

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

NOTICE OF MOTION NO. 869 OF 2012

IN

SUIT NO. 318 OF 1997

Saroj Prakash Mahadik & Anr.

...Plaintiffs

Vs.

Venkatesh Rajaram Shetye & Ors.

...Defendants

Ms.R.C. Nichani I/b. Shubha Dandekar for Plaintiffs.

Mr.D.A. Athawale for Defendants.

CORAM : S.C. GUPTE, J.

DATE : 11 JANUARY 2018

P.C. :

Heard learned Counsel for the parties.

2 This notice of motion is taken out under the provisions of Order 39 Rule 2-A of the Code of Civil Procedure. It alleges breach on the part of Defendant No.1 of an order injunctioning him from creating third party rights as also of an order directing him to file accounts. As far as the matter of filing of accounts is concerned, there is an adequate explanation tendered by Defendant No.1 in paragraphs 4 and 5 of his affidavit in reply. The Defendant has submitted that there was only some delay in filing accounts for some years and that since the accounts were not filed in time, the office refused to take them on record. Learned Counsel submits that in the meantime, originals of some of these accounts were lost but that the Defendant is ready with copies and shall furnish these copies to the Petitioner and also file them in court. On his undertaking to do so, this part

of the notice of motion can be disposed of.

3 Insofar as the ground of creation of third party rights is concerned, the Plaintiff has referred to three instances in support of her application in contempt. Firstly, it is submitted that despite the order preventing Defendant No.1 from creating third party rights, Defendant No.1 has created third party rights in favour of Annapurna Apna Parivar in respect of Shop No.6 at Bhavani Bhavan Co-operative Housing Society Ltd., Bhavani Shankar Road, Dadar (West), Mumbai, which admittedly forms part of the estate of the deceased. The Defendant has denied having created third party rights. The Defendant in his affidavit has submitted that he is a member of Annapurna Apna Parivar and as a member, he was conducting business from Bhavani Bhavan shop and even this business, which was conducted from July 2003, has since been discontinued in 2008 and there has been no third party right created in favour of any party. In fact, the agreement concerning this business makes it clear that in view of the injunction order passed by this court, no right of any nature could be created by virtue of that agreement. There is, thus, no case made out for proceeding in contempt in respect of this instance. In respect of the other instances of third party rights, it is submitted that for a certain shop, which forms part of the estate and which was held by a tenant, Defendant No.1 has now been accepting rent from another person. Defendant No.1 has explained in his affidavit that original tenant, Mr.S.S. Parmar, had died and that after his death, his son was paying rent for the shop. The alleged instance appears to be a matter of inheritance and not transfer of tenancy. There is no case made out here to proceed against Defendant No.1 in contempt. The third instance is of business conducted in the name of Prabha Flour Mill. It is submitted that the business was owned by the

deceased father of the parties and that this business, after his death, is being conducted by Defendant No.1. First of all conducting this business after the death of his father is not prevented by the order of injunction passed against Defendant No.1. Secondly, it is his case that this business was originally being carried on in the name of his mother and she was a tenant in respect of the premises used for this business. It is denied that this premises or business forms part of the estate of the deceased. On these pleas, which need to be decided in the suit, there is no case made out for proceeding in contempt against Defendant No.1.

4 There is accordingly no merit in the notice of motion and the same is dismissed. No order as to costs.

5 In pursuance of his statement, Defendant No.1 tenders four original affidavits, which contain statements of accounts ordered by this court. The same are taken on record. The Defendants shall handover upto date accounts / affidavits within two weeks from today. In case any affidavit disclosing earlier accounts is not yet served on the Plaintiffs' Advocate, Defendant No.1 may do so. This direction must be complied with by the end of the next week.

(S.C. GUPTE, J.)