

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION (L) NO.180 OF 2019

IN

SUIT (L) NO.70 OF 2019

WITH

NOTICE OF MOTION (L) NO.194 OF 2019

Lodha Developers Limited)....Plaintiff/Applicant

V/s.

Krishnaraj Rao and Ors.)....Defendants

Mr.Janak Dwarkadas, Senior Advocate a/w Mr.Sharan Jagtiani,
Mr.Anirudh Hariani, Ms.Sukhada Wagle and Mr.Zaid Wahidi I/by
Hariani and Co. for plaintiff/applicant.

[Mr.Krishnaraj Rao-defendant no.1 appeared in person].

Mr.Onkar Gupte a/w Mr.Jari Mukehs Doshi I/by Malvi Ranchoddas
and Co. for defendant nos.2 & 3.

CORAM : K.R.SHRIRAM,J

DATE : 23.1.2019

P.C.:-

NOTICE OF MOTION (L) NO.194 OF 2019

1. Defendant no.2 who is present in Court through Mr.Gupte undertakes to this Court that she shall not exchange or address any communication to anybody in any mode regarding the matter at hand or the subject matter of the dispute that resulted in filing of this Suit.

2. In view of this undertaking given by defendant no.2,

Mr.Dwarkadas Senior Advocate for the applicants seeks leave to withdraw this Notice of Motion with liberty to apply should the need arise.

Mr.Dwarkadas states that even plaintiff shall not exchange or address any communication to anybody by any mode regarding defendant nos.2 & 3.

3. Notice of Motion stands dismissed as withdrawn with liberty as prayed for.

4. Mr.Gupte for defendant nos.2 & 3 states that this statement shall also be binding on defendant no.3 who is not present in Court and defendant no.2 has informed Mr.Gupte that she will also ensure defendant no.3 does not breach the undertaking.

NOTICE OF MOTION (L) NO.180 OF 2019

1. This Notice of Motion has been taken out by plaintiff for reliefs against defendant no.1. At this point of time, Mr.Dwarkadas is pressing for ad-interim reliefs in terms of prayer clauses-(c) and (d).

2. Before the hearing of this Notice of Motion commenced, defendant no.1 who was present in Court was told not to do things which he has been doing because though he may have his own

reasons, lot of things that he has said in the Video were all incorrect and it actually results in doing dis-service to the society and people will start losing respect for judiciary and Judiciary is a last resort to every citizen.

I have to state even in the Court, the conduct of defendant no.1 right from the start was rather offensive and discourteous.

3. Mr.Gupte also tried to explain to defendant no.1 that he has misunderstood the entire proceedings and that he was happy with the order that was passed on 21.1.2019. Mr.Gupte also stated that if defendant no.1 had any problem, he should have discussed with Mr.Gupte first as he was his counsel before taking any hasty steps which he did. Mr.Gupte also disagreed with the stand taken and views of defendant no.1.

4. The matter was also stood over for some time at Mr.Gupte's request because Mr.Gupte stated that he will try to speak with defendant no.1 and explain to him his conduct in the Court and outside the Court, is not proper. The matter was taken up again after a gap of about ½ an hour.

5. Despite repeated attempts by the Court to make defendant

no.1 realise his mistakes and relent, defendant no.1 was in no mood to relent. Defendant no.1 was in a mood of total defiance and also stated that he will continue to commit contempt and he will state things that the Court could view as contemptuous. Defendant no.1 stated that unless his pre-condition was met, he shall not and does not wish to defend himself and he does not wish to be heard in the matter. Defendant no.1's condition was he should be permitted to audio and video record the entire proceedings. Naturally, that is not permissible in law and hence was rejected. In any event, litigants cannot lay conditions to Court and if litigants are permitted to do, it will set a very wrong precedent.

6. Thereafter, this Notice of Motion was argued by Shri Dwarkadas. Shri Dwarkadas tendered 3 transcripts of 3 videos that were uploaded by defendant no.1 after the order of 21.1.2019. The 3 transcripts are taken on record and marked X, X-1 & X-2, respectively, for identification.

7. Going straight to transcript-2, though the body of the transcript does not mention anything about plaintiff, in the heading it just says Lodha NCP. Shri Dwarkadas stated that NCP is New Cuffe Parade.

8. Shri Dwarkadas states that the video of the 2nd transcript was uploaded with the following message : LODHA NCP : A CLOSE LOOK AT DRY WALLS & ELECTRICALS, AND HOW THEY ARE FITTED TOGETHER” are actually flat purchased by defendant nos.2 & 3. I was also shown the message on telephone by Shri Dwarkadas which I read. I am, therefore, prima facie, satisfied that the 2nd video was in breach of the order passed on 21.1.2019.

9. As regards 1st and 3rd transcripts, the contents are certainly scandalous and lowers the majesty and dignity of the Court. So also the conduct of defendant no.1 in Court. It is necessary to note that despite repeated asking defendant no.1 not to indulge in these acts which would lower the dignity of the Court, defendant no.1 was in total mood of defiance.

10. Since defendant no.1 stated that his conditions have not been met by the Court and therefore, he does not wish to defend himself, defendant no.1 was not heard and this order was passed without hearing defendant no.1 though he was given an opportunity.

11. In the circumstances, a prima facie case is made for

granting ad-interim reliefs in terms of prayer clauses-(c) and (d) which read as under :-

“(c) that pending the hearing and final disposal of the above Suit, this Hon'ble Court be pleased to pass an Order directing Defendant No.1 and/or YouTube to forthwith remove and/or take down the offending videos which Defendant No.1 has uploaded and/or published in breach of this Hon'ble Court's Order dated 21 January 2019 ;

(d) that pending the hearing and final disposal of the above Suit, this Hon'ble Court be pleased to pass an Order directing Defendant No.1 and/or YouTube to forthwith remove and/or take down the Offending Material and the additional videos and blog/posts referred to in the Plaintiff's Additional Affidavit dated 21 January 2019 filed in Notice of Motion (L) No.152 of 2019.”

12. Defendant no.1 stated that he has been served a copy of the Notice of Motion with the affidavit-in-support. Therefore, affidavit-in-reply to be filed and copy served within four weeks from today. Rejoinder, if any, to be filed within two weeks thereafter.

13. Notice of Motion be listed for hearing on 19.3.2019. In the meanwhile, all office objections to be removed and Notice of Motion be numbered.

14. In my view the contents of the transcript nos.1 & 3 and conduct and demeanour of defendant no.1 was disrespectful and

intended to interfere with the administration of justice and lower the dignity and authority of the Court. The language used in the videos as it appears from the transcript and demeanour of defendant no.1 in Court was calculated to insult, show disrespect to overbear and overawe the Court.

15. In the circumstances, Show Cause Notice returnable on 19.3.2019, be issued to defendant no.1 as to why he should not be held guilty of contempt of Court including under Sections 14 & 15 of the Contempt of Courts Act, 1971.

16. Copy of this order also be forwarded to “YouTube LLC, having its address at 901, Cherry Avenue, San Bruno, CA 94066 and having its Mumbai office at Google India Pvt. Ltd., 1st floor, 3rd North Avenue, Maker Maxity, Bandra (E), Mumbai-400 051”.

17. Plaintiff is at liberty to forward a copy of this order to YouTube by e-mail, fax, RPAD etc.

18. All to act on authenticated copy of this order.

(K.R.SHRIRAM,J)