

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No.486 of 2014

IN

SUIT No.313 of 2014

Neha Agrawal

..Applicant.

In the matter between :

Neha Agarwal

..Plaintiff.

Vs

Agarwal Family Trust & Ors

..Defendants.

Mr. Ketan Chothani a/with Mr. Manan Jaiswal I/by M/s Vani & Associates for the Plaintiff.

Dr. Birendra Saraf a/with Mr. Zacarias Joseph I/by Khaitan & Co. for defendant Nos. 1, 2, 3 and 5.

CORAM : B. P. COLABAWALLA, J.

DATED :- 24th June, 2019.

P.C. :-

1. This Notice of Motion has been filed seeking a direction against defendant Nos. 2 and 3 to render true and faithful accounts of the 1st defendant-Trust so as to determine the assets of the Trust. A further direction is sought to order and direct defendant Nos. 1, 2, 3, 5 and 6 to submit in this Court all papers relating to all the movable and immovable properties of defendant No.1-Trust from the

inception till date. These two reliefs can be found in prayer clauses (a) & (b) of the Notice of Motion. It is common ground before me that prayer clauses (a) & (b) have already been granted in favour of the plaintiff by this Court vide its order dated 29th June, 2017. Thereafter, the plaintiff also seeks an order of injunction as well as appointment of a Court Receiver in relation to the properties of the 1st defendant Trust, as more particularly described in Exhibit-B to the plaint.

2. When this Notice of Motion was pressed for ad-interim reliefs, this Court by its order dated 8th June, 2016 had recorded a statement on behalf of defendant Nos. 1 to 3 and 5 that they shall maintain the status-quo in respect of the properties which are in their possession. The said statement was accepted. Now, the Notice of Motion has come up for final hearing and disposal.

3. The learned Advocate appearing on behalf of the plaintiff submitted that in addition to the status-quo order already granted, the plaintiff is pressing for the appointment of the Court Receiver in respect of the properties described in Exhibit-B to the plaint and more particularly the immovable property being Flat No. 601 and 602 at Sangeet-Sarita Apartment, Bhula Bhai Desai Road,

Breach Candy Hospital, Mumbai (for short “the suit flat”). This relief is pressed on the basis that in the affidavit of disclosure that has been filed on behalf of defendant Nos. 1, 2 and 3, the said flat is admitted as the property of the 1st defendant-Trust. In these circumstances, defendant Nos. 2, 3 and 5 ought not to be allowed to continue to use the said flat free of cost and they can be allowed to occupy the same as an agent of the Court Receiver on the payment of usual royalty and security.

4. I am unimpressed with this argument. As correctly pointed out by Dr. Saraf, the learned Advocate appearing on behalf of defendant Nos. 1, 2, 3 and 5, that they have been in use and occupation of the said flat from the inception of the Trust and even prior thereto. The Trust was formed in the year 1978 and was to come to an end in October, 1996. Despite this, the present suit has been lodged on 26th September, 2013. As correctly submitted by Dr. Saraf, this inaction on the part of the plaintiff alone would disentitle her to the appoint of the Court Receiver. Further, nothing has been shown to me that would even remotely indicate that the said flat is in jeopardy which would warrant the appointment of the Court Receiver.

5. Dr. Saraf has fairly stated on instructions that defendant Nos. 2, 3 and 5 shall not, till the disposal of the suit, sell dispose of, alienate, part with possession and/or create any third party rights, title or interest of any nature whatsoever in respect of any of the properties more particularly described in Exhibit-B to the plaint and which includes the said flat occupied by defendant Nos. 2, 3 and 5. I think this statement made by Dr. Saraf would adequately protect the interest of the plaintiff. Accepting the said statement of Dr. Saraf as an undertaking given to this Court, the Notice of Motion is disposed of. No order as to costs.

(B.P. COLABAWALLA, J.)