

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

**NOTICE OF MOTION NO.291 OF 2013
IN
SUIT NO.115 OF 2013**

Liberty Oil Mills Limited	...	Applicant/Plaintiff
Versus		
Sunil Amritlal Shrivastav		
And Another	...	Respondents/Defendants
.....		
Ms. Eventa A. Gonsalves for the Applicant/Plaintiff.		
.....		

CORAM : S.C.GUPTE, J.

DATE : 26 OCTOBER 2018

P. C. :

. The present Notice of Motion is taken out under Order 38 Rule 5 of the Code of Civil Procedure, 1908 for attachment before judgment. The suit claim is in respect of monies of the Plaintiff which have been allegedly misappropriated by the Respondents/Defendants. Learned Counsel for the Plaintiffs submits that the Plaintiff has a good case on merits. Learned Counsel also submits that it is a serious case of forgery and fabrication. Even a criminal case is pending before the Chief Magistrate Court at Jalna. The Plaintiff apprehends that the Defendants may dispose of their properties to defeat the claim of the Plaintiff that may be considered by this court and an appropriate interim injunction, if not attachment, should be passed in favour of the Plaintiff. The Plaintiff relies on the admission of Defendant No.1 contained in a statement which is annexed as Exhibit 'B' to the plaint. Defendant No.1 appears to have admitted in this document

which is under his signature (the signature is not disputed by Defendant No.1) that the amount of Rs.1.92 crore was incorrectly shown as payment to the Head Office of the Plaintiff and these were forged entries in the record of the company. Defendant No.1 even enclosed the revised statement of account and even admitted utilization and misappropriation of the amount for some construction work.

2 There is no reply to the notice of motion, though a written statement has been filed by both Defendants. None appears for the Defendants today. Even on the last two occasions, i.e. on 7 December 2017 and 21 September 2018, none had appeared for the Respondents/Defendants. On the last occasion, the matter was stood over as a last chance.

3 Since none appears and shows cause, the Plaintiff's contention concerning both *prima facie* merits of their case and attempts on the part of the Defendants to dispose of their properties with a view to defeat a decree that may be passed in favour of the Plaintiff, will have to be accepted. There is no dispute that the properties described in prayer clauses-(a) and (b) of the notice of motion are owned by Defendant No.1. The Plaintiff's apprehension, in the premises, is well founded.

4 Accordingly, the Notice of Motion is allowed in terms of prayer clauses- (b) and (c), which are quoted below :

“(b) Pending and final disposal of the suit the 1st Defendant's servants and agents be restrained by an order and injunction by this Hon'ble Court from selling, transferring, assigning or creating any third party rights, in respect of suit plot No.15, admeasuring 65.50 sq. meters with load bearing bungalow standing thereon admeasuring 700.65 sq. feet, bearing

municipal House No.622/11/48/59 and situate at District Nasik, Taluka Nasik (Pt) within the limits of Nasik Mahanagarpalika, Mauje, Dasak and N.A. Plot bearing certificate No.30/1/1A/2 and Vehicles bearing Nos :-

1. M.H. 15 CD 8110 Car
2. M.H. 04 CW 767 Car
3. M.H. 15 be 8110 Pulsar

(c) Pending the hearing and final disposal of the suit, the Defendants be directed to truly and faithfully disclose, the immovable and movable properties standing in their individual names and in the names of their family members including their respective parents and brothers and sisters.”

5 The Notice of Motion is disposed of accordingly.

6 Since the Defendants have filed their written statements, let the Suit to appear on board for framing of issues on 30 November 2018.

(S.C. GUPTE, J.)