

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

**NOTICE OF MOTION (L) NO.2409 OF 2017
IN
APPEAL (L) NO.428 OF 2017
IN
NOTICE OF MOTION NO.1867 OF 2017
IN
SUIT NO.585 OF 2017**

Pushpakumar Sharma ... Applicant

In the matter between :

M/s Unique Processing Industries & Ors. Appellants

versus

Mohamed Mushtaq Ali Laljee & Ors. ... Respondents

And

Jai Prakash Prajapati ... Respondent No.4

.....

- Mr.A.G. Damle, Senior Advocate a/w. Mr.R.G. Singh, i/b. Legal Liasions, Advocate for the Appellants/Applicants.
- Mr.Chirag Mody, a/w. Mr. Munaf Virjee, Ms. Etika Srivastava, Nishith Sharma, i/b. ABH Law, Advocate for the Respondents.
- Mr.V.S. Panandikar, Assistant, Court Receivers Office, present.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 29th NOVEMBER, 2017.**

P.C. :

1. The above Appeal challenges the order dated 22/11/2017 passed by a Single Judge of this Court. By the said

order directions came to be issued as contained in paragraph No.5(a) so as to protect the property pending consideration of the Notice of Motion for further ad-interim reliefs. The learned Senior Counsel on behalf of the Appellants has drawn our attention to the affidavit of the Respondent No.1 filed in Execution Application No.368/17, wherein the Appellant has raised contentions as regards the manner in which the possession of the suit premises was sought to be taken by the Plaintiffs through the Bailiff. It was the statement of the learned Senior Counsel that the directions have been issued by the learned Single Judge in the absence of the material being placed before the learned Single Judge by the Appellant i.e. the original Defendant Nos.1, 3 and 4. The said fact is not disputed by the learned Counsel Mr.Mody, appearing on behalf of the Plaintiffs. It was his contention that the Defendant No.3 was however very much present before the Court.

2. Be that as it may. The learned Counsel Mr.Mody, appearing for the Respondent i.e. the Plaintiffs, on instructions

makes a statement that the Plaintiffs have no objection if the direction contained in paragraph No.5(a) relating to the appointment of the Court Receiver and the sealing of the premises, is set aside and the said issue is once again considered by the learned Single Judge. The learned Counsel further states that the injunction which is contained in the later part of paragraph No.5(a), however be continued. To this the learned Senior Counsel for the Appellants i.e. original Defendant Nos.1, 3 and 4 has no objection.

3. Since we are informed that the above Notice of Motion would come up before the learned Single Judge for consideration for the grant of further ad-interim reliefs on 19/12/2017, the aspect of appointment of Court Receiver and the sealing of the premises can be considered by the learned Single Judge on the said date.

4. In view of the statement by the learned Senior Counsel for the Respondent i.e. the original Plaintiffs, the above Appeal can be conveniently disposed of by the following order :

ORDER

- (1) The direction as regards the appointment of Court Receiver and he taking possession and sealing the premises is set aside. However, the injunction would continue to operate.
- (2) Since the above Notice of Motion is to come up on 19/12/2017 for consideration of the grant of further ad-interim reliefs, it is on the said day or any other day that the matter would come up that the application for consideration of the appointment of the Court Receiver and the sealing of the premises be considered by the learned Single Judge.
- (3) The Appellants herein i.e. the Defendant Nos.1, 3 and 4 would file their affidavit-in-reply within one week from date. Rejoinder to be

kept ready by serving an advance copy on the learned Advocate appearing for the Respondent Nos.1, 3 and 4 and to be filed in the Court two days prior to 19/12/2017.

(4) Needless to state that the contention of the parties are kept open for being urged before the learned Single Judge in respect of the appointment of the Court Receiver as also the injunction.

5. With the directions as aforesaid, the Appeal is disposed of.

6. In view of the disposal of the Appeal, the Notice of Motion does not survive and to accordingly stand disposed of as such.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)