

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

**NOTICE OF MOTION No. 1015 OF 2011
IN
SUIT NO. 740 OF 2011**

Usha Meghani Abramovitz

...Applicant/Plaintiff

Vs.

**Vinaya Saijwani @ Madhu
Saijwani**

...Respondent/Defendant

Mr. Erach Kotwal a/w. Ms. S.W. Kamat a/w. Mr. Satchit Bhogle i/b.
Hariani & Co. for Applicant/Original Plaintiff

Mr. Uday Bhanusingh a/w Ms. Soni Tiwari i/b Manoj M. Kondekar for
Defendant

CORAM : M.S. SANKLECHA, J.
FRIDAY, 18TH AUGUST, 2017

P.C.

1. On 1st April, 2011, this Court, at the ad-interim hearing of this motion, passed the following order :-

“ Today, Motion was fixed for ad-interim hearing. I have heard the learned Counsels on both sides.

2. The suit flat set out in Exhibit 'a' was owned by father of the

Plaintiff and the Defendant. The Plaintiff has instituted this Suit for partition of the said flat and for other appropriate reliefs as set out in the plaint. The Plaintiff is presently staying in United States of America. After hearing learned Counsels on both sides, I suggested to learned Counsels on both sides that as and when the Plaintiff visits India, she will be able to reside in the suit flat and in order to enter the said flat after her arrival in India, the Plaintiff shall give one week's notice to the Defendant so that the Defendant will keep the said flat open for entry of the Plaintiff in the said flat. After the Plaintiff reaches Bombay, the Defendant shall make available to the Plaintiff all the keys in respect of the suit flat so that during the stay of the Plaintiff in India, the Plaintiff would be able to enter the suit flat without reference to the Defendant so as to have free egress and ingress and as the Plaintiff leaves India, the Plaintiff shall return the keys to the Defendant.

3. It was also suggested that this arrangement will continue till disposal of this Motion. The matter was kept back and parties were permitted to think over. On calling out it again, the learned Counsels on both sides accepted the suggestion. The learned Counsel for the Plaintiff informed the Court that the Plaintiff is presently in India and would like to stay in the suit flat and she wants to leave India by 6th or 7th April, 2011. Learned Counsel for the Plaintiff suggested that the keys in respect of the Suit flat be made available to the Plaintiff today itself so that the Plaintiff would be able to stay with the Defendant in the suit flat.

4. Since the suggestion given by the Court is accepted, following order is passed at the ad-interim stage :-

(i) Whenever the Plaintiff wishes to visit India and wants to reside in the suit flat, the Plaintiff shall give one week's notice to the Defendant about her arrival. On reaching India, the Defendant shall deliver to the Plaintiff keys in respect of the suit flat so that the Plaintiff will have free access to the suit flat.

(ii) The Plaintiff will retain the keys with her till she is in India and little before leaving India she will hand over the keys to the Defendant.

(iii) Since the Plaintiff is presently in India, the aforesaid arrangement shall operate so far as the present visit of the Plaintiff. Accordingly, the Defendant shall hand over the keys to the Plaintiff. Timing at which the keys will delivered to the Plaintiff would be fixed mutually by the Advocate for the Plaintiff and Advocate for the Defendant. Little before leaving India, the Plaintiff shall hand over the keys to the Defendant. While handing over the keys to the Plaintiff, a forwarding letter be given to the Plaintiff mentioning therein the make of the lock and the serial number of the keys if such a serial number is engrossed on the keys. It is clarified that the suit flat can be used by the Plaintiff and by her near relatives only. The suit flat cannot be used by an outsider.

(iv) It is clarified that in order to provide privacy, the

Defendant shall make available one bed room having attached w.c. and bath to the Plaintiff.

5. *This order is passed in the presence of the Plaintiff and Defendant.*

6. *The learned Counsel for the Defendant waives service of the Motion. The Motion is fixed for hearing on 15th June, 2011. Parties to complete the pleadings in the meantime.”*

2. Mr. Kotwal, learned counsel for the Plaintiff is pressing this motion only in respect of prayer clause (c), which reads as under :-

“(c) That pending the hearing and final disposal of this suit, the Defendant by a temporary order and injunction of this Hon'ble Court from preventing the Plaintiff from entering into the suit flat and for the said purpose , the Defendant be ordered and directed to provide keys of the suit flat to the Plaintiff.”

3. The order dated 1st April, 2011 was passed on the basis that the Defendant was permanently residing at the relevant time in India while the Plaintiff was a permanent resident of United States of America.

4. Mr. Bhanusingh, learned counsel for the defendant very fairly states that now she is also permanently residing in United States of America.

5. It is an agreed position between the parties that both these sisters are frequently visit India. In the above view, the ad-interim relief which required the Plaintiff when on a visit to India to obtain a key to the suit premises from the Defendant, who at that time was in India, would need to be varied.

6. Mr. Kotwal, learned counsel for the Plaintiff states that the Plaintiff is seeking to visit India in the 2nd week of September. In the above view, the advocate for the Defendant is directed to obtain keys which are presently in possession of the Defendant or or before 8th September, 2017 and hand over the same to the Advocates for the Plaintiff on or before 11th September, 2017. In the above view of the matter, the notice of motion is allowed in terms of prayer clause (c).

7. This is a dispute between two sisters in respect of the flat left by their late father. Both these sisters are presently residing at USA. It would be advisable for the two sisters to resolve their disputes and amicably settle their differences. The Advocates for the parties assure me that they would

assist the sisters in resolving their differences.

8. The Suit itself to come up on the board under the caption 'for settlement' on 9th October, 2017.

[M. S. SANKLECHA, J.]