

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 509 OF 2017
WITH
NOTICE OF MOTION NO.1025 OF 2017
WITH
NOTICE OF MOTION NO.1027 OF 2017
WITH
CHAMBER SUMMONS NO.444 OF 2019
IN
SUIT NO.327 OF 2017**

Anthony Josph Pattathu

..Plaintiff/Applicant

Vs.

Rajesh Kanojia & Ors

..Defendants

Mr. Shanay Shah I/b Asadali Mazgaonwala for Plaintiff

Mr. Rohan Savant I/b Mr. Nitesh Acharya for Defendant Nos.1 and 2

Mr. Ankur Shah I/b Mr. Jatin Shah for Defendant No.3

CORAM : K.R.SHRIRAM, J.

DATE : 23rd APRIL 2019

P.C.:

NOTICE OF MOTION NO.1025 OF 2017

WITH

NOTICE OF MOTION NO.1027 OF 2017

1 Mr. Savant appearing for defendant nos.1 and 2 states that defendant nos.1 and 2 have not been served with the notices of motion. Mr. Shah is unable to confirm since his instructing advocate is not present in court. Therefore, the following order is passed:

(a) If these notices of motion have been served, then

plaintiff/applicant shall file an affidavit of service with a copy to advocate for defendant nos.1 and 2 within one week from today.

(b) If the notices of motion have been served, then for today's adjournment, defendant nos.1 and 2 shall each pay Rs.50,000/- as costs for each of the notices of motion, i.e., defendant no.1 will pay Rs.1,00,000/- and defendant no.2 will pay Rs.1,00,000/- and these amounts shall be paid to the advocate for plaintiff. If these amounts are not paid, the defence of defendant nos.1 and 2 will be struck off and they will not be heard in the matter.

(c) If the notices of motion have not been served, then the notices of motion will stand dismissed without further reference to the court.

(d) If notices of motion have been served, and if defendant nos.1 and 2 have paid the costs as directed above, then defendant nos.1 and 2 shall file affidavit in reply within 4 weeks of receiving a copy of the affidavit of service. Rejoinder, if any, to be filed and copy served within two weeks thereafter.

(e) Notices of motion, if not dismissed under paragraph 1(c) above, to be listed for hearing on 1st July 2019.

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2 This notice of motion, in my view, is rather premature. Time to consider whether adequate stamp duty has been paid and whether steps have to be taken under Section 33 of Bombay Stamp Act 1958, (Maharashtra Stamp Act), will be when plaintiff relies on these documents in the trial. Therefore, keeping open rights of applicant to raise such objections at the hearing of the suit or the commencement of trial, notice of motion dismissed.

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3 Affidavit in reply to be filed and copy served during the course of this week. Rejoinder, if any, to be filed and copy served within two weeks thereafter.

4 Stand over to 10th June 2019.

(K.R. SHRIRAM, J.)