

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1760 OF 2017**

IN

SUIT NO. 2531 OF 2011

State Bank of India ... Applicant

IN THE MATTER BETWEEN:

Mrs. Pushpa Baldev Thakur & Ors. ... Plaintiffs

V/s.

Mrs. Raju Thakur & Ors. ... Defendants

AND

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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NOTICE OF MOTION (L.) NO. 2633 OF 2017**

IN

SUIT NO.2531 OF 1997

Mrs. Pushpa Baldev Thakur & Ors. ..Applicants

IN THE MATTER BETWEEN:

Mrs. Pushpa Baldev Thakur & Ors. ..Plaintiffs

V/s

Mrs Raju Thakur & Ors. ..Defendants

And

State Bank of India ..Respondent

Mr.Piyush Raheja a/w. Mr. Federal and Rashmikant for the Plaintiffs.

Mr.Prabhu Velar for Defendant Nos. 1 to 3.

Mr.Vivek Sawant for Defendant No. 4.

CORAM : S.J. KATHAWALLA, J.
DATED: 8TH JANUARY, 2018

P.C. :

The facts relevant for these Notices of Motion are as follows :

1. The Plaintiffs have filed the present suit seeking a declaration that they along with Defendant No.1 are the co-owners of the suit premises, each having 1/6th shares in the suit premises. The Plaintiffs have contended that after coming into possession of the suit premises, the Plaintiff Nos. 1 to 3 alongwith late Mr. Nandlal (husband of Defendant No. 1) have by Lease Agreement dated 1st July 1975 granted lease of the suit premises in favour of State Bank of Mysore (Defendant No.5 Bank). By further Lease Agreements dated 1st March 2001 and 8th December 2006, the lease in favour of Defendant No.5 Bank has been renewed from time to time. According to the Plaintiffs, the lease agreement dated 8th December 2006 has been signed by the Defendant No. 1 as well. According to the Plaintiffs right from inception, the lease rent paid by the Defendant No.5 Bank has been shared equally between the Plaintiffs and the late husband of Defendant No.1 and after his demise with Defendant No.1.
2. By the said Lease Agreement dated 8th December, 2006, Defendant No.5 Bank agreed to take on rent the suit premises for a further period of 5 years i.e., till 31st January, 2011 on a monthly rent of Rs. 55,980/-. This agreement has been signed by the Defendant No.1.
3. In the meanwhile, disputes and differences arose between the Plaintiffs on the one hand and Defendant No.1 on the other with regard to ownership of the suit

premises. Defendant No.1 claims that the suit premises were solely purchased by her late husband, Mr. Nandlal Thakur and Plaintiffs have no share in the suit premises. In view of the said disputes, the Plaintiffs filed the present suit. The Plaintiffs also prayed, that pending the hearing and final disposal of the Suit, the Court Receiver, High Court, Bombay be appointed as Receiver in respect of the Suit premises and the Receiver be directed to take formal possession of the suit premises and Share Certificates in respect thereof and to renew the lease in favour of Defendant No.5 Bank at enhanced rates.

4. In Notice of Motion No.2890 of 2011 filed by Plaintiffs, this Court by an ad-interim order dated 10th October 2011 directed the parties to maintain status quo in respect of the suit premises. It is an admitted position that as on the date of the said order, the lease rent was shared equally by the Plaintiffs and Defendant No. 1

5. The Defendant No.1 had filed a Notice of Motion No.931 of 2012 seeking to vacate the Order of status quo granted by the Order dated 10th October 2011. By Order dated 23rd April 2012, this Court disposed of the Notice of Motion Nos.2890 of 2011 (filed by the Plaintiffs) and 931 of 2012 (filed by Defendant No.1) by confirming the ad-interim order of status quo dated 10th October, 2011 till the hearing and final disposal of the suit. These orders have today attained finality as none of the Defendants have challenged them.

Notice of Motion No. 1760 of 2017:

6. Pursuant to the Notification dated 22nd February 2017, Defendant No. 5 Bank was acquired by State Bank of India. On 4th October 2017, State Bank of India filed the

present Notice of Motion *inter alia* seeking permission to vacate the suit premises and that on vacation State Bank of India be discharged from paying further rents.

7. The Plaintiffs filed an Affidavit in Reply dated 5th December 2017. In the said Affidavit, the Plaintiffs contended that Defendant No. 5 Bank has continued to remain in possession of the suit premises after expiry of the Lease Agreement dated 8th December 2006 on 1st February 2011. It was further stated that, Defendant No. 5 Bank never intimated prior to the filing of the Notice of Motion of their intention to vacate the suit premises and have continued to occupy the same by paying the monthly rent of Rs. 55,980/- instead of agreed increased rate of 25% on the said amount of Rs. 55,980/- as per the said Lease Agreement. In the said Affidavit, the Plaintiffs also requested for appointment of Court Receiver for the suit premises.

Notice of Motion (L.) No. 2633 of 2017:

8. The Plaintiffs filed the Notice of Motion, *inter alia*, for :

- a) Directions to Defendant No.5/Respondent (State Bank of India) to deposit an amount of Rs.13,43,520/- in the Hon'ble Court and thereafter, a direction to Prothonotary & Senior Master to disburse the deposited amount to Plaintiffs and Defendant No.1 in equal shares;
- b) Pending the hearing and final disposal of the suit, the Court Receiver, High Court, Bombay be appointed as the Receiver under Order XL Rule 1 of the Code of Civil Procedure, 1908 of the suit premises with directions to take possession of the suit premises from Defendant No.5/Respondent (State Bank of India);

- c) directions to Court Receiver, High Court, Bombay to invite offers for granting licenses of the suit premises on 'as is where is' basis with direction to the Court Receiver (in his sole discretion) to accept the best offer and execute Leave and License Agreement (on usual terms and conditions) and hand over possession in terms of the said Leave and License Agreement and the Court Receiver to distribute the license fee received from such leave and license to each of the Plaintiffs and Defendant No.1 in equal shares;
- d) further directions to Defendant No.1 to pay along with the Plaintiffs, her proportionate 1/6th share in the maintenance and all other charges in respect of the suit premises.

9. The State Bank of India filed their Reply to the Notice of Motion (L.) 2633 of 2017. The State Bank of India contended that it is not liable to pay any amount to the Plaintiffs and Defendant No. 1 and instead claimed that Plaintiffs and Defendant No. 1 are liable to refund the security deposit of Rs. 3,35,880/- to State Bank of India. With regard to prayers seeking appointment of Court Receiver on vacation of suit premises, it was stated that the same does not concern State Bank of India.

10. The Defendant No. 1 also filed her Reply to the said Notice of Motion inter alia opposing reliefs sought for by the Plaintiffs and stated that no further amounts are required to be paid by the Defendant No. 5 Bank. The Defendant No. 1 further opposed the appointment of Court Receiver for taking charge of the suit premises. It was further stated that if the suit premises are given on leave and license and Plaintiffs received any

amount therefrom, same would be utilized to fight the litigation against Defendant No.

1. It was further stated that by granting reliefs in the present Notice of Motion, same would lead to violation of status quo order.

11. On 21st December 2017, the Notice of Motion No.1760 of 2017 was listed for hearing. During the said hearing Ld. Counsel for the Plaintiffs pointed out that in the said Indenture of Lease dated 8 December 2006, it was further agreed that :

a.i. in the event Lessee desires to renew the said Lease for a further period of 5 years, the same will be renewed with an enhancement in rent by 25% of the then existing rent of Rs. 55,980/- for the next block of 5 years.

a.ii. The lessee would be liable for payment of all outgoings in respect of the leased premises.

a.iii. The lessee would be entitled to terminate the lease deed after giving notice of 3 months to the lessor.

The learned Counsel for the Plaintiffs further pointed out that on 12th June, 2012, the Defendant No.5 Bank filed a Notice of Motion No. 1629 of 2012. In the Affidavit in support thereof, Defendant No. 5 Bank showed their willingness to pay the increased monthly rentals as per the Lease Agreement. In their Written Statement dated 12th June, 2012 as well, Defendant No. 5 Bank also showed their willingness to pay the increased monthly rentals. He thus submitted that the Defendant No.5 should be permitted to vacate the premises only after payment of the enhanced rentals from 2011.

He also submitted that after the bank vacates the premises, it is necessary to protect the premises which would be lying vacant by appointing the court receiver as the Receiver of the suit premises. The Plaintiffs and Defendant No.1 and/or her late husband as co-owners have earned income from the said premises continuously since 1975 and it would be in the interest of all parties if the same arrangement is continued by inducting a licensee as agent of the court receiver and by distribution of the license fees equally to the Plaintiffs and Defendant No.1 as per the prevailing practice.

12. The Ld. Counsel appearing for Defendant No. 1 objected to any payment being made to the Plaintiffs after the premises are vacated by the Defendant No.5/State Bank of India. However, at the same time, Defendant No. 1 (despite her Advocate being present in Court) started shouting and sought to disrupt the Court proceedings. Accordingly, I passed the Order on 21st December 2017 restraining Defendant No. 1 from entering the Court room.

13. The Notice of Motion was thereafter listed on 8th January 2018. At that time, the Ld. Counsel for Defendant Nos. 1 to 3 alongwith the daughter-in-law of Defendant No. 1 appeared. At that time, the Ld. Counsel and the daughter-in-law of Defendant No. 1 opposed the appointment of Court Receiver in respect of the suit premises and giving the suit premises on leave & license. It was argued that any amount received by the Plaintiffs due to entering into leave & license agreement, would be utilized by them to fund their litigation against Defendant Nos. 1 to 3.

14. In my view, the arguments advanced by Ld. Advocate appearing for Defendant Nos. 1 to 3 are without substance. It is an admitted fact that Defendant No. 5 Bank has been in possession of the suit premises since inception as a lessee thereof. It is also an admitted fact that at least since filing of the Suit in the year 2011, the Plaintiffs and Defendant No. 1 have been receiving rent from the suit premises in equal shares. There is no change in circumstances which has been pointed out to me by the advocates for the Defendant No.1 to 3 for altering this position. As aforesaid, the order granting status quo was passed in the year 2011 and the Defendant No.1's application for having the same vacated was rejected in 2012. The Defendant No.1 to 3 have accepted these orders and have not challenged them at all. Thus, no case is made out for depriving the Plaintiffs of their share of the income being generated from the suit property. Further, it will not benefit any party to keep the suit premises vacant / locked. The Plaintiffs and Defendant No. 1 are also required to be directed to bear in equal proportion the maintenance and other charges in respect of the suit premises, till the time the suit premises are given on a leave and license.

15. Defendant No. 5 Bank/State Bank of India wishes to vacate the suit premises. It is an admitted position that they are entitled to terminate the lease agreement. They have stated they are no longer in need of the suit premises, hence they be permitted to vacate the suit premises. The Ld. Counsel for the Plaintiffs and the Defendant No.1 to 3 have no objection per se to the Defendant No.5/State Bank of India vacating the suit premises. The Plaintiffs however have submitted that they be permitted to vacate after

making payments of the arrears of the increased rentals as per the agreement as well the three months rentals, prior to vacating the suit premises. The Ld. Counsel for the Plaintiffs submitted that the notice of motion filed by the Defendant No.5 be treated as the notice to vacate and the three months notice period may commence from the date of the filing of the notice of motion, i.e. 4th October 2017. He therefore contends that the Defendant No.5 is liable to pay the lease rent till January 2018.

16. Having regard to the aforesaid submissions, at this stage, since the lease notice period of 3 months has come to an end, and no further lease rent would be payable by the Defendant No.5, it would not be in interest of any party to let Defendant No.5 remain in possession of the suit premises. It is therefore necessary to take over possession of the suit premises from the Defendant No.5 and take steps for giving the same on leave and license to ensure that it earns income and is not wasted. The issue as to whether Defendant No.5/State Bank of India is required to pay lease rental from 2011 till January 2018 at the enhanced rate can be decided at the subsequent stage.

17. In view of the aforesaid, at the present stage, the following order is passed;

- a. Notice of Motion No. 1760 of 2017 is allowed in terms of prayer clauses (a) and (d) with directions to the Defendant No.5 / State Bank of India to pay the lease rent till January 2018 and vacate the suit premises and handover keys of the suit premises to the Prothonotary & Senior Master of this Hon'ble Court;
- b. Notice of Motion (L.) No. 2633 of 2017 is allowed in terms of Prayer clauses (c) to (f). The Court Receiver on taking possession of the suit premises shall in the

presence of the parties prepare an inventory of the items in the suit premises and shall also fix his board on the suit premises. The Court Receiver shall be entitled to fix such meetings with the parties as he deems appropriate for finalizing the modalities of giving out the suit premises on leave and license to third parties as agent of the Court Receiver. Having regard to the repeated disruptive conduct of the Defendant No.1 in this court, the Defendant No.1 shall not be permitted to attend the meetings fixed by the Court Receiver, without leave of this Court and shall be represented in such meetings by her advocates who may be assisted by her sons, i.e. Defendant No. 2 and 3 herein or her daughter in laws;

c. The prayer clauses (a) and (b) of the Notice of Motion (L.) No. 2633 of 2017 are kept open and shall be considered subsequently at the time of final hearing and disposal of the said notice of motion;

d. Notice of Motion No. 1760 of 2017 is disposed of. There shall be no orders as to costs.

(S.J.KATHAWALLA, J.)