

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1066 OF 2016**

IN

SUIT NO. 2087 OF 2012

Rashtriya Bhim Sena

...Plaintiff

Versus

Sunderlal S Irban & Anitadevi S Nirban

...Defendants

WITH

NOTICE OF MOTION NO. 1601 OF 2015

IN

SUIT NO. 2087 OF 2012

Mr Sanjeev Sawant, i/b Deepak R Kushwaha, for the Plaintiff.

**Mr Rakesh K Agrawal, for the Defendants Nos. 1 & 2 / Applicant in
NMS/1066/16.**

CORAM: G.S. PATEL, J

DATED: 23rd January 2017

PC:-

I. NOTICE OF MOTION NO. 1601 OF 2015

1. There was an order dated 20th August 2014 (SC Gupte J) on the Defendants' Notice of Motion No. 64 of 2014. This was a detailed order. Paragraph 14 of this order reads:

“Learned Advocate for the Defendants, upon instructions from his clients, states that his clients shall not create any third party rights in respect of the suit property until further orders. The statement is accepted.”

2. It is important, however, to also note what was then stated in paragraph 15 of that very order. It reads:

“15. Learned Counsel for the Plaintiff also states, on instructions of Ravi Rajan Pandayan, who is also present in Court, that the Plaintiff and the said Ravi Rajan Pandayan shall also not create any third party rights in, or part with possession, of the suit property, pending the execution of the orders passed in eviction proceedings under the Maharashtra Rent Control Act.”

3. It is a common ground even today that the statement made on behalf of the Defendants in paragraph 14 continues to hold the field and has not been disturbed at any stage. The Plaintiffs’ present apprehension that third party rights will be created despite this order is completely unwarranted. The statement made and accepted operates as an effective injunction. If there is any variation, modification or recall, that can only be done by a subsequent order of the Court, and none have applied for such a relief. If a party bound by the order acts in breach of it, the inevitable consequences will follow.

4. There is, therefore, no reason to grant any further relief to the Plaintiffs today. In my view, their interests are fully protected by paragraph 14 of the order dated 20th August 2014.

5. The Notice of Motion is disposed of with these observations.

II. NOTICE OF MOTION NO. 1066 OF 2016

6. This Notice of Motion is filed by the Defendants. It seeks that an amount of Rs 8,00,000/- deposited in this Court pursuant to the orders passed in the Defendants' previous Notice of Motion No. 64 of 2014 be allowed to be withdrawn. This is said to be necessary in part satisfaction of a decree dated 30th July 2012 read with the order of 15th February 2006 passed by the Competent Authority under the Maharashtra Rent Control Act; itself said to have been confirmed by the Supreme Court.

7. The Plaintiffs are entitled to reply to this; the reason being the previous order of SC Gupte J and the directions contained in paragraph 15 as also in paragraphs 12 and 13 of that very order, which read as follows:

"12. Learned Counsel for the Defendants states that his clients, who have withdrawn the sum of Rs. 8 lacs deposited by Ravi Rajan Pandayan in the eviction proceedings without prejudice to the rights and contentions of the parties, would bring back the said amount into this Court, subject however to the liberty to the Defendants to claim

the said amount in execution proceedings to be filed in respect of the orders passed the eviction proceedings, *inter alia*, for payment of interim compensation and its arrears.

13. The statement is accepted. The Defendants may bring in the amount of Rs. 8 lacs in the Court, within a period of eight weeks from today. The amount shall be invested by the Prothonotary and Senior Maser of this Court in a fixed deposit of a Nationalized Bank, initially for a period of one year and thereafter renewable from time to time. The amount shall be abide by the orders that may be passed by this Court in the present suit or, as the case may be, in the execution proceedings to be filed by the Defendants for execution of the orders passed in favour of the Defendants in the eviction proceedings under the Maharashtra Rent Control Act.”

8. Affidavit in Reply to be filed and served on or before 10th February 2017. There will be no extension of time. List the Notice of Motion high on the daily board for hearing and final disposal on 13th February 2017.

(G. S. PATEL, J.)