

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 6 OF 2018
IN
PARSI SUIT NO. 6 OF 2018**

Aspi Minoo Damania	...Plaintiff
<i>Versus</i>	
Gulshan Aspi Damania	...Defendant

Ms Kashmira Bharucha, *i/b Radhika A Mehta, for the Plaintiff.*

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

PC:-

1. This is a contested divorce proceeding in the Parsi Chief Matrimonial Court. The Plaintiff is the husband and the Defendant is the wife. The present Notice of Motion seeks a restraint against the Defendant-wife from entering into, remaining in or creating any nuisance or disturbing the Plaintiff-husband's occupation and possession of Room No.1, Cooper Building, Ground floor, 9th Lane, Khetwadi, Mumbai 400 004 ("**the Cooper Building premises**").

2. First, as to service. I have two Affidavit of service. One is by Dilip Magar, the bailiff of the Parsi Chief Matrimonial Court. It is affirmed on 6th August 2018. He says that he was unable to serve

the Defendant at the Cooper Building premises or at the alternative address at C/o Shahrukh Dastur, Rustomjee Building No. 17, Ground floor, Lady Pochkhanawala Road, Lion Godiba Kale Marg, Tardeo, Mumbai 400 007. There is a second Affidavit of one Sandeep Shinde, a clerk in the office of the Advocate Radhika Mehta who is on record for the Plaintiff. Mr Shinde says that on the date that he visited the Tardeo flat given as the address of Shahrukh Dastur along with Dilip Magar. He met one Bapsy Dastur. She identified herself as Shahrukh Dastur's mother and then said that she was the Defendant's 'mother-in-law'. The Plaintiff says that the Defendant has in fact taken up residence with Shahrukh Dastur and they lived together as man and wife at Shahrukh Dastur's home at Tardeo. Mr Shinde's Affidavit says that Bapsy accepted papers on behalf of the Defendant but declined to sign an acknowledgement. This having been said on Affidavit, I will proceed on the basis that the Defendant has adequate notice of this application.

3. I am however making it clear that this will not substitute for a proper service of the Writ of Summons in the Suit itself. That will have to be served in the manner prescribed by the Code of Civil Procedure 1908 ("CPC").

4. The Affidavit in Support of the Notice of Motion contains a long narrative of the disputes and differences between the parties. The Plaintiff himself suffers from crippling osteoarthritis and osteoporosis. He finds it difficult to perform even the simplest daily tasks. He has set out in his Affidavit sufficient material to show that the Defendant has abandoned his company and their marriage, and has moved in with Shahrukh Dastur. Though named in the Affidavit

in Support, Mr Dastur is not a Co-Respondent to the main Suit itself.

5. The Affidavit says that until as recently as May 2018 the Plaintiff was greatly troubled by the Defendant and Shahrukh Dastur. They attempted to dispossess him from the Cooper Building premises. They changed the locks surreptitiously late one night. The Plaintiff's mother was compelled to file a police complaint. The Plaintiff has been threatened, repeatedly, by the Defendant and Shahrukh Dastur. Fearing for his safety at the Cooper building premises, the Plaintiff is presently with his mother; but her home is on the first floor of another building. The Plaintiff finds it difficult to access this flat. There is no lift in that building. He is also scheduled to undergo some serious bone surgeries for both hip joints.

6. Having regard to what is stated in the Affidavit in Support and the manner in which the Defendant was required to be given notice of the present application, I do not think it will serve the purpose to simply grant the injunction in the manner sought. Even if the Defendant claims that the Cooper Building premises are her 'matrimonial home', the fact is that she is now living elsewhere; and the mother of the man with whom the Defendant has chosen to live describes the Defendant as her 'daughter-in-law'. That statement cannot be brushed aside or ignored; and the Defendant cannot possibly be allowed to maintain divergent and conflicting claims simultaneously. If the Defendant has chosen to evade direct service, and to remain away despite service being accepted on her behalf, she must take the consequences.

7. The Cooper Building premises are a tenancy of the Parsee Punchayet and Trusts. The rent receipt stands in the Plaintiff's family name. I do not propose by this order to prejudice the interests of the landlords at all, but I do believe that it is in the interest of the Plaintiff, who has made out a *prima facie* case, as also the landlord that the Court Receiver be appointed so that no third party can claim rights to the Cooper Building premises adverse to the interest of the landlord trust and its recorded tenant or tenant's family.

8. Hence the following order:

- (a) The Court Receiver will proceed to take actual and physical possession of the premises at Room No.1, Cooper Building, Ground floor, 9th Lane, Khetwadi, Mumbai 400 004.
- (b) The Court Receiver will appoint the Plaintiff as an agent of the Court Receiver without security or royalty.
- (c) There will be an injunction in terms of prayer clause (a) against the Defendant.
- (d) The Court Receiver will inform the police authorities of the local police station of this order and will ensure that neither the Defendant nor Shahrukh Dastur are permitted within a radial distance of 500 meters from the Cooper Building premises.
- (e) The Defendant must apply to this Court for any modification or variation of this order with at least ten working days' prior written notice to Ms Mehta, the Advocate on record for the Plaintiff.

(f) The Plaintiff is not to dispose of, alienate, part with possession, transfer or encumber this flat under any circumstances.

9. The Court Receiver will forward a copy of this order to the Trustees of the Parsee Punchayet Trust and Funds as well.

10. The Motion is disposed of in these terms with liberty to the parties to apply.

(G. S. PATEL, J)