

ATUL

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 867 OF 2016
IN
SUIT NO. 154 OF 2015

Ashan Alias Mansur Hasan Khan ...Plaintiff
Versus
Salim Hasan Khan & 4 Others ...Defendants

Mr. G. Raikar, *i/b Mr. Charles J. DeSouza, for the Plaintiff.*
Mr. D.D. Madon, Senior Advocate, *with Mr. Atul Daga, Ms. Poorva Garg & Mr. Parikshit Barpujari, i/b Mulla & Mulla & C.B.C. for Defendant No. 1/Applicant.*
Ms. Soniya Putta, *with Mr. Rahul Soman, i/b Solomon & Co., for Defendant No. 3.*

CORAM: G.S. PATEL, J
DATED: 30th August 2016

PC:-

1. This is the 1st Defendant's application for ad-interim reliefs in an Administration Suit. The complaint is that the Plaintiff has entered into an agreement with certain Cell Tower Company, Indus Communications, for erecting a cell tower on the property that is a commercial premises at Kurla Industrial Estate, Sakinaka, Andheri. This property is mentioned in Schedule "B" at page 240 of the plaint. The 1st Defendant's case is that he has 50% stake, right, title

and interest in this industrial property. The 1st Defendant also says that this property is among those that is the subject matter of various litigations for a long period of time.

2. This Notice of Motion was filed by the 1st Defendant on 14th March 2016. The Plaintiff sought time to file an Affidavit in Reply. The matter was moved before Mr. Justice K.R. Shriram on 22nd March 2016 when a short order was passed recording the statement of senior Advocate on behalf of the Plaintiff that the Plaintiff will not, till the next date, enter into an agreement with the Cell Tower Company to the exclusion of the 1st Defendant by inserting the name of the Plaintiff's son on the necessary record.

3. There is a significant problem with the Court record in this Notice of Motion. I find that I have the Notice of Motion and its Affidavit in Support, a further Affidavit in Support dated 21st April 2016 and an Affidavit in Rejoinder dated 15th June 2016. There is no record of the Affidavit in Reply having been filed. It is not a question of the Affidavit having been misplaced. It is not in the Court papers at all. There is no noting in the Court system of this Affidavit in Reply ever having been filed. I have been given a plain paper copy by Mr. Madon who appears for the 1st Defendant.

4. On behalf of the Plaintiff, a submission is made that a certain senior Advocate appears and, therefore, I should give a fixed date for this matter. I refuse to do anything of the kind. This practice of seeking fixed dates at the convenience of senior advocates will now stop. If they have accepted a brief in a matter listed on the ad-

interim board, they will remain present or they will return that brief. We will not fix our dockets on the basis of their diaries. They will adjust their diaries to our dockets. Being designated a senior counsel has more responsibilities than privileges. Regaining those privileges will present no difficulty at all.

5. At this, learned Advocate appearing for the Plaintiff today seeks some time to prepare himself. That is fair enough.
6. List the matter first on the supplementary board tomorrow.

(G. S. PATEL, J.)