

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

NOTICE OF MOTION NO.1017 OF 2013

WITH

NOTICE OF MOTION NO.46 OF 2014

IN

SUIT NO.779 OF 1984

Shri Subhash M. Gurjar

....Plaintiff

Vs.

M/s. Lokmitra Press & Publications Pvt. Ltd. & Ors.

....Defendants

Mr. R.V. Govilkar a/w. Ms. Shaba N. Khan for applicant/plaintiff.

Mr. Dushyant Kumar a/w. Mr. H.C. Pimple for respondent no.2 in NMS/46/2014.

Mr. Ajay B. Malvankar, Section Officer, representative of Court Receiver present.

CORAM : K.R.SHRIRAM, J.

DATE : 30th OCTOBER 2018

P.C.:

NOTICE OF MOTION NO.1017 OF 2013

1 This notice of motion is to recall the order dated 22nd March 2013, restore the suit and hear the notice of motion (lodging) no.587 on merits.

2 For reasons mentioned in the affidavit in support, notice of motion is allowed and accordingly disposed in terms of prayer clauses - (a), (b) and (c).

3 Notice of motion (lodging) no.587 of 2013 is restored to file. So also suit no.779 of 1984.

NOTICE OF MOTION NO.46 OF 2014

1 Respondent no.2 has filed an affidavit in reply through one

Ashok K. Dhamankar affirmed on 10th August 2017. There are quite a few documents which are in Marathi language annexed to the affidavit at Exhibit “E”, “F”, “G” and “H”. No English translation is provided and therefore, this Court cannot accept the averments made in the affidavit in reply. In any event, Mr. Kumar, counsel appearing for respondent no.2 states that after possession was taken from Court Receiver, the property remains as it is and nothing more has been done by respondent no.2. Respondent no.2 took possession from Court Receiver in 2013 and for almost 5 years has done nothing. Therefore, no prejudice will be caused to respondent no.2 if prayer clause – (b) of the notice of motion is granted.

2 Notice of motion is allowed and accordingly disposed in terms of prayer clause – (b) which reads as under :

(b) In the alternative the respondent – MCGM be directed and ordered not to hand over the possession of the said unit no.51, Municipal Industrial Estate, K. Khade Marg, Mumbai 400 011 to anyone and/or to induct any third person in the suit property and/or not to create any third party interest of whatsoever nature in the suit property till the hearing and final disposal of the suit and/or till further orders of this Hon'ble Court.

SUIT NO.779 OF 1984

1 Mr. Govilkar states that within two weeks from today plaintiff will take out a chamber summons to amend the plaint to introduce Municipal Corporation of Greater Mumbai (MCGM) as defendant to the suit.

Statement accepted.

2 Suit be listed for directions on 19th November 2018.

(K.R. SHRIRAM, J.)