

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 14 OF 2019**

IN

SUIT NO. 3051 OF 2008

Rakesh Saigal & Anr

...Plaintiffs

Versus

Ramesh G Sippy & Ors

...Defendants

WITH

NOTICE OF MOTION NO. 2241 OF 2018

IN

SUIT NO. 3051 OF 2008

Mr Atul Rajadhyaksha, Senior Advocate, with Nishant Tripathi, Vaibhav Bandgar, & Somnath Iyer, i/b M/s. Tripathi & Co., for the Plaintiffs.

Mr Rahul Narichania, Senior Advocate, with Siddhanth Chhabria & Jamshed Ansari, i/b Jamshed Ansari, for Defendant No. 3.

Mr Vishal Kanade, with Shamima Taly, Aziz Shaikh & Vithoba Masurkar, i/b S Mahomedbhai & Co., for Defendant No. 5.

CORAM: G.S. PATEL, J

DATED: 11th February 2019

PC:-

1. There were originally two Defendants to the suit, both members of the Sippy family. Mohini Gopaldas (“**Mohini**”) was

Defendant No. 1 and Ajit Gopaldas (“**Ajit**”) was Defendant No. 2. The suit is in respect of a plot of land of about 4,229 sq yards and a structure standing on it, and known as Gopal Mansion, at Turner Road, Bandra, Mumbai 400 050. The suit, one that has been amended, seeks specific performance of an agreement annexed at Exhibit “B” to the Plaint compelling the Defendants to convey this property to the Plaintiffs.

2. The Plaintiffs filed Notice of Motion No. 3804 of 2008. They obtained an ad-interim order on 22nd September 2008. This was when the two Defendants sought time and the learned Single Judge said that the Defendants were not to create any third party rights until the next date. On 29th September 2008, the matter was taken up for ad-interim reliefs again. The Defendants again sought time. This was refused. Some documents were shown and the learned Single Judge granted limited ad-interim reliefs restraining the Defendants from creating third party rights and interest in the suit property. The Notice of Motion was made returnable after 12 weeks.

3. The Notice of Motion came up after eight years. On 8th June 2016, none was present for the Defendants. Being of the view that there was nothing to show that the situation had changed, the learned single Judge confirmed the ad-interim order on 29th September 2016. I do believe this was perhaps an inadvertent error. The reason is that the two Defendants, Mohini and Ajit, had by this time passed away. Indeed the order dated 8th June 2016 was a common order on the Notice of Motion and also on Chamber Summons No. 1908 of 2011 to implead the heirs and legal

representatives of the two deceased defendants. Logically, that Chamber Summons ought to have been allowed, then the Notice of Motion ought to have been amended, served on the newly impleaded heirs and legal representatives and then taken up for hearing and final disposal. This not having been done, in my view, Mr Narichania for the Gopal Mansion Cooperative Society (“**the Society**”), more recently added as Defendant No. 3 to the suit, is correct in saying that apart from anything else, this is a reason to recall the order of 8th June 2016.

4. This Society has, in the meantime, filed its own Notice of Motion No. 2241 of 2018. Firstly, it seeks impleadment and I have allowed that. It then seeks a recall of all three previous orders referred to above. At this stage, it might be somewhat ambitious to recall both ad interim orders.

5. In the meantime, the Plaintiffs have filed Notice of Motion (L) No. 14 of 2019. To this Notice of Motion, the heirs of original Defendants Nos. 1 and 2 are joined, as is Gopal Mansion Cooperative Society (Defendant No. 3), as also two other Defendants, Videocon Developers Ltd (“**Videocon**”) and KBS Properties Pvt Ltd (“**KBS**”). In other words, everybody who is anybody in this litigation is now a party to Notice of Motion (L) No. 14 of 2019.

6. The reliefs sought in the Notice of Motion (L) No. 14 of 2019 are not in substitution of the reliefs the Plaintiffs originally sought in Notice of Motion No. 3804 of 2008, but in addition. The Plaintiffs

now seek a restraint against any further construction or development and not merely a restraint from creating any third party rights. It is entirely unclear whether Mohini and Ajit's heirs have been properly served with either the Society's Notice of Motion or the Plaintiffs' new Notice of Motion.

7. In my view, the correct course of action would be to recall the order of 8th June 2016 while continuing the ad-interim order; to restore the old Notice of Motion No. 3804 of 2008 to file; then to direct that it be amended to include the heirs of original Defendants Nos. 1 and 2 as Defendants Nos. 1(A) to 1(I) and 2(A) to 2(C); and also add the Society as Defendant No. 3, Videocon as Defendant No. 4 and KBS as Defendant No. 5; serve all these parties; and hear that Notice of Motion finally along with the Plaintiffs' fresh Notice of Motion (L) No. 14 of 2019. With the continuation of the previous ad-interim order, there could be no conceivable prejudice to the Plaintiffs.

8. I also find that even the Plaintiffs' new Notice of Motion (L) No. 14 of 2019 has not been served on the newly added heirs of Defendants Nos. 1 and 2. This may be because there are very many variations in the cause titles of the addresses of some of these Defendants. They are to be served at their correct addresses.

9. I propose today to issue directions to this effect and then to list both Notice of Motion No. 3804 of 2008 and Notice of Motion (L) No. 14 of 2019 after two weeks for directions. Those Defendants who are present today must keep their Affidavits in Reply ready to

both these Notices of Motion so that further time is not lost. Hence, the following order:

- (a) The order dated 8th June 2016 is recalled;
- (b) Notice of Motion No. 3804 of 2008 is restored to file;
- (c) The ad-interim order dated 29th September 2008 will presently continue to operate;
- (d) Notice of Motion No. 3804 of 2008 will be amended without need of reverification on or before 15th February 2019 to add the names of the heirs of original Defendants Nos. 1 and 2 as Defendants Nos. 1(A) to 1(I) and 2(A) to 2(C), as also to join Defendants Nos. 3, 4 and 5 as mentioned above;
- (e) Leave to amend will include leave to amend the cause title in both the Notices of Motion as also in the Plaint to show the correct addresses of Defendants Nos 1(A) to 1(I) and 2(A) to 2(C);
- (f) Service of Notice of Motion No. 3804 of 2008 will be effected on the Advocates for the Defendants Nos. 3, 4 and 5, who are present in Court and who waive service of the Notice of Motion for their respective clients;
- (g) Defendants Nos. 1(A) to 1(I) and 2(A) to 2(C) will be served by courier at the corrected addresses;
- (h) Further leave to amend the cause title in Notice of Motion (L) No. 14 of 2019 without need of reverification to correct the addresses of the heirs of Defendants Nos. 1 and 2, viz., . Defendants Nos. 1(A) to 1(I) and 2(A) to 2(C);

- (i) Notice of Motion (L) No. 14 of 2019 will similarly be served by courier on the newly added Defendants Nos. 1(A) to 1(I) and 2(A) to 2(C) at the corrected addresses. It will be served, if it has not already been served, on the Advocates for Defendants Nos. 3, 4 and 5 who waive service of the Notice of Motion for their respective clients.

10. List both these Notices of Motion for directions on 25th February 2019.

11. Notice of Motion No. 2241 of 2018 is disposed of in these terms. There will be no orders as to costs.

(G. S. PATEL, J)