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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 232 OF 2017
IN
SUIT NO. 3228 OF 1997**

Farrokh Pudam Mistree & Anr	...Plaintiffs
<i>Versus</i>	
Ruzbeh Cherag Mistree & Ors	...Defendants
<i>And</i>	
Humlog Coop Hsg Soc Ltd	...Applicant

Mr Rohaan Cama, *with Soniya Putta, i/b Solomon & Co., for the Plaintiff.*

Mr JV Parmar, *for Defendants Nos. 1 and 2.*

Mr Ashish Kamath, *with Shobhana R Waghmare, i/b Mulani & Co., for the Applicant.*

**CORAM: G.S. PATEL, J
DATED: 18th January 2018**

PC:-

1. Heard. This is a Notice of Motion first for intervention and then for a clarification of an order dated 26th July 2001.

2. The Notice of Motion is filed by the Humlog CHS Ltd. This is not a party to the Suit. The two Plaintiffs and the first two Defendants are in a dispute about certain properties and matters that belong or belonged to a Trust known as the Khan Bahadur

Jehangeer and Mrs Rusttonbai Jehangeer Cursetjee Mistree Religious Trust. The length of the Trust's name is perhaps exceeded only by the extent of the properties it owned at Malad. According to the two Plaintiffs, the first two Defendants mismanaged or mishandled large portions of the Trust property. The first two Defendants are alleged to have alienated impermissibly portions of the Trust property, including through one NB Shah. One of the properties that he transacted was a tract of land of about 2,700 sq yards No. 2B, part of Survey No. 7, Hissa No. 2 at Orlem Village in Malad, Greater Bombay. Apparently, there was a lease of 14th December 1965 ostensibly on behalf of the Trust through one or the other of the two Defendants, or perhaps both, in favour of Shah. There was then a litigation in 1967 with NB Shah which culminated in consent terms in 1969. On 1st July 1970, Shah entered into a Deed of Assignment of his leasehold interest with the Applicant-Society.

3. The present Suit was not filed for another 27 years till 1997. Several developers were joined but not NB Shah. The Applicant was not joined. Allegations were made of the 1st and 2nd Defendants mismanaging and wasting the Trust properties, including Plot No. 2B, and an application was made for interim relief in Notice of Motion No. 1682 of 1990. This resulted in an elaborate order of 26th July 2001 of FI Rebello J (as he then was). A copy of this order is annexed. Rebello J observed at pages 84 to 86 of this order as part of paragraph 14 that extensive third party rights have been created in the time that had lapsed and orders had been obtained by some of the Trustees from this Court in Trust Petitions permitting alienations. There is a specific reference in that order to NB Shah

and the buildings constructed on Plots Nos. 2A, 2B and 2C. The order is that in view of these subsequent developments injunctive reliefs in respect of those plots could not be granted. Plot No. 2B is the very one in question today.

4. This is the context in which Mr Kamath submits, and in my view with considerable justification, that if the Applicants' rights over Plot No.2B are to be affected by this suit, or if their right to develop or re-develop that property are to be affected, they should be allowed to be heard.

5. To my mind, the matter is much simpler than that. Mr Kamath's clients, the Society, cannot possibly bound by the orders passed in a civil suit to which they are not parties. If their rights as lessees or sub-lessees are sought to be affected or if the registered documents in their favour are sought to be questioned, then they must be joined as party-defendants to the Suit, given notice of an application to implead them, and, if joined, must be fully heard on any application for interim relief that affects them. In a civil suit, nothing short of this will suffice. There is no question of the Applicants facing an indirect or circuitous injunction or one that falls on them by necessary implication. There is no such thing. If, as Mr Cama for the Plaintiffs says, the transactions with NB Shah are called into question, then the reliefs available to the Plaintiffs are plain. They can move for restitution or damages against those trustee-Defendants who trucked with NB Shah, to seek reparations, restitution or damages; or they can seek a cancellation of those transactions by joining NB Shah (and even he is not a party to these proceedings) and those with whom, in turn, NB Shah had dealings.

Any such application will of course have to be heard on its own merits with all contentions being left open including on delay, laches and limitation. But the one thing that is not possible is for the Plaintiffs to seek and obtain some sort of a restraint against a third party or downstream entity without that entity or party being joined to this Suit. As between the Plaintiffs and the 1st and 2nd Defendants, naturally, all contentions are kept open.

6. The Notice of Motion can be simply disposed of with a clarification that in view of the observations dated 26th July 2001, there is no restraint whatsoever either directly or indirectly against the Applicant-Society.

7. The Notice of Motion is, therefore, made absolute in terms of prayer clause (b). No further directions are required. There will be no order as to costs.

(G. S. PATEL, J)