

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

**NOTICE OF MOTION NO.1040 OF 2015
IN
SUIT NO.555 OF 2015**

Rajesh Ashwin Merchant

....Applicant/Plaintiff

V/s.

Sandip Ashwin Merchant & Ors.

....Defendants

Mr.Vishal Kanade a/w Ms.Kausar Bantawala i/by Tushar Goradia for the plaintiff/applicant.

Mr.Reshant Shah i/by Lex Conseiller for defendant nos.2 & 3.

Mr.Sanjeev Kochar-defendant no.3 present in person.

CORAM : K.R.SHRIRAM,J

DATE : 17.4.2017

P.C.:-

1 Mr.Shah appearing for defendant nos.2 & 3 on instructions from defendant no.3 (son of defendant no.2) who is present in Court undertakes to deposit within six weeks from today with the Prothonotary & Senior Master, High Court, Bombay 50% of the compensation/license fees received from/payable by defendant no.4 from the date the leave and license was created i.e., 19.2.2010 upto date. It is clarified that the amount that will be deposited is after adjusting 50% of the society dues paid by defendant nos.2 & 3. While depositing this amount, the defendant nos.2 & 3 shall file an affidavit enclosing therein the leave and license agreement with extension/further agreements and also render detailed accounts.

Copy of this affidavit to be provided to the plaintiff within a period of 3 days of filing the affidavit. Likewise all future compensation/license fees shall be deposited with the Prothonotary & Senior Master, High Court, Bombay.

Mr.Shah states that leave and license agreement is coming to an end by 30.6.2017 and as and when defendant nos.2 & 3 take possession back from the licensee, they shall inform the plaintiff's advocate within one week from taking possession.

2 Mr.Kanade appearing for the plaintiff states that when defendant nos.2 & 3 take back possession of the suit premises and inform the plaintiff about the same, the plaintiff may take out appropriate application if advised, to direct defendant nos.2 & 3 to pay at least 50% of the market rate. I am not making any observation on the statement of Mr.Kanade except that it is open for the parties to take such steps as advised and court would consider the same on merits.

3 It is clarified that above arrangement is without prejudice to the rights and contentions of the parties to be decided in the suit. The statement made by defendant no.2 & defendant no.3 as recorded in paragraph-2 of the order dated 17th March, 2015 shall continue until the disposal of the suit.

Notice of Motion accordingly disposed.

4 Defendant nos.2 & 3 have filed written statement. Mr.Kanade states on instructions that defendant no.1 has not filed written statement though served, so also defendant no.4. Therefore, the suit be proceeded against defendant nos.1 & 4 as undefended suit.

Stand over to 2.5.2017 for issues.

(K.R.SHRIRAM,J)