

N/m No. 2781/25 in S.C.Suit No. 6287/24.

[1]

Order.

MHCC010071922025



Presented on : 19-05-2025

Registered on : 19-05-2025

Decided on : 21-05-2025

Duration : 0 years, 0 months, 2 days

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY.

NOTICE OF MOTION NO. 2781 OF 2025

IN

S. C. SUIT NO. 6287 OF 2024

Mr. Avinash L. Ladha

**)...Applicant /
Original Plaintiff**

IN THE MATTER OF:

Mr. Avinash L. Ladha

)...Plaintiff

Versus

**M/s. Lark Wires and Infotech Pvt. Ltd.
and others**

**)
)...Defendants**

Shri Kamlesh Tiwari, Advocate for the plaintiff.

Shri Yash Momaya alongwith Anaisha Zachariah i/b Negandhi Shah,
Advocate for defendant no.2.

Shri Jamshed Master alongwith S.M.Seegarla i/b RMG Law Associates,
Advocate for defendant no.3.

**CORAM : HIS HONOUR JUDGE SHRI U.C.DESHMUKH.
(COURT ROOM NO.66).**

DATE : 21st MAY, 2025.

ORDER

Vide this notice of motion the plaintiff seeks direction against defendant no.3 to restore and continue electricity supply to suit Flat No. 102.

2. The plaintiff has come with case that he has instituted suit for declaration that he is in use and occupation of suit flat. However defendant no.3 malafidely disconnected electricity supply. Therefore he made complaint to Police Station Worli on 16/05/2025 and moved this notice of motion.

3. Defendant no.2 and 3 appeared. They failed to file reply to this notice of motion. However, learned advocate appearing for them argued orally to resist the notice of motion.

4. It is specific submission of learned advocate for the plaintiff that there is no dispute that the plaintiff is in possession of the suit flat. Therefore even though the plaintiff's possession is illegal, defendants cannot deprive plaintiff's right to enjoy services of electricity supply. Hence prayed to allow the notice of motion.

5. On the contrary, it is submission of learned advocate for defendant no.2 that the electricity bill produced on record at Exh.4 shows that since last four months there is no consumption of electricity supply used for suit premises. It shows that no one is using the suit flat. He further argues that this Court has no jurisdiction to entertain the suit. The plaintiff himself has filed copy of Deed of Transfer dated 10/10/2005 at Exh.B to the plaint which manifests that the plaintiff

was put in possession of the suit flat being licensee of erstwhile owner and now the defendant no.2 is owner. On similar footing learned advocate for defendant no.3 submits that considering relationship between the plaintiff and defendant no.2 this Court has no jurisdiction. The defendant no.2 has initiated an action to recover the possession of the suit flat filing application before the competent authority under the Rent Act. The defendant no.2 has filed copy of notice given to defendant no.1 at Exh.5. Therefore this notice of motion is moved to counter the proceeding before said competent authority. There is no cause of action against the defendant no.3. The suit is also not maintainable for want of relief of declaration of ownership. Hence prayed to reject the notice of motion.

6. It is appropriate to note at the outset that after argument of both sides is over learned advocate for the plaintiff filed document at Exh.7 which was categorically challenged by the defendants. To counter the contents of document at Exh.7 it is submission of learned advocate for defendant no.2 that the plaintiff cannot act in dual capacity. When the plaintiff himself has signed Deed of Transfer at Exh.B to the plaintiff being legal representative of defendant no.1, he cannot now claim independent right that of the defendant no.1. Therefore prayed to reject the notice of motion.

7. It is further necessary to note that this Court vide order dated 14/10/2024 considering the pleadings directed the plaintiff to explain how the suit is maintainable in view of Section 41 of the Presidency Small Causes Court Act [In short, 'the Act']. Thereafter the plaintiff amended the plaint vide order dated 02/01/2025 and corrected the contents of plaint para no.6. When the issue as to

jurisdiction is raised vide order dated 14/10/2024 and vide Notice of Motion No. 2780/2025 which is pending before the Court, it has to see whether the plaintiff has prima facie case to grant the relief sought. Therefore reference to the contents of the plaint and documents filed therewith is inevitable.

8. Vide the plaint the plaintiff pleads that he was initially associated and worked as Financial Consultant of defendant no.1. He acted as an authorized representative of it. Defendant no.2 has purchased suit flat vide Deed of Transfer dated 10/10/2005 whereas defendant no.3 is Co-Operative Housing Society registered under Maharashtra Co-operative Societies Act. The suit Flat No.102 is subject matter of the suit and it is in possession of the plaintiff since prior to year 2005 when Leave and License Agreement in between the defendant no.1 and erstwhile owner in respect of the suit flat was executed. The plaintiff specifically pleads that vide Deed of Transfer dated 10/10/2005 defendant no.2 has acquired ownership of the suit flat.

9. The plaintiff further pleads that the document like voter card, bank passbook, Adhar Card establishes that the plaintiff is in occupation of suit premises prior to 2005. It is specific case of plaintiff that he is in possession of suit flat openly and hostilely to the defendants. He came in possession of suit premises in year 2002. Therefore he has perfected his title over the suit premises by principle of adverse possession. Hence he be declared as owner of the suit flat.

10. During the course of arguments, learned advocate for defendant no.2 points out the recitals of the Deed of Transfer dated

10/10/2005 to which the plaintiff is signatory being legal representative of defendant no.1. There is reference of Leave and License Agreement executed in favour of defendant no.1 of which period was extended for further period of 33 months from 01/05/2003. Learned advocate for the plaintiff does not explain as to in what capacity the plaintiff admits transfer of the suit flat in favour of the defendant no.2. The plaint itself shows that plaintiff admits execution of Deed of Transfer dated 10/10/2005 in favour of defendant no.2. Thus, the plaintiff admits that defendant no.2 is owner of suit flat. The averments as to adverse possession and right accrued to the plaintiff are vague. The plaintiff nowhere in the plaint has specifically mentioned the date, month or year from which his possession over the suit flat becomes adverse to the defendant no.2. Apart from it, though plaintiff pleads that he be declared as lawful owner of suit premises, he does not seek such relief of declaration vide the plaint specifically. He has instituted suit mere for injunction. Therefore in view of the observation of the Honourable Supreme Court in **K.M. Krishna Reddy V/s. Vinod Reddy And Another [(2023) 10 Supreme Court Cases 248]** relied upon by defendant no.3, wherein the Honourable Apex Court has referred its own decision in **Anathula Sudhakar V/s. P. Buchi Reddy [(2008) 4 SCC 594]**, it cannot be said that the mere suit for injunction is maintainable.

11. It seems that the plaintiff has cleverly drafted the suit to claim right and interest over the suit flat. The pleadings of the plaintiff to claim right and interest over the suit flat are not clear. The plaintiff does not explain the effect of Deed of Transfer dated 10/10/2005 wherein there is reference of Leave and License Agreement executed in favour of defendant no.1 and to which plaintiff being legal representative of defendant no.1 is signatory. Defendant no.1 does not

contest notice of motion. Therefore there is substance in submission of learned advocate for defendant no.2 that the plaintiff cannot act in dual capacity. On this ground the plaint is liable to be rejected. However, in view of pendency of Notice of Motion No. 2780/2025 filed under Order 7 Rule 10 read with Order 7 Rule 11 of the Code of Civil Procedure [In short, 'the Code'], it would be just and proper to hear both parties on that issue in detail. Consequently it would be just and proper to consider ratio laid down by Honourable Apex Court in **Mansukhlal Dhanraj Jain And Others V/s. Eknath Vithal Ogale [(1995) 2 Supreme Court Cases 665]** at the time of decision to be passed on Notice of Motion No. 2780/2025.

12. On backdrop of the aforesaid facts, it is seen that the plaintiff has not come with clean hand before the Court. He has drafted the plaint cleverly to claim the right independent of defendant no.1. There is prima facie case to say that the provisions of Section 41 of the Act are affected. The plaintiff had notice that defendant no.3 is likely to take action against him in the year 2009 vide Exh.E to the plaint. The suit is instituted in the year 2024 and notice of motion is filed particularly after defendant no.2 has initiated proceeding to recover the possession of the suit flat before competent authority. All these facts disentitle the plaintiff from claiming relief sought. Therefore the observation of the Honourable Apex Court in **Sudipta Dutta V/s. CESC Ltd. Through Chairman & Ors. (Special Leave to Appeal (C) No(s). 5587-5588/2024)** wherein the Honourable Apex Court has observed that the person in wrongful possession cannot be denied his right to enjoy electricity and water supply are not helpful to the plaintiff. In the result, notice of motion deserves to be rejected. In the result, following order is passed :

- ORDER -

Notice of Motion No. 2781/2025 stands rejected.



(U.C.DESHMUKH)
Judge,
City Civil Court,
(Court Room No.66)
Mumbai.

Date : 21/05/2025.

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| 1. Dictated on | : 21/05/2025. |
| 2. Transcribed on | : 21 and 22/05/2025. |
| 3. Placed for correction on | : 22/05/2025. |
| 4. Checked on | : 22/05/2025. |
| 5. Correction carried on | : 22/05/2025. |
| 6. Signed on | : 22/05/2025. |
| 7. Delivered to Certified
Copy Section on | : |

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”

UPLOAD DATE AND TIME
22/05/2025. 3.21 p.m.

NAME OF STENOGRAPHER
Miss M.A.Kulkarni.

Name of the Judge (with Court Room no.)	HHJ Shri U.C.Deshmukh. (Court Room No.66).
Date of Pronouncement of Judgment/Order	21/05/2025.
Judgment/Order signed by P.O. on	22/05/2025.
Judgment/Order uploaded on	22/05/2025.