

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

**NOTICE OF MOTION NO.7 OF 2014
NOTICE OF MOTION NO.1735 OF 2016
IN
SUIT NO.2229 OF 2012**

Jagat Vishwa Khanna

....Plaintiff

V/s.

Kiran Vishwa Khanna & Ors.

....Defendants

Mr.Mayur Khandeparkar a/w Mr.V.A.Joshi i/by Chitnis Vaithy and Co.
for the plaintiff.

Mr.S.L.Shah i/by Shah Legal for defendant nos.1 to 3.

**CORAM : K.R.SHRIRAM,J
DATE : 17.4.2017**

P.C.:-

1 Mr.Mayur Khandeparkar appearing for the plaintiff submits a statement of the amount deposited with the Prothonotary & Senior Master, High Court, Bombay and the further amounts payable by the developer Paranjape Scheme Construction Limited as rent for alternative accommodation since the building has gone for redevelopment. A copy of the same has been given to Mr.Shah. Mr.Shah appearing for defendant nos.1 to 3 states that prima facie, he does not find anything incorrect in the statement.

2 Both the counsel by consent request that the following order be passed :

ORDER

(a) the amount of Rs.17,81,856/- together with accumulated interest be distributed by the Prothonotary & Senior Master by handing over 50% of this amount to the plaintiff and remaining 50% to defendant no.1 ;

(b) Future rent payable from 1.4.2017 onwards also be distributed at 50% to the plaintiff and 50% to the defendant no.1. So far as future rent is concerned, both the counsel state that they will forward a copy of this order to the builder-Paranjape Scheme Construction Limited and request the builder-Paranjape Scheme Construction Limited to pay the rent amount equally to the plaintiff and defendant no.1 ;

(c) So far as the amount of Rs.46,82,608/- together with accumulated interest is concerned, this amount be paid by the Prothonotary & Senior Master in equal proportion to the plaintiff, defendant no.1, defendant no.2 and defendant no.3, i.e., 25% each ;

(d) This order is passed without prejudice to the rights and contentions of the parties and it is subject to finalization of accounts at the time of hearing

and final disposal of the suit.

3 In view of the above, counsel jointly request that both the Notices of Motion be considered as disposed.

4 Mr.Shah submits that it should not be considered that the defendants are giving up their defence that the suit is barred by limitation. Mr.Shah states that determination of this issue be deferred to the final hearing of the suit. Mr.Khandeparkar is agreeable and on instructions, states that the plaintiffs will not contend at the hearing of the suit, that by virtue of the above order, the defendants should be deemed to have given up or waived the issue of limitation.

5 Both the Notices of Motion accordingly disposed.

6 Since the pleadings in the suit are complete, suit be listed for issues on 25.4.2017 on which date parties to come with agreed draft issues and a separate list of draft issues on which they are unable to agree.

(K.R.SHRIRAM,J)