

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

NOTICE OF MOTION (L.) NO.502 OF 2015
IN
SUIT (L.) NO.182 OF 2015

Shailesh Ramniklal Mehta & Anr. ... Applicant

In the matter between

Shailesh Ramniklal Mehta & Anr. ... Plaintiffs

Vs.

Kirit Murji Shah ... Defendant

G D Utangale, Adv. a/w. Akhil Kupade, Adv. i/b. Utangale & Co. for
plaintiffs.

Mr. Dharmesh Jain, Adv. i/b. Divya Shah & co. for defendant No.1.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 10th April, 2015.

P.C. :

1. Defendant No.2 has been served a copy of the plaint, Notice of Motion and affidavit in reply as per the affidavit of service tendered by the plaintiff through the plaintiff's advocate's letter dated 4th March, 2015. Defendant No.1 has been served and has filed affidavit in reply. Defendant No.1 executed certain agreements with the plaintiff for allotment of certain flats mentioned in his allotment letters under which he received consideration which is admitted to be received. The agreements are also admittedly executed. The plaintiffs were to be allotted three flats each in the complex which was constructed by defendant No.1. Defendant No.1 has executed a Deed of Conveyance on 12th October, 2013 in favour of defendant No.2 without constructing flats and without handing over possession of those flats to the plaintiff. Hence the suit.

2. Defendant No.1 claims that defendant No.2 was his mortgagee and in view of the mortgage he was coerced to execute and register the Deed of Conveyance in October, 2013 for which he has filed criminal complaint against defendant No.2 on 15th March, 2014.

3. Thereafter on 9th April, 2014 defendant No.1 in Suit No.273 of 2014 which was in respect of five other similar flats under similar agreements with other parties, undertook not to sell, alienate, encumber or create any third party rights thereunder without disclosure the Deed of Conveyance already entered into by defendant No.2. Defendant No.1 also undertook not to assign any rights in Hansa complex without the prior permission of the Court, which rights have been assigned under the said conveyance. Defendant No.1 undertook to complete the construction of the building and obtain occupancy certificate within 22 months which has not been done. Counsel on behalf of defendant No.1 states that defendant No.1 cannot complete the construction and shall handover the amounts received from the plaintiffs to the plaintiffs.

4. The director of defendant No.2 was directed to be served a notice to remain present in Court by the order dated 11th March, 2015 passed by Justice Kathawalla. The director of defendant No.2 has refused to accept service. He is not present in Court. He has been conveyed suit property under the aforesaid conveyance. He is likely to create third party rights also as he has not at all countenanced the claim of the plaintiffs.

5. Consequently an order of injunction becomes imperative

against both the defendants. The defendants are restrained from selling, alienating, encumbering, parting with possession or creating any third party rights in respect of the three flats of the plaintiff being Flat Nos.101, 104, 904 in 'C' Wing and the suit property described in Exh.A to the plaint.

6. Counsel on behalf of defendant No.1 states that defendant No.1 shall return the amounts received from the plaintiffs as defendant No.1 shall not be able to complete construction of the suit property. Defendant No.1 shall be entitled to deposit the amount received from the plaintiffs in this Court.

7. Notice of Motion is disposed of accordingly. The defendants shall file their WS within 30 days.

8. Suit to be on board on 6th July, 2015.

(ROSHAN DALVI, J.)