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

NOTICE OF MOTION (L) NO. 431 OF 2015
IN
SUIT (L) NO. 147 OF 2015

Tajuddin Dawood Hamdulay ...Applicant

In the matter between:

Tajuddin Dawood Hamdulay ...Plaintiff
Vs.
Keystone Infra Developers & Ors. ...Defendants

Mr. J.P. Sen, Sr. Counsel, Mr. Rafiq Peer Moidin &
Mr. Rohan Cama i/b. Sapana Raichure for the Plaintiff
Mr. Moinuddin Ahmed Khan for Defendants

CORAM : MRS. ROSHAN DALVI, J.
DATED : 16TH APRIL, 2015

ORDER:

1. Defendant Nos. 2 and 3 have entered into an agreement of sale dated 21st May, 2013 with the plaintiff. Defendant Nos. 2 and 3 are partners of defendant No.1 firm. However the agreement is not entered into by defendant Nos. 2 and 3 as partners of the firm. It is signed by them individually though defendant Nos. 2 and 3 are described as partners of defendant No.1 firm on the first page of the unregistered agreement for sale.

2. The plaintiff has sought to purchase 7 bungalows on behalf of himself and his family members. The plaintiff claims to be an agriculturist. He has produced income tax returns of the entire family. The income tax returns inter alia show income from agriculture. That income is exempt from payment of tax. That is not the only income of the plaintiff and his family members. The entire income received over the period of 4 years is added-up to show the consideration paid.

3. The parties have sought to settle their dispute under the consent terms.

4. In view of the aforesaid unusual facts the Court has gone into the legality of the amounts received as agricultural income in respect of which income tax has not been paid, but which has been aggregated to constitute the consideration.

5. The entire consideration is paid in cash.

6. Such a transaction would fall within the mischief of Finance Bill 2015 under which the receipt / payment for immovable property is sought to be put on par with the receipt of loans and advances which are required to be paid by account payee cheques and not in cash.

7. It is shown on behalf of the plaintiff that the provision under the proviso of Section 269SS in Chapter XX B of the Income Tax Act relating to the requirement as to the mode of acceptance, payment or repayment in certain cases to counteract evation of tax would not be applicable. It is contended that the amount of consideration paid for the purchase of the bungalows is not loan or deposit which falls under the mischief of Section 269SS.

8. Mr. Sen on behalf of the plaintiff drew the Court's attention to circular No.387 of 1984 dated 6th July, 1984. It clarifies in paragraph 32.5 that the prohibition contained in Section 269SS is confined to loans and deposits only and does not extend to purchase / sale transactions. He refers to the judgment of **Gujarat High Court Commissioner of Income-tax – VI Vs. Madhav Enterprise(P.) Ltd. (MAG)/ [2013]356ITR 588(Gujarat) [2013] 37 Taxman.com.349 (Gujarat)** in which also referring to the case of **Shiv Enterprises (ITA No.291/Ahd/2009 order dated 14-10-2011)** and considering the provision of Section 269SS it has been held that the receiving of advance or repayment of advances in a business transaction would be confined to loans and deposits and not purchase/sale transaction.

9. Defendant No.1 has produced a photocopy of the

registered notarised sale deed dated 21st May 2013 relating inter alia to the suit property described in **Exhibit-A** to the plaint. The registered sale deed shows that defendant No.1 firm, along with its 7 partners, have sought to sell the suit property to three purchasers mentioned therein. The share of defendant Nos. 2 and 3 who are the only partners of the firm of defendant No.1 who are party defendants is shown to be 15% each. Defendant Nos. 2 and 3 have agreed to give the plaintiff premises admeasuring 10725 sq. ft., carpet area or a specified amount in default of the aforesaid property from out of their 30% share in the partnership firm of defendant No.1.

10. The consent terms are signed by the plaintiff as also the defendants. Defendant No.2 has signed on behalf of defendant No.1 firm as its partner. The Advocates identify the signatures of the parties. The consent terms are accepted on record as agreement binding between the parties to the suit who are the parties to the consent terms and with the clarification that they would not bind any other partners of defendant No.1 firm or any third party. The undertakings, if any, in the consent terms are accepted. Consent terms are marked **"X"** for identification.

11. Notice of Motion as also Suit are disposed off in terms of consent terms. The Suit is decreed in terms of the consent terms.

12. A photocopy of the sale deed executed by defendant No.1 along with its 7 partners in favour of third parties is kept on record.

13. There shall be refund of Court fees as per rules.

(ROSHAN DALVI, J.)