

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. J.P. Sen, Senior Advocate, 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 M/s. Solomon & Co., for Defendant No. 3.

**CORAM: G.S. PATEL, J
DATED: 31st August 2016**

PC:-

1. I have heard Mr. Sen for the Plaintiff and Mr. Madon for Defendant No. 1. Before proceeding further, I note that Mr. Sen states that an Affidavit in Reply was indeed filed in May 2016. This was not found yesterday. The Court Associate reports that the missing Affidavit in Reply is found in the Miscellaneous Papers file. That Affidavit in Reply is paginated from page 126 to 152. The

Rejoinder in the Court record will be returned to its original page numbering from page 153 onwards.

2. Mr. Madon's grievance in the present application is that the Plaintiff has held himself out to certain cell tower operators as being the sole owner of the industrial or commercial property shown in Schedule "B" to the Petition at page 240. This is an industrial unit at Saki Naka, Andheri. It is a ground and first floor structure. There are abutting premises as well and all of these share a common terrace. Paragraph 4(s) of the Affidavit in Reply clearly indicates that the Plaintiff held out to the cell tower companies that he and his son were the only ones one entitled to the Schedule "B" premises; and that they, along with their neighbours, were authorised to permit the cell tower companies to erect cell towers. The Plaintiff entered into agreements with cell tower companies. Mr. Madon states that there are at least three such agreements of which his client is aware. There may in fact be more.

3. For his part, Mr. Sen states that this is only one side of the coin. He readily accepts that the 1st Defendant has an approximately 20% interest in the Schedule "B" property. Mr. Madon does not accept the correctness of this figure. Mr. Sen further states that the 1st Defendant's allegation against the Plaintiff is equally true of the 1st Defendant in respect of the residential property at Schedule "A" at page 139 of the plaint. There, according to Mr. Sen, Mr. Madon's client has taken possession of or remained in possession of a far larger share than to which he is entitled. Mr. Sen makes a request that a similar order should be made against Mr. Madon's client as well.

4. Mr. Sen says that the Plaintiff has filed Notice of Motion (L) No. 2050 of 2014 for similar reliefs. That Notice of Motion is still on a lodging number. The Plaintiff will remove all office objections on this Notice of Motion by 8th September 2016, failing which I will dismiss it without examining it on merits.

5. I will consider Mr. Madon's Notice of Motion along with Mr. Sen's Notice of Motion (subject to numbering) finally on the next date.

6. In the meantime, however, it seems to be necessary that some arrangement ought to be made in respect of the amounts received by the Plaintiff under these agreements with these cell tower companies. Mr. Sen makes a statement, on instructions of the Plaintiff who is present in Court, that the Plaintiff will deposit all amounts received from the Cell Tower companies since April 2014 till date. This statement is noted and accepted. Mr. Sen states that this amount will be brought into the Court by 27th September 2016. That amount is to be deposited with the Prothonotary & Senior Master to the credit of the Suit.

7. As regards the disclosures, I am inclined to make an order against both sides in respect of the properties at Schedule "B" and at Schedule "A". There seems to be no dispute that the 1st Defendant does in fact control some portion of the Schedule "A" property, as also some portion of the Schedule "B" property. Whether the 1st Defendant is entitled to possession of that property as a sole owner or otherwise is another matter. At this stage, I am

directing a disclosure of what portion of Schedule “A” property is in possession of the 1st Defendant himself, since when and what portion is in occupation of others at the instance of the 1st Defendant, since when and on what terms. The Plaintiff will make a similar disclosure in regard to the properties at Schedule “B” and at Schedule “A”.

8. Till further orders of this Court, neither the Plaintiff nor the 1st Defendant are to initiate any correspondence or any legal proceedings in respect of either of these properties at Schedule “A” or Schedule “B”.

9. The question of whether the Plaintiff has any share at all in the Schedule “A” property, which Mr. Madon says he does not, will be considered on the next date.

10. I am making it clear that these disclosures are entirely without prejudice to the rights and contentions of both the sides and all contentions are expressly kept open.

11. All filings upto the stage of Rejoinder will be complete on or before 23rd September 2016.

12. List both the Notices of Motions on 30th September 2016 at the end of the supplementary board for hearing and final disposal.

(G. S. PATEL, J.)