

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

NOTICE OF MOTION NO.673 OF 2017

IN

SUIT NO.260 OF 2017

Jayesh Dinesh Shah and Ors.Applicants/Plaintiffs

Vs.

Kaydee Family Turst and Ors.Defendants

Ms. Yasmin E. Tavaría for applicants/plaintiffs.

Mr. Karl Tamboly a/w. Ms. Sapana Roopawate and Ms. Kausar Banatawala
I/b. Mr. Tushr A. Goradia for defendants.

CORAM : K.R.SHRIRAM, J.

DATE : 5th MARCH 2019

P.C.:

1 Heard the counsel. To the question asked by this Court, the counsel for plaintiffs stated that in 2006 itself plaintiffs had written to the society – Arcadia Premises Co-operative Society Limited informing the society that the bills are also be sent to plaintiffs because they are also beneficiaries of the Trust. Therefore, in 2006 itself plaintiffs, in my view, have come to know that they are being deprived of their alleged entitlement in the Trust. It is also noted that plaintiffs have by a letter dated 2nd November 2006, copy whereof is at Exhibit “1” to the notice of motion, informed the two banks mentioned in the said letter that plaintiffs are beneficiaries and Trustees in the Kaydee Family Trust and the other beneficiaries and Trustees are creating third party rights in respect of the office premises, which is subject matter of this suit, bearing No.204 on the 2nd Floor of building Arcadia Premises Co-operative Society Limited at

Nariman Point and that plaintiffs are taking legal action against beneficiaries and Trustees and other responsible persons who have misappropriated, according to plaintiffs, the Trust fund.

2 The suit has been lodged on 24th March 2017. Ms. Tavaría stated that plaintiffs had commenced arbitration proceedings but the arbitration proceedings were held to be not maintainable by the Apex Court and hence, this suit came to be lodged. The notice of motion also has been lodged on 29th March 2017. On 19th April 2017, this Court was pleased to pass the following order :

1. The learned Advocate for the Defendants states that the Defendant No.1 Trust has created a leave and license agreement dated 23-03-2017 in favour of GCIL Finance Ltd., for a period of five years in respect of the premises in Arcadia Building, 2nd Floor, Office No.204 admeasuring 1110 sq.ft. carpet area and is receiving monthly compensation of Rs.1,66,500/-. As far as basement premises is concerned, a leave and license agreement dated 06-10-2016 is executed in favour of Rajesh Prajapati for a consideration of Rs.15,000/- per month. The learned Advocate for the Trust undertakes to hand over copies of the said agreements to the Advocate for the Plaintiffs in the course of the day.

2. Defendants to file their Affidavit in Reply within a period of two weeks from today. Stand over to 3rd May, 2017. In the meantime, the Defendants shall maintain status quo in respect of the trust properties as of today.

3 I have to note that the arbitration itself was invoked on 23rd October 2012 as stated in the plaint. The prayer sought is akin to attachment before judgment. Therefore, it is clear that in 2006 itself plaintiffs were aware about the alleged breach of the Trust Deed being committed by defendants and still have waited almost 6 years to commence

the failed arbitration proceedings and 11 years to lodge this notice of motion. In the circumstances, I see no reason why interim relief as prayed for should be granted.

4 Notice of motion dismissed with cost in the sum of Rs.50,000/- to be paid by way of cheque drawn in favour of advocate on record for defendants within four weeks from today. At this stage, Mr. Tamboly states that the cost to be paid to Charity. Therefore, this amount to be paid to National Defence Fund (NDF), State Bank of India, Institutional Division, Parliament Street, New Delhi, Account No.11084239799-www.pmindia.nic.in. and this amount to be paid within four weeks from today.

(K.R. SHRIRAM, J.)