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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1040 OF 2009
IN
SUIT NO.274 OF 2009**

Lilavati K Mehta Medical Trust & Anr ...Plaintiffs
Versus
Sharan P Khanna & Ors ...Defendants

**WITH
NOTICE OF MOTION NO.1676 OF 2008
IN
SUIT NO.1423 OF 2008**

Sharan P Khanna & Anr ...Plaintiffs
Versus
UTI Infrastructure And Services Limited & Ors ...Defendants

**WITH
NOTICE OF MOTION NO.374 OF 2010
IN
SUIT NO.1423 OF 2008**

Sharan P Khanna & Anr ...Plaintiffs
Versus
UTI Infrastructure And Services Limited & Ors ...Defendants

WITH

CHAMBER SUMMONS NO.1542 OF 2016

IN

SUIT NO.274 OF 2009

Lilavati K Mehta Medical Trust & Anr ...Plaintiffs

Versus

Sharan P Khanna & Ors ...Defendants

WITH

NOTICE OF MOTION NO.1999 OF 2016

IN

SUIT NO.274 OF 2009

Lilavati K Mehta Medical Trust & Anr ...Plaintiffs

Versus

Sharan P Khanna & Ors ...Defendants

WITH

CHAMBER SUMMONS NO.1764 OF 2016

IN

SUIT NO.274 OF 2009

Lilavati K Mehta Medical Trust & Anr ...Plaintiffs

Versus

Sharan P Khanna & Ors ...Defendants

**Mr Raghav Gupta, i/b Wadia Ghandy & Co, for the Plaintiff in Suit
No.274 of 2009**

**Mr Jayesh Mestry, i/b RMG Law Associates for the Plaintiff in Suit
No. 1423 of 2008 and for Defendant Nos. 1 to 27 in Suit No. 274
of 2009 for the Defendant.**

Mr Pesi Modi, Senior Advocate, *with Mr Neville Lashkari & Ms Kanchan Gupta i/b VBA Legal for Defendant Nos. 28 and 29 in Suit No. 274 of 2009 and for Defendants Nos. 1 to 3 in Suit No. 1423 of 2008.*

Ms Sayli Apte, *i/b PG Lad for Defendant No.30.*

Mr Hemant Prabhulkar, *with Mr Ranjeet Vaghani i/b Jurisperitus Mumbai for Defendant No. 41 in Suit No. 274 of 2009 and Applicant in Chamber Summon No. 1542 of 2016.*

Mr Bhupesh Dhupatkar, *with Ms Aditi Gupta i/b M/s Thakore Jariwala & Associates, for Defendant No. 47 in Suit No.274 of 2009 and Applicant in Chamber Summons No. 1764 of 2016.*

CORAM: G.S. PATEL, J
DATED: 7th February 2018

PC:-

**NOTICE OF MOTION NO. 374 OF 2010 AND
NOTICE OF MOTION 1676 OF 2008 IN SUIT
NO.1423 OF 2008**

1. The 1st and 3rd Defendants agree to deposit an amount of Rs.1,19,42,448/- within four weeks in this Court with the Prothonotary and Senior Master. This is the earnest money with interest up to 26th July 2007, on which date this amount was tendered to the Plaintiff, who refused it.

2. Mr Modi for 1st and 3rd Defendant states that interest as against his clients will necessarily stop running when those Defendants made that offer and tender. That is generally correct in law. To put the matter beyond all controversy, I have asked for that

amount to be deposited in Court. The 1st and 3rd Defendants have agreed to do so in four weeks. The amount deposited is to be invested by Prothonotary and Senior Master in nationalised Bank in accordance with the usual practices of his office.

3. Suit No.1423 of 2008 is a suit for specific performance. The owner of the building in question namely Lilawati Hospital is UTI Infrastructure Services Limited, a Central Government undertaking. There are 28 flats in building No.16 which is subject matter of the Suit. There are also 20 car parking spaces. These flats have been vacant for the last 10 years. This will undoubtedly have affected their condition because they require maintenance and upkeep. The suggestion from Mr Modi for 1st and 3rd Defendants is that UTI be permitted to give these on leave and license on regular terms. UTI agrees that it will maintain accounts of the these licenses, including as to security deposits and monthly license fees, as also costs incurred from the license fees towards maintenance, upkeep and outgoings.

4. I believe this suggestion deserves to be accepted if the asset is to be preserved. Defendants Nos. 1 and 3 are not to sell or dispose of Building No. 16 or any of its flats or car parking spaces without leave of the Court obtained after at least two weeks' notice to the other side. They may, however, give all the flats on leave and license on suitable terms not exceeding five years. The Plaintiff and the trustees of the Lilawati Hospital Trust may approach UTI for taking one or more of these flats on leave and license basis on regular commercial terms.

5. UTI will maintain separate accounts of all these transactions including the amounts received as security deposits, and monthly license fees. It is also to maintain accounts of all drawdowns from the amounts fetched, and these amounts drawn down shall be used only to meet the management, upkeep, maintenance and outgoings, including all municipal and other taxes, levies and cesses in respect of the building.

6. At this stage no further order are required. The ad-interim injunction granted on 16th May 2008 will be varied to this limited extent.

7. I believe this order is required in the interests of both sides and sufficiently protects the property while at the same time ensuring that there is no loss to the suit property caused on account of the pendency of the suit.

NOTICE OF MOTION NO.1764 OF 2016 IN SUIT NO. 274 OF 2009

8. Not on board. By consent taken on board.

9. The 47th Defendant seeks to be transposed as 2nd Plaintiff (in place of the Hon'ble Mr Justice JN Patel, retired Judge of this Court). Unfortunately, the 47th Defendant has entered a written statement contesting the Suit and making allegations against the 1st Plaintiffs, including saying that suit is not maintainable, and also

making allegations of forgery and other varieties of nefarious wrongdoing. An alleger of such allegations cannot seek to join hands with the allegee. The 47th Defendant cannot possibly prosecute both the suit and the written statement in opposition to it. The Chamber Summons is a triumph of ambition over logic. It should be dismissed. And it is.

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10. This is an application by the 41st Defendant (Chetan Mehta) to be transposed as 2nd Plaintiff and for the deletion of Justice JN Patel as 2nd Plaintiff. The Suit was filed by or through another Trustee, Vijay Mehta, and by orders of the Supreme Court Justice JN Patel was directed to carry forward the Suit.

11. I will not allow this Chamber Summons. I believe it is unnecessary. The 41st Defendant *qua* Trustee of the 1st Plaintiff may support the Plaintiffs against all other Defendants. All contentions in that behalf are kept open. There is no reason to cause a transposition given the past history in the matter. All contentions of 41st Defendant in regard to the Plaintiff and other Defendants are expressly kept open.

12. It is made clear that 1st Plaintiff Trust will be able to draw on any of its Trustees, including the 41st Defendant, at the stage of trial.

13. The dismissal of this Chamber Summons does not mean, obviously, that the 41st Defendant has been removed as a trustee. This order returns no such finding. It has no impact whatsoever on the continued trusteeship of 41st Defendant, Chetan Mehta. This decision is only in regard to the trial of the Suit. I have made no assessment on the continuance of any of the Trustees.

NOTICE OF MOTION NO.1040 OF 2009 IN SUIT NO. 274 OF 2009

14. The motion seeks an injunction and appointment of the Court Receiver in respect of a building No.16 at Bandra Reclamation and which is the subject matter of the agreement. I have by a separate order passed today in Notice of Motion No.374 of 2010 and Notice of Motion No 1676 of 2008 in Suit No.1423 of 2008 allowed that building to be given on leave and license by the 1st and 3rd Defendants to that Suit (UTI Infrastructure and Anr) and passed detailed directions to ensure that the property is preserved and maintained pending the suit. I have also prohibited the sale or disposal by UTI of that building without leave of the Court. The result of this is that the prayer for an injunction and the appointment of a Court Receiver in the present Notice of Motion No. 1040 of 2009 are both entirely unnecessary. I will dismiss the Notice of Motion No.1040 of 2009 as infructuous but with liberty to the parties to apply, should the need arise, including for the same reliefs or any variation or modification of the present order.

**NOTICE OF MOTION NO. 1999 OF 2016 IN SUIT
NO. 274 OF 2009**

15. That only leaves Notice of Motion No.1999 of 2016. This is the 1st Defendant's motion seeking rejection of the Plaint on various grounds.

16. At the request of the 1st Defendant list the matter on 27th February 2018.

(G. S. PATEL, J)