

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.2192 OF 2012**

**IN
SUIT NO.2229 OF 2012**

Jagat V.Khanna

....Plaintiff

V/s.

Kiran V.Khanna & Ors.

....Defendants

**WITH
NOTICE OF MOTION NO.7 OF 2014
NOTICE OF MOTION NO.1735 OF 2016**

Mr.V.A.Joshi i/by Chitnis Vaithy & Co. for the plaintiff.

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

**CORAM : K.R.SHRIRAM,J
DATE : 6.4.2017**

P.C.:-

1 This is a partition suit filed by a son against his mother and his two sisters. Defendant no.1 is the mother and defendant nos.2 & 3 are his sisters. After the suit was filed, the plaintiff took out a Notice of Motion No.2192 of 2012. In response, the defendants took out a Notice of Motion bearing (L) No.1691 of 2015 praying for the court to frame preliminary issue under Section 9A of the Code of Civil Procedure, 1908. The court was pleased to frame preliminary issue on 11.9.2015 and disposed the said Notice of Motion. The preliminary issues framed are as under :-

- (1) Whether the suit as filed, is barred by limitation ?
- (2) Whether this court has jurisdiction to entertain and try the suit ?

2 Before the preliminary issue was framed, the plaintiff took out another Notice of Motion being No.1735 of 2016- (a) to direct the Prothonotary & Senior Master to transfer and to pay over the monthly rental compensation deposited by the developer to the plaintiff and (b) for a direction that the plaintiff alone shall be entitled for monthly rental compensation to be paid by the developer during the course of re-development of the suit property viz. flat no.126/15, Mayur Co-operative Housing Society Ltd., (the said flat). Before the preliminary issue was framed, the defendants also filed a Notice of Motion No.7 of 2014 seeking directions against the plaintiff to vacate the said flat and to direct the developer to divide the corpus fund equally between the plaintiff and the defendants.

3 On 25.9.2014 when the Notice of Motion came up for hearing, the court referred the parties to mediation. I am unable to trace the mediator's report on record but since the parties are still at logger heads, I would assume that mediation has failed. In fact, there is no reference to that mediation in the subsequent orders.

4 It appears that due to the dispute between the plaintiff and the defendants, redevelopment work was getting affected and therefore, developer filed an arbitration petition being Arbitration

Petition No.386 of 2015 in this court. By an order dated 10.3.2015, the court disposed of the arbitration petition by directing the parties not to come in the way of redevelopment and also directing the developer to deposit the corpus fund and monthly compensation in this court. That is the reason why in March-2015 the plaintiff filed Notice of Motion No.1735 of 2016 for seeking directions to be paid over monthly compensation deposited by the developer.

5 Today, Mr.Joshi for the plaintiff states that the reliefs as sought in the Notice of Motion No.2192 of 2012 do not survive and seeks leave to withdraw the Notice of Motion. Notice of Motion dismissed as withdrawn.

6 In view of the withdrawal of this Notice of Motion, the court need not go into the issues framed under section 9A at this stage because the issue under Section 9A was framed in view of the plaintiff filing the Notice of Motion No.2192 of 2012. Moreover, the defendants having taken out Notice of Motion No.7 of 2014 are deemed to have submitted to the jurisdiction of this court. The defendants have also filed the written statement. I have considered the written statement in which the defendants have, by an amendment dated 6.10.2016, raised issue of limitation. The issue of limitation could be decided as a preliminary issue along with all other

issues.

7 In the circumstances, Notice of Motion No.7 of 2014 and Notice of Motion No.1735 of 2016 be listed for directions at 3.00 P.M. on 11.4.2017.

(K.R.SHRIRAM,J)