

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2352 OF 2010
IN
SUIT NO. 2289 OF 2010**

Manu Parmanand Melwani ...Plaintiff
Versus
Parmanand Kishinchand Melwani & Ors ...Defendants

Mr Haresh Jagtiani, Senior Advocate, with Yashpal Jain, Harshita Joglekar and Dhruti Chheda, i/b Yashpal M Jain, for the Plaintiff.
Mr Karl Tamboly, with Komal Joshi, & Tushar Hathiramani, i/b KP Shah, for Defendant No. 2.

**CORAM: G.S. PATEL, J
DATED: 10th December 2018**

PC:-

1. I have heard Mr Jagtiani for the Plaintiff and Mr Tamboly for the 2nd Defendant at some length. Mr Jagtiani in fairness restricts his prayers to a request for an injunction in terms of prayer clause (b) in respect of the flat in question, Flat No. 42, Somerset House, Peddar Road in a building owned by the 3rd Defendant – Society; and one further relief, as noted below.

2. Mr Tamboly states that the 2nd Defendant does not reside in the flat and that it has been given on leave and license to a third party. This license is valid till December 2019. Mr Jagtiani submits that apart from the injunction, the license fees from January 2019 to December 2019 should, at least to the extent of 50%, be deposited in Court.

3. On instructions from the 2nd Defendant, who is personally present in Court along with her husband, Mr Tamboly says that the 2nd Defendant gives an undertaking and makes a statement broadly in terms of prayer clause (b), i.e. agreeing and undertaking not to alienate or dispose of the flat in question until final disposal of the suit without an order of the Court obtained after at least three weeks' prior notice to the Advocates for the Plaintiff.

4. As regards the question of deposit of the license fees, having regard to the passage of so much time during which the Plaintiff has had no such order, I am not inclined to make a peremptory order at this stage for deposit. I will, however, accept Mr Tamboly's statement that the present leave and license arrangement will not be renewed, extended or changed, i.e., given to a new licensee, without leave of the Court obtained after at least three weeks' prior notice to the Advocates for the Plaintiff.

5. In addition, the 2nd Defendant will file as evidence in the suit a signed statement of accounts in regard to her having given this flat on leave and license in the past.

6. The Notice of Motion is disposed of accepting these statements from both sides as statements to the Court. All contentions are kept open and these statements are without prejudice to the rival contentions in the suit itself.

7. Both sides request that the suit itself to be expedited since all written statements have been filed except by the 3rd Defendant – Society. I will note that there are some documents obtained from the Society and which are the subject matter of a previous order. Either side will be at liberty to summon the Society as required at the trial of the suit.

8. List the suit itself for framing issues and pre-trial directions on 12th December 2018.

(G. S. PATEL, J)