IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

NOTICE OF MOTION NO.162 OF 2017
AND
NOTICE OF MOTION NO.520 OF 2017
IN
COMMERCIAL SUIT NO.212 OF 2017

Mr.Hastimal Babulal Kothari)….Plaintiff/Applicant
V/s.
Mrs.Indira Shetty & Ors.)....Defendants

Mr.Krishna K.Holambe Patil for plaintiff/applicant.
Mr.Pranesh J.Gada I/by Dhanuka and Partners for defendants.
Mr.Ritesh Shetty-son of defendant no.1 present in court.

CORAM : K.R.SHRIRAM,J
DATE : 27.11.2018

P.C.:-

NOTICE OF MOTION NO.162 OF 2017

1. This Notice of Motion is taken out by plaintiff for temporary order of injunction restraining defendants from in any manner whatsoever selling, transferring, encumbering, assigning, conveying, granting or dealing with and/or disposing off the suit property or any part thereof or creating any third party rights of the suit property and also for appointment of Court Receiver.

2. On 22.3.2017 the following order came to be passed :-

"1. The Defendants to file their Affidavit in Reply within a period of two weeks from today. Rejoinder, if any to be

filed within one week thereafter. Place the Notice of Motion for hearing and final disposal subject to numbering on 13-04-2017.

2. In the meantime, the Defendants shall maintain status quo in respect of the suit property as of today. The learned Advocate for Defendant Nos.1 to 3 states that Defendant Nos.1 to 3 shall not sell, alienate, encumber, part with possession and/or create third party rights in respect of the suit property. The statement is accepted."

3. The ad-interim order came to be extended on 25.9.2017 until further orders.

4. Counsel for defendants states that the ad-interim order could be continued as order in the Notice of Motion with a slight modification. According to the counsel for defendants, on 22.3.2017 the suit premises had been demolished for road widening and before it was demolished, the son of defendant no.1 one Ritesh who is physically challenged was running a restaurant business in the said premises. Counsel states that in view of the portion of the premises being given for road widening, Municipal Corporation of Greater Mumbai had granted permission to defendants to erect ground + one storied structure in the said premises. A copy of those permissions are annexed to the plaint. Counsel for defendants states that the defendants constructed the ground + one structure but due to oversight, this was not brought to the notice of the court earlier.

However, the said fact is mentioned in the written statement dated 12.9.2017 which the counsel requests be treated as reply to the Notice of Motion.

5. In my view, no prejudice would be caused to plaintiff because if tomorrow plaintiff succeeds in the suit, plaintiff will have a ready ground + one structure.

6. No order for appointment of Receiver is granted at the ad-interim stage. Plaintiff has not filed any further affidavit explaining why between 22.3.2017 till date, the situation has changed that Receiver has to be appointed.

7. Notice of Motion is disposed in terms of prayer clause-(a) which reads as under :-

> "(a) That pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased an temporary order and injunction restraining the Defendants, their servants, agent, employees and person or person claiming through or under them, from in any manner whatsoever selling, transferring, encumbering, assigning, conveying, granting or dealing with and/or disposing of the suit property or any part thereof or creating any third party rights of the suit property viz.commercial premises/shop admeasuring 36.08 sq. meters to be constructed on House No.5, Patel Building, bearing CTS No.260, Caves Road, Jogeshwari (East), Mumbai-400 060."

8. Suit property will be the ground + one storied structure which has come up on house no.5, Patel Building, bearing CTS No.260, Caves Road, Jogeshwari (East), Mumbai.

9. Since the pleadings in the suit are completed, further directions are passed as under :-

(a) On or before 10.12.2018, parties shall file their respective affidavit of documents and serve copy thereof upon other side, failing which parties will not be permitted to rely on any documents, copies whereof are not annexed to the plaint/written statement and mentioned in the list of documents annexed to the plaint/written statement ;

(b) On or before 17.12.2018 parties shall complete inspection/discovery and exchange statement of admission and denial with reasons for denial. If inspection is not given such party will not be permitted to rely on any document. If statement of admission and denial is not given, existence of documents relied upon by the other party shall be deemed to have been admitted.

10. At this stage, Mr.Shah for defendants states that defendants through their physically challenged son was running a restaurant business and should be allowed to continue to run the restaurant business. Mr.Shah for plaintiff states that if tomorrow plaintiff

succeeds in the

suit, plaintiff would have lost an opportunity to earn out of this premises and defendant should be directed to deposit some money with the Prothonotary & Senior Master every month so that if plaintiff succeeds at the end of the day, they can withdraw that amount and if defendant succeeds, money can go back to defendant.

11. Mr.Shah for defendants states on instructions from the son of defendant no.1 Ritesh that premises is only about 350 sq. feet in Jogeshwari and he will have to spend money to re -do the entire place and furnish it. Mr.Shah states that defendants will deposit sum of Rs.15,000 per month from 1.2.2019 until the hearing and final disposal of the suit with the Prothonotary & Senior Master under advise to Advocate for plaintiff. This amount shall be deposited with the Prothonotary & Senior Master on or before 5th of every month. If there are two consequent defaults, defendants will be deemed to have been barred from carrying out the restaurant business and this bar will be effective without further reference to the court. The amount deposited, shall be invested by the Prothonotary & Senior Master with a nationalized bank initially for a period of one year and renewed year to year until further orders.

KJ

12. Stand over to 19.12.2018 for issues on which date, parties shall come with agreed draft issues and a separate list of issues on which they are unable to agree.

NOTICE OF MOTION NO.520 OF 2017

1. In view of the order passed in Notice of Motion No.162 of 2017, this Notice of Motion does not survive and accordingly stands disposed.

(K.R.SHRIRAM,J)

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