

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

**NOTICE OF MOTION NO.2142 OF 2015
IN
SUIT NO.1668 OF 2003**

Darayus R. VazifdarApplicant/Org. defendant

In the matter between :

Cyrus R. VazifdarPlaintiff

V/s.

Darayus R. VazifdarDefendant

Mr. S.S. Dube for the plaintiff.

Mr. S.M. Khaire for the applicant/org. defendant.

CORAM : K.R.SHRIRAM,J

DATE : 28th APRIL, 2016

P.C.:-

1 This notice of motion is filed by the applicant/defendant
for the following reliefs :-

“(a) That the defendant be granted leave by this Hon'ble Court under Section 3 of the Partition Act, 1893 to buy the plaintiff's half share in the suit flat, viz., flat no.3A, II Palazzo, Little Gibbs Road, Mumbai – 400 006 at the price determined by the Valuer (who was appointed by this Hon'ble Court vide minutes of order dated 29.7.2003) in terms of his report dated 22.8.2003;

(b) That the defendant be allowed to deposit in the office of this Hon'ble Court the amount towards plaintiff's such half share in respect of the suit flat, viz., flat no.3A, II Palazzo, Little Gibbs Road, Mumbai – 400 006 within such time and on such terms as may be permitted by this Hon'ble Court;

(c) That this Hon'ble Court be pleased to pass all necessary and proper orders in terms of Section 3 of the Partition Act, including orders directing the plaintiff to withdraw the amount deposited in the office of this Hon'ble Court by the defendant only on the plaintiff

handing over vacant and peaceful possession of the suit flat, viz., flat no.3A, II Palazzo, Little Gibbs Road, Mumbai – 400 006 to the defendant.”

2 The counsel for the applicant/defendant argued extensively as to the date on which the valuation has to be considered and the partition was not possible, etc. When the turn of the plaintiff/respondent came to make their submissions, the counsel for the plaintiff/respondent pointed out to the court that for identical reliefs the defendant had taken out notice of motion no.2917 of 2003.

3 I have considered the reliefs sought in the notice of motion no.2917 of 2003 and the present motion. The reliefs are identical. The notice of motion no.2917 of 2003 came to be dismissed by an order dated 23rd September, 2005 and the reasons for dismissal can be found in paragraph 4 of the said order, which reads as under :-

“4. In so far as notice of motion no.2917 of 2003 is concerned the said motion is taken out by the defendant for buying out the plaintiff by offering to pay 50% of the flat value. There are disputes about the valuation of the flat and date which is to be taken into consideration for valuation of the flat. The said relief cannot be granted only at the interim stage and such relief can be granted at the final hearing of the suit. Motion is disposed off accordingly. No order as to costs.”

4 An appeal was filed against the said order and the appeal also came to be dismissed on 6th December, 2005. While dismissing

the appeal, the Division Bench in paragraph 13 observed as under :-

“13. As regards prayers made by the defendant in the notice of motion no.2917 of 2003, we are of the view, these prayers cannot be granted at this stage.”

5 In the circumstances, this notice of motion is not maintainable. In my view, this is nothing but abuse of process of court whereby substantial precious judicial time is wasted.

6 Therefore, the notice of motion is dismissed with cost in the sum of Rs.50,000/-. This amount to be paid by way of cheque drawn in favour of the advocate for the plaintiff by the defendant within one week from today.

(K.R.SHRIRAM,J)