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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1456 OF 2017

IN

SUIT NO.1161 OF 2009

Renu V. Grover And Anr. ...Plaintiffs/Applicants

vs

Ramesh L. Agarwal And 3 Ors. ...Defendants.

Mr. Y.R. Mishra, a/w. Mr. Upendra Lokegaonkar, for the
Plaintiffs/Applicants.

Mr. Aditya Shiralkar, a/w. Ms. Deepali Khare, i/b. Shiralkar & Co., for
Defendant Nos. 1 and 2.

Mr. Aditya Bhat, i/b. Sanjay Udeshi & Co., for Defendant No.3.

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CORAM : S.C. GUPTE, J.

DATED : 5 OCTOBER 2017

P.C. :

. This Notice of Motion is taken out by the Plaintiffs for reserving their entire evidence in rebuttal under Order 18 Rule 3 of the Code of Civil Procedure on all issues.

2. The present suit seeks a declaration that the Plaintiffs are lessees in respect of the suit property. The suit seeks a decree of possession and mesne profits based on this title. The onus to prove these issues is clearly on the Plaintiffs, and accordingly, Issues 1 to 6 are so framed as to cast the onus on the Plaintiffs. As far as the other issues are concerned, the onus is on the Defendants to prove their case as bonafide transferees for value and without notice. As far as the issues, the onus to prove which is on

the Plaintiffs are concerned, there is no question of the Plaintiffs reserving evidence in rebuttal. Evidence can be reserved in rebuttal only on those issues the onus to prove which lies on the opponent. There is no question accordingly of the Plaintiffs reserving their entire evidence on all issues under Order 18 Rule 3 of the Code of Civil Procedure. Insofar as Issue Nos. 1 to 6 are concerned, the onus being on the Plaintiffs, the Plaintiffs will have to lead their evidence fully on these issues. Insofar as Issues 7 to 9 are concerned, it is permissible to the Plaintiffs to reserve their evidence in rebuttal. So also, as far as Suit No.1138 of 2011 is concerned, the onus to prove the issues in this suit is primarily on the Defendants herein, who are Plaintiffs in that suit. The Plaintiffs herein, as the Defendants to that suit, will be entitled to lead their evidence in reply.

3. The Court is informed that the Plaintiffs herein have already led the evidence of two witnesses (PW1 and PW2). In case the Plaintiffs want to lead any further evidence on Issue Nos. 1 to 6 in their suit, they may do so within a period of eight weeks from today. In that event, the Plaintiffs shall file an affidavit of evidence of their next witness latest by 3 November 2017. In the event such affidavit is filed, the Commissioner already appointed for recording of evidence may proceed to hold sittings for cross-examination. In case no such affidavit is filed by 3 November 2017, the Plaintiffs' evidence on Issue Nos.1 to 6 shall be treated as closed. The Notice of Motion is disposed of in the above terms.

(S.C. GUPTE, J.)