

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION (L) NO.1033 OF 2018
IN
SUIT (L) NO.548 OF 2018**

Farhad Ginwala and Ors. ... Plaintiffs

versus

Zenobia R. Poonawala (nee
Ginwala and Anr. ... Defendants

Ms. Sarrah Khambati i/by M/s. Wadia Ghandy and Co., for Plaintiffs.
None for Defendants.

CORAM: S.J. KATHAWALLA, J.

**DATE: 1st JUNE, 2018
(In Chambers)**

P.C.:

1. Not on board. Upon mentioning, taken on board.
2. The Application for Speaking to the Minutes of the order dated 2nd May, 2018 which was uploaded yesterday evening, was mentioned in the morning session. The matter was kept at 3.00 p.m. Though a copy of the praecipe is served on the Advocate for the Defendants, they have not remained present on the ground that their Counsel is not available.
3. I have perused the Praecipe as well as the reliefs sought in sub-clause (ii) of prayer clause (b) of the Notice of Motion and have noted that certain errors have crept

in the order due to inadvertence. In view thereof, the mistakes in the order are corrected as follows :

(i) Clause (b) of paragraph 2.6 of the order be read as under :

“(b) That the Defendants in the first week of April placed CCTV cameras over the main entrance doors to Flat Nos.4, 5, 6 and 8 on the 1st, 2nd and 3rd floors of Rutton Manor in which the Plaintiffs are residing, without their consent, and are monitoring as to who is coming in and out of those flats, thereby invading the Plaintiffs privacy.”

(ii) The first sentence of paragraph 4 of the order be read as under :

“The two other grievances made on behalf of the Plaintiffs on 25th April, 2018 were that in the first week of April-2018 without the consent of the Plaintiffs, the Defendants have installed CCTV cameras over the entrance doors of Flat Nos.4, 5, 6 and 8 on the 1st, 2nd and 3rd floors of Rutton Manor, in which the Plaintiffs are residing and are monitoring who is coming in or out from the said flats thereby invading the privacy of the Plaintiffs and further that the Defendants have locked the access door to the common terrace of the building Rutton Manor, because of which the Plaintiffs are unable to have access to the common terrace and the water tanks and lift room, which are located on the terrace.”

(ii) The third sentence of paragraph 6 of the order be read as under :

“However, though the learned Advocate appearing for Defendant No. 1

admits that CCTV cameras currently installed by Defendant No. 1 are over the main entrance of Flat Nos.4, 5, 6 and 8 on the 1st, 2nd and 3rd floors of the Rutton Manor in which Plaintiffs are residing, he states that since an unknown person had tried to open the flat of Defendants on 24th March, 2018 and a complaint was made to the Senior Inspector of Colaba Police Station, it is necessary to install the cameras on each floor and his clients are not agreeable to change the position of the cameras even if one can see who is coming in and out of the flats of the Plaintiffs”.

(iv) The 4th and 5th sentence of Paragraph 7 of the order be read as under :

“Therefore, in my view, since admittedly the Plaintiffs are residing in Flat Nos.4, 5, 6 and 8, no one has a right to invade their privacy. Defendant No. 1 certainly cannot be allowed to continue with the CCTV cameras installed over the main entrance door to Flat Nos.4, 5, 6 and 8 on the 1st, 2nd and 3rd floors of Rutton Manor on the ground that some one had allegedly tried to enter their flat on the fourth floor on 24th March, 2018.”

(v) Clause (ii) of paragraph 10 be read as under :

“(ii) The Plaintiffs are allowed to forthwith remove the CCTV cameras, which are put/installed, without their consent, over the main entrance of Flat Nos.4, 5, 6 and 8 on the 1st, 2nd and 3rd floors of Rutton Manor, in which the Plaintiffs are residing thereby invading the Plaintiffs’ privacy. However, to secure the building of the Plaintiffs and the Defendants, the Plaintiffs shall get CCTV cameras

installed as suggested by Span Systems initially at their costs.”

Application for Speaking to the Minutes is accordingly disposed of.

(S.J.KATHAWALLA,J.)



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NOTICE OF MOTION (L) NO. 1033 OF 2018
IN
SUIT (L) NO. 548 OF 2018**

Farhad Ginwala and Ors. ... Applicants / Plaintiffs

Versus

Zenobia R. Poonawala

(Nee Ginwala) & Anr. ... Defendants

Mr.Karl Tamboly a/w. Mr.Sameer Pandit, Ms.Sarrah Khambati i/b. M/s. Wadia Ghandy and Company for the Applicants / Plaintiffs.

Mr.Amin i/b. B. Amin and Company for the Defendants.

CORAM : S.J. KATHAWALLA, J.

DATED : 2ND MAY, 2018

P.C.:

1. The Plaintiffs have moved an Application for urgent ad-interim reliefs in terms of prayer Clauses (a) (i) – (v) and (b) (i) and (ii) of the present Notice of Motion, which are reproduced hereunder :

“a) That pending hearing and final disposal of the instant Suit, this Hon’ble Court be pleased to pass an order of temporary injunction restraining the Defendants, directly or through agents, servants, employees or contractors, from:

i. coming within 50 meters of any of the Plaintiffs, photographing/video recording any of the Plaintiffs, their guests, domestic help and/or other persons invited/employed by the Plaintiffs;

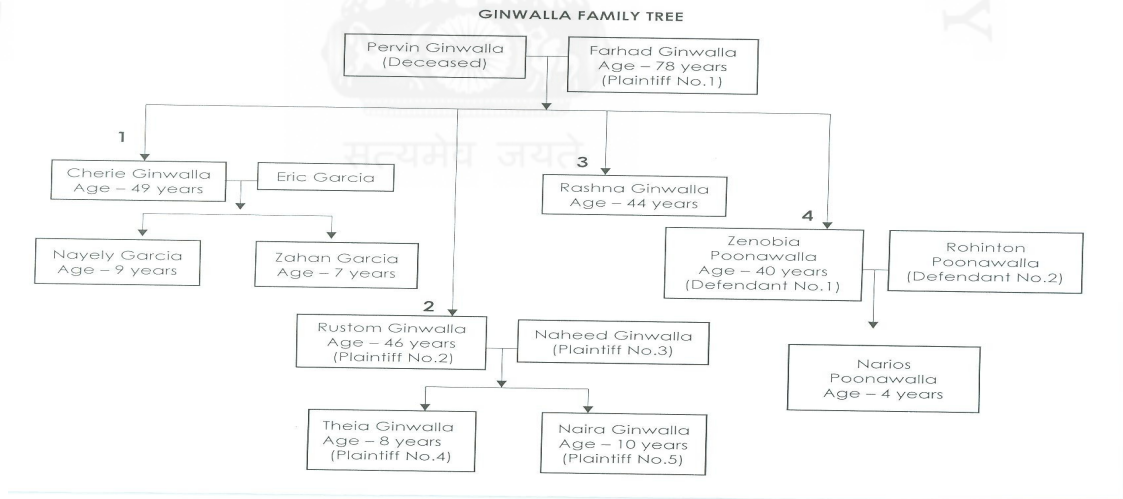
- ii. stopping, disconnecting and/or otherwise interfering with the electricity, water, telephone, internet and/or other utilities used by the Plaintiffs in their residential premises;*
 - iii. installing any CCTV cameras or other recording devices outside Flat Nos. 4, 5, 6 and 8 in Rutton Manor;*
 - iv. obstructing access to common areas in the building including the terrace and lift room; and*
 - v. harassing, abusing, obstructing, or otherwise annoying or causing nuisance to the Plaintiffs, their close family members, their guests, domestic help and/or persons visiting/employed by the Plaintiffs and/or interfering with the Plaintiffs' peaceful use and occupation of their residential premises;*
- b) That pending hearing and final disposal of the instant Suit, this Hon'ble Court be pleased to pass an order directing the Defendants to:*
- i. restore all water connections to the flats occupied by the Plaintiffs including Flat Nos. 4, 5, 6 and 8; and*
 - ii. remove any such CCTVs or other recording devices that may have already been installed devices outside Flat Nos. 4, 5, 6 and 8 in Rutton Manor."*

2. The facts and circumstances in which the present ad-interim Application has been made, are as follows :

2.1. The Plaintiffs and the Defendants are the members of the same family. The Plaintiff No. 1 – Farhad Ginwalla and his late wife – Pervin had four children i.e. Rustom (Plaintiff No. 2), Rashna, Chherie and Zenobia (Defendant No.1). Late

Pervin was the landlady of a building known as Rutton Manor, Garden Road, Apollo Reclamation Colaba, Mumbai-1, and the entire family lived in the said building. After the demise of Pervin, pursuant to the request made by Pervin under her Will, Farhad/Plaintiff No. 1 (husband of Pervin) and Zenobia/Defendant No. 1 (daughter of Farhad and Pervin) acquired Pervin's interest in Rutton Manor and became co-landlords of Rutton Manor in the proportion of 55% and 45% respectively. On 11th October, 2017, Plaintiff No. 1 executed a Gift Deed (rectified by Deed of Rectification dated 24th October, 2017) and transferred his interest in Rutton Manor to his son Rustom/Plaintiff No.2 and his daughter - Rashna in the proportion of 45% and 10% respectively. Accordingly, as on date, Rustom/Plaintiff No. 2, his sister Rashna and Zenobia/Defendant No. 1 are the co-landlords of Rutton Manor.

2.2 The Ginwalla Family tree is shown hereunder :



2.3 The Plaintiffs and the Defendants are residents of Mumbai and residing in Rutton Manor. While Rashna and Cherie are presently overseas, they live in Rutton Manor, when they visit India.

2.4 According to the Plaintiffs, the flats and garages in Rutton Manor are occupied by the family members in the following manner :

Ground Floor :

1. Flat No.1 - Currently vacant and co-owned by Zenobia (Defendant No.1) (45%), Rustom (Plaintiff No.2) (45%), and Rashna (10%)
2. Flat No.2 - Occupied by 3rd party tenant

First Floor :

3. Flat No.3 - occupied by 3rd party tenant
4. Flat No.4 - Occupied by Rustom/Plaintiff No.2. Used by his aunt and other family members when they visit Rutton Manor.

Second Floor :

5. Flat No.5 - Occupied by Rustom/Plaintiff No.2 along with Naheed and their children as their place of residence
6. Flat No.6 - Occupied by Rustom/Plaintiff No.2 along with Naheed (Plaintiff No.3) and their children (Plaintiff Nos.3 and 5) as their place of residence

[Zenobia (Defendant No.1) has filed eviction suits in Small Causes Court in respect of Flat Nos.4, 5 and 6].

Third Floor :

7. Flat No.7 – Occupied by 3rd Party tenant
8. Flat No.8 – Used by Farhad (Plaintiff No.1) as his place of residence.

Fourth Floor :

9. Flat No.9 – belongs to Rashna, however, according to the Plaintiffs, the same is illegally occupied by Zenobia/Defendant No.1

10. Flat No.10 – Occupied by 3rd party tenant

Terrace :

11. Common building terrace is accessible from passage on fourth floor, which has been locked by Zenobia.

2.5 The above flats/garages are the subject matter of various proceedings in the Small Causes Court and City Civil Court, Mumbai. However, according to the Plaintiffs, they have not been restrained from using or enjoying any of the premises in their possession.

2.6. The grievances raised by the Plaintiffs at the ad-interim stage and in respect of which the Plaintiffs are seeking urgent protection, are as follows :

a. That the Defendants, and especially Defendant No. 1 have been incessantly taking photographs and video recordings of the Plaintiffs and the insides of the Plaintiffs homes.

b. That the Defendants in the first week of April placed CCTV cameras over the main entrance doors to Flat Nos. 5 and 6 on the second floor of Rutton Manor in

which Plaintiff Nos. 2 to 5 are residing, without their consent, and are monitoring as to who is coming in and out of those flats, thereby invading the Plaintiffs privacy.

c. That the Defendants have turned off the water supply providing water to Flat Nos. 4, 6, 8 and 10 i.e. on one entire side of the building.

d. That the Defendants have locked the access door to the common terrace of the building Rutton Manor, thereby depriving the Plaintiffs access to the common terrace, and the water tanks and lift room which are located on the terrace.

e. That the Defendants are constantly intimidating Plaintiff No. 1 who is a senior citizen, Plaintiff Nos. 4 and 5 who are minors, the domestic help and guests of the Plaintiffs and persons, including staff of the Mumbai Municipal Corporation, who are deputed to carry out work at Rutton Manor such as gardening, cleaning of overflowing gutters, fumigation etc.

3. As far as the first grievance of Plaintiffs pertaining to the Defendants incessantly taking photographs and video recordings of the Plaintiffs and the insides of the Plaintiff's flats is concerned, Mr. Tamboly appearing for the Plaintiffs pointed out from the Plaint, the various instances of Defendant No. 1 taking photographs and videos of the Plaintiffs and inside of their homes without their consent. Mr. Tamboly has submitted that Defendant No. 1 is repeatedly taking photographs and videos of the Plaintiffs to annoy the Plaintiffs and to disturb the Plaintiffs. Though the instances of Defendant No. 1 repeatedly taking photographs and videos of the Plaintiffs, are in detail listed in Clauses (a) to (o) of paragraph 3.5 of the Plaint, I am not reproducing

the same but I am only reproducing pictures showing how Defendant No. 2 is repeatedly following the Plaintiffs and taking their photographs :

Exhibit-B-3 to the Plaint at page 40



Defendant No.1

Exhibit-C-2 to the Plaint at page 42



Defendant No.1

Exhibit-C-3 to the Plaint at page 43



Defendant No.1

Exhibit-C-4 to the plaint at page 44

Defendant No. 1



Exhibit-E-1 annexed to Plaintiff at page 47

Defendant No. 1



Exhibit-E-3 annexed to the Plaintiff at page 49



Defendant No. 1

Exhibit-F annexed to the Plaint at page 31



Defendant No. 1

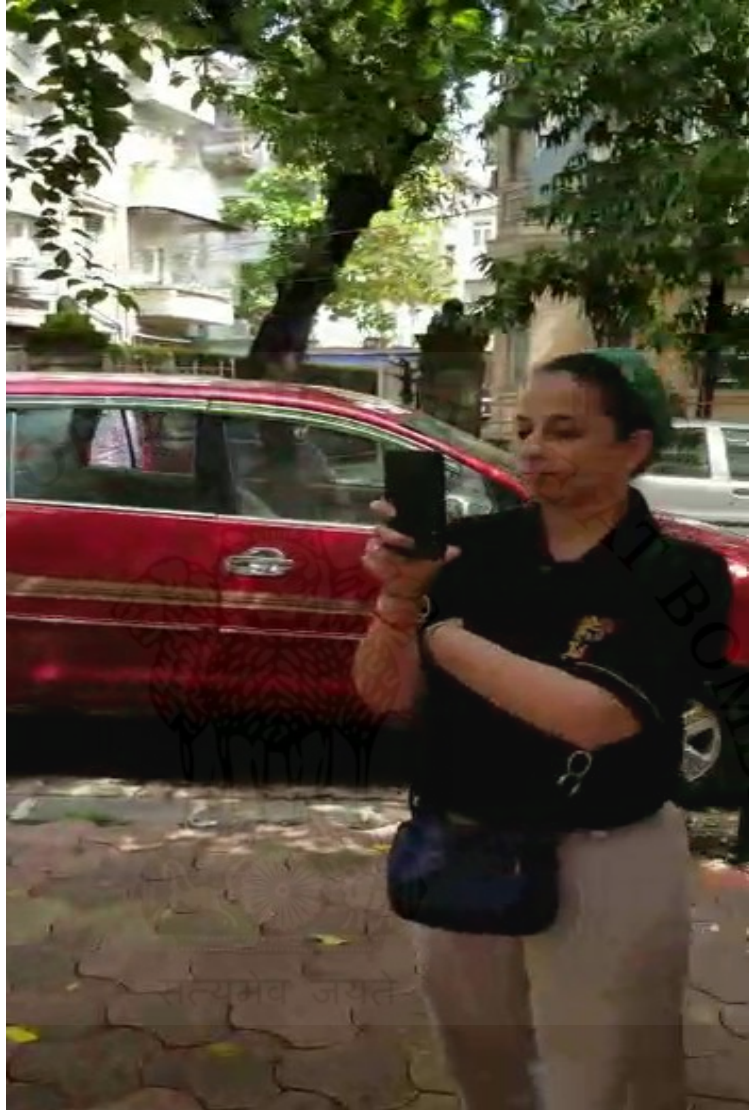
Exhibit-G-2 annexed to the Plaint at 53

Defendant

No.1 →



Exhibit-G-3 annexed to the Plaint at page 54



Defendant No. 1

Exhibit-H-1 annexed to the Plaint
Defendant No. 1



Exhibit-H-2 annexed to the Plaint
Defendant No. 1



Exhibit-T-1 annexed to the Plaint

Defendant No. 1



Exhibit-I-3 annexed to the Plaint



Defendant No. 1

Exhibit-J-2 annexed to the Plaint

Defendant No. 1



2.5. Since it was clear from the above photographs that the Defendant No.1 is conducting herself in this manner undoubtedly to annoy and disturb the Plaintiffs, their children and their guests, this Court enquired from the learned Advocate appearing for Defendant No. 1 as to why she was behaving in this manner. The learned Advocate appearing for Defendant No. 1 informed the Court that since the Plaintiffs were committing breach of the order/s passed by the Small Causes Court, Mumbai by inducting third parties in the flats in the building named Rutton Manor, she was doing so. In response, this Court referred to a photograph, which Defendant No. 1 was taking / clicking when the father of Plaintiff No. 1 is getting out of the lift with the help and support of two individuals and enquired as to why the said photograph was taken and what could she prove/establish through such a photograph. The Advocate

for the Defendants submitted that the father of the Defendant No. 1 (Plaintiff No.1) is suffering from dementia, he is not in a position to take his own decisions and she has filed a case in the City Civil Court, Mumbai under the Mental Health Act. When this Court again enquired as to how the said photograph would help in proving the mental health of her father/the Plaintiff No.1, there is no answer. This Court therefore made it clear to the Advocate for the Defendants that the Court has no doubt that Defendant No. 1 is conducting herself in this manner only to annoy and disturb the Plaintiffs and their guests, and the Court cannot allow her to do so. In view thereof, on 25th April, 2018 Defendant No. 1 who was present in Court, gave an undertaking that she will not take photographs or do video recordings of the Plaintiffs and / or any of their family members. The said statement was recorded and accepted as an undertaking given to the Court.

4. The two other grievances made on behalf of the Plaintiffs on 25th April, 2018 were that in the first week of April-2018 without the consent of the Plaintiffs, the Defendants have installed CCTV cameras over the entrance doors of Flat Nos. 5 and 6 on the 2nd Floor of Rutton Manor, in which Plaintiff Nos. 2 to 4 are residing and are monitoring who is coming in or out from the said flats thereby invading the privacy of the Plaintiffs and further that the Defendants have locked the access door to the common terrace of the building Rutton Manor, because of which the Plaintiffs are unable to have access to the common terrace and the water tanks and lift room, which are located on the terrace. The Plaintiffs also made a grievance that the Defendants

are stopping the water supply from the water tanks to their respective flats. In view thereof, this Court suggested that Shri Samir Pandit, Advocate from Wadia Ghandy and Company appearing for the Plaintiffs and Shri Amin, Advocate from B. Amin and Company appearing for the Defendants, should visit the Suit premises along with a person dealing in the business of installing and maintaining CCTV's to find out a way to amicably resolve the disputes qua the said two issues between the Plaintiffs and the Defendants. In view thereof, Advocate Samir Pandit and Advocate Amin along with the technician of 'Span System' who have earlier installed CCTV systems in the premises of the partnership firm of the family, visited Rutton Manor on 27th April, 2018 and Mr. Chirag Dhakaan of Span Systems visited the said building on 28th April, 2018. Mr. Dhakaan has submitted the report of Span System to this Court, wherein he has recorded that at present the CCTV cameras have been installed in the building Rutton Manor as under :

- “a) Ground floor -
 - a. CCTV on left side above Flat No.1
 - b. CCTV on right side above Flat No. 2
- b) First floor -
 - a. CCTV on left side above Flat No. 3
 - b. CCTV on right side above Flat No. 4
- c) Second Floor -
 - a. CCTV on left side above Flat No. 5
 - b. CCTV on right side above Flat No. 6
- d) Third Floor -

- a. CCTV on left side above Flat No. 7
- b. CCTV on right side above Flat No.8.”

5. Mr. Dhakaan has in his report also recorded the questions put to him by the Plaintiff No.2 and the answers given by him. The same are reproduced hereunder :

“1. What are the best locations to install CCTVs at Rutton Manor such that they can record persons entering and exiting in the building in a minimally intrusive manner ?

Ans : There are three gates to the compound, there is one main entrance to the building and a spiral staircase at the back side. Cameras in the front and back compound and ground floor entrance will be sufficient for the above.

2. Will installation of CCTVs at the three entry and exit points of the building and appropriate locations in the front, side and back compounds capture entry and exists of persons into Rutton Manor ?

Ans : Yes.

3. What is the area of coverage of the CCTVs installed on the left-hand side of the first, second and third floors of Rutton Manor ?

*Ans : Nor me or my person have personally been shown the CCTV feed, but from my inspection, I estimate the area of **coverage includes** part of the landing (lobby) areas and lift door at the first, second and third floors, **and the main doors of Flats 3, 4, 5, 6, 7 and 8 of Rutton Manor.** (Emphasis supplied)*

4. Are the CCTVs install on the left-hand side of the first, second and third floors of Rutton Manor capable of recording persons entering and exiting Flat Nos. 4, 5, 6 and 8 of Rutton Manor ?

Ans : Yes.

5. Will it be possible to record entry and exit of persons from Rutton

Manor if the cameras at the first, second and third floors of Rutton Manor are removed and replacements are installed at appropriate locations of the entrance and compound of Rutton Manor ?

Ans : Yes, if the suggestions in answer 1 are followed.”

6. On 2nd May, 2018 i.e. today Mr.Dhakaan has appeared before this Court and has informed the Court that he has submitted his report dated 30th April, 2018 after visiting the Suit building and has suggested the best locations to install CCTV's at Rutton Manor, which would take care of the security in a minimally intrusive manner. This Court therefore suggested that the CCTV cameras be installed as advised by Span Systems. However, though the learned Advocate appearing for Defendant No. 1 admits that CCTV cameras currently installed by Defendant No. 1 are over the main entrance of Flat Nos. 4, 5 and 6 on the second floor of the Rutton Manor in which Plaintiff Nos. 2 to 5 are residing, he states that since an unknown person had tried to open the flat of Defendants on 24th March, 2018 and a complaint was made to the Senior Inspector of Colaba Police Station, it is necessary to install the cameras on each floor and his clients are not agreeable to change the position of the cameras even if one can see who is coming in and out of the flats of the Plaintiffs.

7. The submission made on behalf of the Defendants cannot be accepted. The report submitted by Span Systems assures that installation of CCTVs at the 3 entry and exit points of the building and at appropriate locations in the front, side and back compounds will capture entry and exit of persons into Rutton Manor. Again, the

Defendants can put any number of cameras on the fourth floor to monitor the entry and exit of any person on the fourth floor. Therefore, in my view, since admittedly Plaintiff Nos.2 to 5 are residing in Flat Nos.5 and 6, no one has a right to invade their privacy. Defendant No. 1 certainly cannot be allowed to continue with the CCTV cameras installed over the main entrance door to Flat Nos. 5 and 6 on the second floor of Rutton Manor on the ground that some one had allegedly tried to enter their flat on the fourth floor on 24th March, 2018.

8. As far as the issues pertaining to the water tanks and the lift room located on the terrace are concerned, the photograph reproduced herein shows that the grill door is the door to the residence of the Defendants on the fourth floor. The white door on the left is an entry to the terrace.

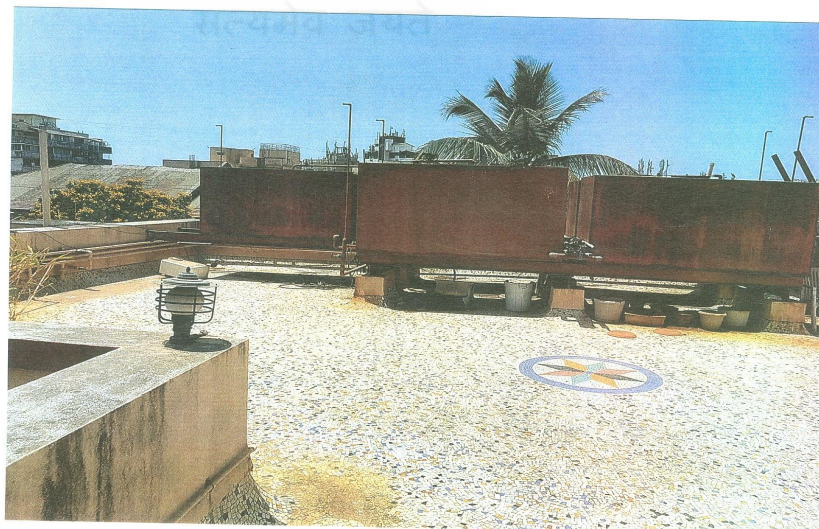


9. Once the white door is opened, one can enter the terrace, which at present is used by Defendant No. 2. Though according to the Defendants, the white door is not

shown in the sanctioned plan, it is clear that the same is put up with the purpose of enabling other flat owners/occupiers to gain access to the terrace without entering the flat occupied by Defendant No.1 and 2. The photograph of the terrace is reproduced hereunder :



10. The iron staircase, which can be seen on the terrace leads to a higher level on the terrace, where the water tanks are housed, the photograph of which, is reproduced hereunder :



10. Defendant Nos. 1 and 2 have refused to handover keys of the white door, from which the Plaintiffs and their representatives can have access to reach the tanks and the lift room. At present, I am not directing Defendant No. 1 to handover a set of keys to the Plaintiffs. However, in my view, Defendant Nos. 1 and 2 except in case of emergency, can with prior notice allow Plaintiff No.2 and/or 3 to reach the water tanks / lift room on the terrace along with plumbers, technicians, etc., if the need so arises. Since the Defendants by their demeanor in Court and also otherwise through their Advocate, have refused to cooperate in resolving the above problems/disputes in any manner whatsoever and have taken a very unreasonable and obstructive stand in the matter, I pass the following Order :

- i. Defendant Nos.1 and 2 will not take any photographs or do video recordings of the Plaintiffs and / or any of their family members, guests and servants.
- ii. The Plaintiffs are allowed to forthwith remove the CCTV cameras, which are put/installed, without their consent, over the main entrance of Flat Nos. 5 and 6 on the second floor of Rutton Manor, in which Plaintiff Nos. 2 to 5 are residing thereby invading the Plaintiffs' privacy. However, to secure the building of the Plaintiffs and the Defendants, the Plaintiffs shall get CCTV cameras installed as suggested by Span Systems initially at their costs.
- iii. The Defendants shall be at liberty to put CCTV cameras in the manner they deem fit on the fourth floor where the flat in their occupation is situated.
- iv. The Defendants shall upon receipt of an hour's notice (except in case

of emergency) allow access to Plaintiff Nos.2 and/or 3 along with their plumbers, technicians, etc. to have access to water tanks / lift room on the terrace. In view of the conduct of the Defendants recorded hereinabove and in view of the extreme animosity between the parties, it is possible that the implementation of this order qua access to the water tanks/lift room may become difficult. In view thereof, if the Defendants do not allow the Plaintiffs and their plumbers/technicians etc., to gain access to the terrace as directed herein, the respective Advocates for the parties shall intervene and ensure the compliance of this order.

v. Stand over 18th June,2018.

(S.J.KATHAWALLA, J.)



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Mr.Karl Tamboly a/w. Mr. Sameer Pandit, Ms. Sarrah Khambati i/b. M/s. Wadia Ghandy and Company for the Plaintiffs.

Mr.Anjal N. Amin i/b. B.Amin and Company for the Defendants.

Ms.Zenobia R. Poonawala - Defendant No. 1 present in person.

CORAM : S.J. KATHAWALLA, J.

DATED : 25TH APRIL, 2018

P.C.:

Defendant No. 1 who is present in Court, undertakes to this Court that she will not take photographs or do video recordings of the Plaintiffs and / or any of their family members. The statement is accepted. Stand over to 2nd May, 2018.

(S.J.KATHAWALLA, J.)