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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1088 OF 2015
IN
SUIT (L) NO. 359 OF 2015**

Nikita Sandeep Kedia, Also known as Nikita Sandeep Kanodia	...Plaintiff
<i>Versus</i>	
Sanjay Niranjallal Dedia	...Defendant

Mr. Ankit Lohia, *with Ms. Kauser Banatwala, i/b Mr. Tushar
Goradia, for the Plaintiff.*
Mr. Prashant Chande, *for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 3rd July 2015

PC:-

1. Heard. By consent, the following order disposes of the Notice of Motion.

2. The Defendant states that he is in sole use, occupation and possession of Flat No. 11, 2nd Floor, GOP Apartments Cooperative Housing Society Limited, CST Road, Vidya Nagari, Santacruz (East), Mumbai – 400 098. It may be noted that in the plaint this

flat is being described as being on the ground floor. Mr. Chande, learned Advocate for the Defendant, states that the Defendant is an epileptic and is provided care by his uncle, who is also his Constituted Attorney, namely, Mr. Rajendra Pashupatinath Karundia, residing at 74, Netaji Subhash Road, Marine Drive, Mumbai - 400 020. The Defendant is, however, in sole use, occupation and possession of this flat. He confirms that the flat is on the second floor. It is agreed that the Defendant is in use, occupation and possession of only one flat in the building known as GOP Apartments Cooperative Housing Society Limited, and that is the flat on the second floor.

3. There will be an injunction in terms of prayer clause (b) of the Notice of Motion, which reads as follows:

“(b) that pending the hearing and final disposal of the Suit, this Hon’ble Court be pleased to grant an order of injunction restraining the Defendant, his servant, agent and any person claiming by, through and/or under him from selling, transferring, conveying, assigning, alienating, dealing with and/or disposing of the suit flat more particularly described in the Schedule being Exhibit “A” to the Plaint and/or any part thereof and/or creating third party rights and/or encumbrances therein and/or parting with possession of the suit flat in favour of any person and/or entity in any manner and under any guise whatsoever;”

4. The Defendant will be at liberty to give the flat on leave and licence if he so desires, but he shall do so after at least three weeks' written notice to the Advocates for the Plaintiff.

5. In order to ensure that the interest of both parties are clearly and unambiguously taken care of, pending the hearing and final disposal of the Suit, the Court Receiver, High Court, Bombay is appointed a Receiver of this flat. The Court Receiver is deemed to be in possession of this flat upon the passing of this order. That possession is purely and only symbolic. The Court Receiver is not to take physical or actual possession of the flat. An authenticated copy of this order is to be furnished to the Court Receiver, as also to the Cooperative Society. It is made clear that from the date of this order, the flat is *custodia legis*.

6. It is clarified that this order will not affect any proposal for redevelopment of the building in which the suit flat is situated. However, Mr. Chande states that the Defendant will furnish complete particulars, with all annexures, of any existing redevelopment proposal to the Advocates for the Plaintiff. Further, as the redevelopment proposal progresses, Mr. Chande will keep the Advocates for the Plaintiff informed at every stage. Consequently, if as part of the redevelopment proposal, any agreement is required to be signed, the Defendant will be at liberty to execute that agreement provided that an authenticated copy of this order is made available to the Developer, and the Advocate for the Plaintiff inform of any such agreement at least three weeks' in advance. If possession is required to be hand over to any developer, the Defendant will ensure that the possession is not taken by any

other person other than the developer duly appointed by the Cooperative Housing Society. Even at that time, a copy of this order will be made available to the developer and intimation of handing over of possession will also be given to the Advocates for the Plaintiff. In this regard, it is clarified that all protective rights in respect of the existing flat will also apply *mutatis mutandis* to any flat allotted in the name of the Defendant in the newly constructed/redeveloped building. However the Developer or the Society as the case may be will be at liberty to make the allotment in name of the Defendant. That allotment will be subject to the outcome of this suit, but the fact of any such allotment having been made will not make the Developer or the Society liable to either of the present parties or their successors or assigns. Any such allotment made, agreement signed or possession taken after receipt of a copy of the order will sufficiently discharge the Developer and the Society *vis-à-vis* all claims or demands by either of the parties or their successors or assigns.

7. As regards the preliminary issue of limitation, Mr. Chande has fairly not pressed it as a preliminary issue at the stage of Notice of Motion. However, this is without prejudice to the rights of the Defendant to take a plea of limitation in the written statement.

8. Liberty to both the parties to apply for variation or modification or recall of this order on an appropriate case being made out.

9. The Notice of Motion is disposed of in these terms with no order as to costs.

10. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)