

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

**NOTICE OF MOTION NO. 96 OF 2016
IN
SUIT NO. 169 OF 2003**

Aly Shirazi

.. Applicant/Org.Pltff

In the matter between :

Aly Shirazi

.. Plaintiff

Vs.

Mehdi Shirazi & Ors.

.. Defendants

Mr.Tanvir Adbul Hamid Shaikh for plaintiff/applicant.

Mr.D.D.Madon, senior advocate a/w. Mr.Nikhil Patil i/b Y.M. Chaudhari for defendant no.1.

Mr.S.A.Jabbar i/b G.M.Joshi for defendant nos.2 to 4.

Mr.Gaurav Mehta a/w. Ms.Aditi Prabhu i/b M/s.Desai Desai Carrimjee and Mulla for defendant no.5.

**CORAM : K.R.SHRIRAM, J.
DATE : 15TH FEBRUARY, 2017**

P.C.

1 By an order dated 15th January 2016 read with the order dated 10th February 2016, this Court at the interim stage, granted prayer clauses (c), (d) and (e) pending the hearing and final disposal of the notice of motion. Certain other directions have also been passed. The Court, however, did not grant prayer clauses (a) and (b) and stated that it can be considered at the time of final hearing of the notice of motion.

2 The counsel for the applicant stated that after the order dated 10th February 2016, there is no change in circumstances. No affidavit has also been filed to that extent. It is the case of the applicant that defendant no.1 is enjoying the premises exclusively/which is lying vacant and since the premises belong to the entire family in which defendant no.1 has only 11.11% share, the Court should appoint a Court Receiver who could appoint defendant no.1 or any third party or the plaintiff as agent of the Court Receiver which will be for the benefit of all the parties.

In fact, the prayer in the notice of motion is to appoint the plaintiff as the agent without payment of royalty. I fail to understand if the plaintiff can seek to be appointed as an agent without payment of royalty, why should defendant no.1 not continue in the premises without paying any royalty or compensation.

3 Mr.Madon raises various issues including that the plaintiff is guilty of perjury. Mr.Madon submitted that in the affidavit in support, the plaintiff's advocate has stated that he came to know of certain legal proceedings only in December 2004 whereas the plaintiff knew about the legal proceedings much earlier.

4 Admittedly, the suit property is on leasehold land from Maharashtra

Government. Some years ago, the lease came to an end and the Maharashtra Government had refused to extend the lease due to change in rules and the lease rent prescribed by the Government was increased many fold. Mr.Madon states that the plaintiff and the other defendants did not want to contest the matter. Defendant no.1, was the only person in the family filed writ petition in this Court in which orders have been passed staying the demand notice issued by the State Government, on deposit of 25% of the amount demanded. Mr.Madon also stated that this amount has also been paid by defendant no.1 solely without any contribution from the others. Shri Mehta appearing for defendant no.5 states that his clients sent his share of 25% which was not accepted by defendant no.1.

The property had certain tenants against whom defendant no.1 had filed the eviction suit in the Small Causes Court, Bombay. It is Mr.Madon's case that defendant no.1 alone prosecuted the said eviction suit and also contested the Appeal filed by the defendants and has incurred substantial costs to which none of the others, i.e., other defendants or the plaintiff contributed. It is Mr.Madon's case that the others were actually opposing the eviction suit filed by defendant no.1.

5 I am not going into all this contentions at this stage because (a) there is admittedly no change in circumstances after the order dated 10th February

2016 was passed; (b) On that date, the Court declined to grant the reliefs as prayed for by the plaintiff; and (c) Moreover, the suit has reached a stage where evidence of all parties is closed and suit is ripe for arguments.

6 Mr.Madon states that it is the case of defendant no.1 that the entire property belongs to defendant no.1 and cannot be partitioned as prayed for in the plaint. In view of these rival contentions and the fact that there is no change in circumstances after the order dated 10th February 2016 was passed and the suit is already ripe for arguments, it will be appropriate if the orders passed in this notice of motion including the statements of parties recorded in various order passed in the notice of motion, is confirmed as order passed in the notice of motion and notice of motion disposed. The notice of motion accordingly disposed.

7 At this stage, Shri Madon states that notice for perjury should be issued to the plaintiff. Since it is a family dispute, I am not inclined to issue any such notice at this stage. If defendant no.1 wishes to proceed on this issue, he may renew his prayer at the final hearing of the suit.

8 The suit be listed for arguments on 16th March 2016 at 3:00 p.m.

(K.R. SHRIRAM, J.)