

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

**NOTICE OF MOTION NO.2867 OF 2011
IN
SUIT NO.2274 OF 2010**

Sunetra Nikam & Ors.

....Plaintiffs

V/s.

Surekha S.Tankkar & Ors.

....Defendants/Applicants

None for the plaintiffs.

Ms.Yatin R.Shah a/w Ms.Aditi Bhat for defendants/applicants.

CORAM : K.R.SHRIRAM,J

DATE : 6.4.2017

P.C.:-

1 This Notice of Motion is taken out by the defendants to direct the plaintiff no.5 to hand over vacant and physical possession of the 1st floor of the building to the defendants. According to the applicants, the 1st floor of the building Hindmata Niwas does not have electricity connection or water connection and it was lying locked for many years but plaintiff no.5 has broken open the lock and taken forcible possession of the premises on 31.5.2011.

2 The plaintiffs had taken out a Notice of Motion for various reliefs and the said Notice of Motion is still pending. At the ad-interim stage, this Court was pleased to direct the defendants to maintain status-quo with reference to various properties which included the

Hindamata Niwas building. Mr.Shah states that in view of the injunction order, the plaintiff no.5 could not have taken forcible possession of the 1st floor of the building.

3 The injunction order only restrained the defendants from creating any 3rd party rights with reference to Hindamata Niwas building among other properties. There is no order against the plaintiffs.

4 The plaintiff no.5 is not present though served and affidavit in reply opposing the Notice of Motion has also not been filed.

5 First of all, Notice of Motion itself was not moved for urgent ad-interim order in the last six years. Moreover, if the plaintiff no.5 has taken forcible possession, Mr.Shah states that plaintiff no.5 be directed not to part with possession of the 1st floor premises pending the disposal of the suit. In my view, no prejudice will be caused, If such a direction is passed. Therefore, Plaintiff no.5 shall not part with possession of the 1st floor premises Hindamata Niwas to any party.

Notice of Motion accordingly disposed.

6 Mr.Shah states that there is a connected Testamentary

Suit which has to be heard first because if that suit is disposed, nothing will survive in the present suit. Hence, Testamentary Suit No.73 of 2011 be listed on 4.5.2017 for receiving evidence/marking of documents on which date, attesting witness/s of the plaintiffs shall remain present in court.

(K.R.SHRIRAM,J)