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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT (L) NO. 437 OF 2014
WITH
NOTICE OF MOTION (L) NO. 1143 OF 2014
AND
CHAMBER SUMMONS NO. 420 OF 2015**

Shri Yashwant Gangaram Kandpile	...Plaintiff
<i>Versus</i>	
Shri Rajaram Gangaram Kandpile & Ors.	...Defendants

Mr. Vishal Kanade, *i/b Mr. S.S. Deokar, for the Plaintiff.*
Mr. P.P. Prabhu, *for Defendants Nos. 1 to 5.*
Mr. Madhur Rai, *i/b M/s. PRS Legal, for Defendant No. 6.*

CORAM: G.S. PATEL, J
DATED: 25th March 2015

PC:-

1. This family dispute is agreed to be referred to the arbitration with the following order.

2. Mr. Kanade, learned Advocate for the Plaintiff, tenders a draft Chamber Summons for amendment to the plaint. Leaving

open all contentions on both sides, the Chamber Summons is made absolute in terms of prayer clause (a). Amendment to be carried out on or before 6th April 2015. Reverification dispensed with. Chamber Summons to be numbered forthwith. It is clarified that among the contentions left open to the Defendants is also the contention as regards non-disclosure in the plaint as originally filed of the additional material now introduced by amendment.

3. The Chamber Summons is disposed of in these terms.
4. Two properties that are part of the subject matter of this dispute require a specific order. One of these is a mall known as K-Mall. On behalf of Defendants Nos. 1(a) to 1(e) and 2 to 5, a statement is made on instructions that these Defendants will not, without leave of the Court, alienate, transfer, sell or create any third party rights in any part of this mall, except for renewing any existing leave and licence agreements or entering into creating new leave and licence agreements in respect of any premises within this mall. That statement is accepted as an undertaking to the Court.
5. It is noted that the mall is today already mortgaged to Defendant No. 6. This mortgage is an exception to the foregoing statement made on instructions.
6. The other property in question is a building of residential flats known as Pearl Homes. There are 36 flats in all in this building. Flat No. 606 is exclusively reserved and set aside for allotment to some family members. A statement is made on behalf of the contesting Defendants that this flat will not be sold, transferred,

alienated or put in possession of any third party without leave of the Court. This statement is accepted as an undertaking to the Court.

7. As regards Flats Nos. 103 and 106, these are stated to be unsold. In respect of these two flats, the Defendants agree and undertake to this Court that they will not sell, transfer, alienate or part with possession, or create any third party rights therein including by way of leave and licence without leave of the Court. This statement is also accepted as an undertaking to the Court.

8. In respect of 21 flats in the building, documents of sale have already been registered. In respect of the remaining 12 flats, advance payments of about 90% of the purchase price have been received, but documents are yet to be executed. In respect of these 34 flats, the Defendants are at liberty to complete the transactions in question subject to their setting out complete particulars and details of each of these transactions, including disclosing the agreements in question on affidavit. This affidavit shall be filed before the learned Arbitrator to whom the matter will now be referred pursuant to the following directions.

9. The submission of Mr. Kanade that nine of these flats have apparently been sold to the family members but without any documentation is noted. All contentions in that behalf are expressly kept open.

10. Mr. Naushad Engineer, an Advocate of this Court is requested to take up the assignment as a Sole Arbitrator. The amended plaint will be the statement of claim before Mr. Engineer.

Mr. Engineer is requested to call a meeting at the earliest possible for further directions of filing a reply to the statement of claim, etc. It is clarified that the contesting Defendants will be entitled to file a counter-claim and that there is no restriction on the learned Arbitrator in exercising his discretion in considering an application for interim relief either.

11. All costs of the arbitration including arbitrator's fees will be borne equally by the Plaintiff on one side and the contesting Defendants on the other.

12. The reference to arbitration is only with regard to the disputes between the Plaintiff and Defendants Nos. 1(a) and 1(b) and Defendants Nos. 2 to 5. Defendant No. 6 is not concerned with this reference to the Arbitrator.

13. The learned Arbitrator is requested to publish his Award at the earliest within a period of six months from today.

14. I am informed that Defendant No. 6 has declined to disburse a loan previously sanctioned on account of a previous *status-quo* order. It is clarified that the present order is now the only order that will govern the parties. The 6th Defendant is at liberty to proceed with the loan disbursal application in accordance with its usual practice.

15. It is also clarified that the present order is only in order to maintain a certain *status quo* till the learned Sole Arbitrator has had an opportunity to consider the matter and to consider any interim

application that may be filed before him. The learned Arbitrator will be at liberty to pass an interim order modifying this order on an application by either party.

16. The Suit and the Notice of Motion are disposed of in these terms. Refund of Court fee in accordance with the Rules.

(G. S. PATEL, J.)