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

NOTICE OF MOTION NO. 466 OF 2015
IN
WRIT PETITION NO. 2874 OF 2012

Kunal Nathuram Borkar ...Applicant (Orig. Respondent No.5C)
Vs.
The Municipal Corporation of
Mumbai & Ors. ...Respondents

Mr. A.S. Khandeparkar a/w. Mr. Amit Kate i/b. Gaonkar & Co.,
for the Applicant in Notice of Motion and for Respondent No.5C in WP
Ms. Urvi Tanna i/b. Pravin Mehta and Mithi & Co., for the Petitioners
in Writ Petition
Mrs. Shobha Ajitkumar for the Respondent Nos. 1 to 3

CORAM : A.S.OKA, &
 C.V. BHADANG, JJ.
DATE : JANUARY 05, 2016

PC.:

1. The prayer in this notice of motion filed by the respondent no.5C in the writ petition is virtually for modification of the consent order passed by this Court on 5th May, 2015 in the Notice of Motion No. 9 of 2015. The Notice of Motion No. 9 of 2015 was filed by the original respondent nos. 4 to 12C in the Writ Petition. The respondent no.5A Nathuram in the Writ Petition is shown as the applicant no.2 in the said Notice of Motion. Not only that the said Nathuram is shown as the applicant no.2, an Advocate has signed the consent terms dated 5th May, 2015 representing the respondent nos. 4 to 12C in Writ Petition. The **Exhibit-B** to the present Notice of Motion shows that the said Nathuram died on 24th November, 1989. The order dated 5th May,

2015 directs that each applicant in the Notice of Motion No.9 of 2015 shall be entitled to withdraw an amount of Rs.3,60,000/-. Thus, there is an order in favour of deceased Nathuram permitting him to withdraw a sum of Rs.3,60,000/-.

2. In the affidavit in support of the present Notice of Motion, in paragraph 3, it is claimed that the present applicant who is the original respondent no.5C in the Writ Petition is the son of the deceased Nathuram and he is entitled to receive the amount, which is payable to the deceased Nathuram. It is stated that even the respondent no.5B who is also the applicant in the Notice of Motion No.9 of 2015 is not entitled to receive any amount. In short, the contention raised in the affidavit in support of the notice of motion is that the respondent no.5A (Nathuram) was a tenant in respect of a tenement and, therefore, the present applicant (the respondent no.5C in the Writ Petition) being the son of the Nathuram should be paid the said amount of Rs.3,60,000/- which was payable to the said Nathuram.
3. Legal representatives of the said Nathuram were not brought on record. In fact, the Notice of Motion No.9 of 2015 is shown to have been filed by the said Nathuram as well. Therefore, we have a serious doubt about the legality and validity of the consent terms and the consent order made without disclosing to the Court that one of the applicants in the Notice of Motion No.9 of 2015 was dead long back. Therefore, no relief can be granted in this Notice of Motion. Accordingly, the Notice of Motion is dismissed.