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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1738 OF 2017

IN

SUIT NO.265 OF 2012

WITH

CHAMBER SUMMONS NO.336 OF 2013

IN

SUIT NO.265 OF 2012

WITH

NOTICE OF MOTION NO.652 OF 2013

IN

SUIT NO.265 OF 2012

Mohanlal Shankarlal Jain

...Plaintiff

vs

Suresh P. Shah And 2 Ors.

...Defendants

.....

Mr. Faran Khan, a/w. Mr. Ashish Verma, i/b. Ms. Sheela Mistry, for the Plaintiff-Applicant in CHS/336/2013 & NMS/652/2013.

Mr. Sanjiv Singh, for Defendant Nos. 1 and 2/Applicants in NMS/1738/2017.

Mr. R.D. Soni, i/b. Bhavin Bhatia, for Defendant No.3.

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CORAM : S.C. GUPTE, J.

DATED : 16 MARCH, 2018

P.C. :

. Heard learned Counsel for the parties. These three miscellaneous proceedings are taken out in a suit filed by the Plaintiff seeking recovery of possession of the suit property from Defendant Nos. 1 and 2, who are said to be landlords of the Plaintiff and Defendant No.3, who is said to be a developer in respect of the suit property. The Plaintiff claims

to be a tenant in respect of the original tenement in the old building standing on the suit property. It is his case that his building was redeveloped by Defendant No.3. It is his case that his tenement was handed over by him to the Defendants for the purposes of redevelopment of the suit property. It is submitted that when the building was redeveloped, the possession of the suit flat was not handed over to the Plaintiff but there appears to be some third party on the scene, who claims to be in possession of the suit flat. It is the case of the Defendants that, in pursuance of the transaction between the Plaintiff and this third party, the possession of the suit flat was given to the third party.

2. The first miscellaneous proceeding is the chamber summons taken out by the Plaintiff for impleadment of this third party as a party Defendant. The chamber summons is duly served on the third party and the existing Defendants. There is no reply by anyone to this Chamber Summons. The third party, despite notice, does not appear at the hearing of the chamber summons. The chamber summons is, accordingly, allowed in terms of prayer clause (a). The amendment to be carried out within two weeks. The amended plaint to be served on the newly added Defendant. The Defendant to submit written statement within a period of four weeks after such an affidavit of such service to be filed before the Court. The chamber summons is disposed of.

3. Notice of Motion No.1738 of 2017 is taken out by original Defendant Nos. 1 and 2 in the present suit. The suit is transferred to the list of undefended suits as against these Defendants. The Defendants, by the present motion, seek recall of that order permission to file their written statement after condonation of delay. For the reasons stated in the affidavit

in support of the notice of motion, the notice of motion is allowed in terms of prayer clauses (a) and (b). Learned Counsel for Defendant No.2 tenders his written statement. The same is taken on record.

4. Notice of Motion No.1652 of 2013 the Plaintiff's motion for interim reliefs in the suit. By an ad-interim order dated 7 October 2011, the Defendants were directed not to create any third party rights in respect of the suit flat. This order is confirmed, pending the hearing and final disposal of the suit. It is also clarified that this order was not only operating against existing Defendants, but also against newly added Defendant. The Plaintiff is, however, given liberty to apply for further and better reliefs, if so advised, after service of the suit on the newly added Defendant. The notice of motion is disposed of with liberty as above.

(S.C. GUPTE, J.)