fees;

(c) both the plaintiff and the defendants are permitted to apply for using the premises on leave and license basis apart from any third party, who will be interested in the premises;

(d) the Court Receiver to give on leave and license basis the suit property to any party who offers the most advantageous terms.

(e) any deposit and license fees received from the licensee will be deposited with the Court Receiver and the said amounts to be invested in Fixed Deposit with a nationalised bank for a minimum period of one year to be extended for similar period until further orders;

7 The above order passed is without prejudice to the rights and contentions of the parties including the contention of the defendants that the suit is barred by limitation.

8 The Court Receiver before inviting bids shall ensure that all permissions including occupation certificate are in place to give the premises on leave and license basis.

9 Dr. Chandrachud, counsel for the defendant nos.2,4 and 5, on instructions states that his instructing advocate will file Vakalatnama on behalf of defendant no.3(a) as well. Dr. Chandrachud also waives service of writ of summons.

10 As regards the defendant nos.1,2,4,5 and 6, Dr. Chandrachud states that they do not wish to file any further written statement.

11 As regards defendant nos.3(a), the written statement to be filed and copy served within two weeks from today.

12 On or before 30th July, 2016 parties to file their respective affidavit of documents. Inspection to be given on or before 6th August, 2016. Statement of admission and denial with reasons for denial to be filed and exchanged on or before 12th August, 2016.

13 The suit be listed for issues on 22nd August, 2016.

(K.R.SHRIRAM,J)