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

**NOTICE OF MOTION NO. 998 OF 2014
IN
SUIT NO. 55 OF 1997**

Mrs. Catherine Thomas

...Applicant

In the matter between:

Atul Himmatlal Trivedi

...Plaintiff

Vs.

Sushma Virendra Pal Verma

...Defendant

Mr. S.A. Shetty a/w. Mr. ravindra K. Shetty, Advocates for the Applicant
Mr. Parimal Trivedi i/b. Mr. Atul Trivedi for Plaintiff

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 20TH FEBRUARY, 2015**

P.C. :

1. The applicant is not the party to the suit. The applicant is an occupant of one of the flats in the suit building. The Court Receiver was appointed in the notice of motion taken out by the plaintiff in the suit in respect of certain flats in the suit building. The applicant occupies flat No.602.
2. The consent order of appointment of Court Receiver dated 18th October, 2002 passed in the plaintiff's notice of motion is inter alia in respect of flat No.602. Clause 3 of the order shows that there is no dispute between the plaintiff and defendants with regard to that flat. It also shows that it has been sold / allotted to the persons who are presently occupying the flats. Since the

applicant has continued to occupy the flat as the flat purchaser, she claims that there is no necessity of the Court Receiver in respect of her own flat.

3. The brother of the plaintiff Mr. Parimal Trivedi who has appeared to represent the plaintiff in the suit relies upon **Exhibit-G** to the plaint showing the flats retained by the plaintiff. Flat No.602 is one of the nine flats shown in **Exhibit-G** to the plaint. He, therefore, claims that the plaintiff has retained the flat and the Court Receiver cannot be discharged in respect of suit flat. He also contends that the ad-interim order of injunction has been passed in the suit.
4. Whatever be the claim in the suit and the initial ad-interim order of injunction, the plaintiff has agreed for the appointment of the Court Receiver under the interim order dated 18th October, 2002 as per its terms. That order now prevails. The plaintiff is, therefore, governed by those terms. The term 3 of the order dated 18th October, 2002 shows no dispute in respect of flat No.602 which was initially retained by the plaintiff.
5. The Court Receiver cannot be appointed and cannot continue the appointment in respect of premises in which there is no dispute between the parties.
6. The brother of the plaintiff drew the Court's attention to

various documents of the applicant to contend that they are fabricated and got-up. The applicant has relied upon a deed of confirmation registering her agreement. The applicant does not base her claim upon any unregistered agreement or upon the deed of confirmation. She has produced a copy of her share certificate to show her ownership. In this application the need for continuation of the Court Receiver alone has to be seen. The confirmation is, therefore, shown only for collateral purpose. If admittedly flat No.602 was the flat in possession of a third party with which there was no dispute between the plaintiff and the defendant, though retained by the plaintiff until then, the Court Receiver need not continue as Receiver.

7. The brother of the plaintiff drew the Court's attention to the receipt dated 28th August, 1987 of Sushma Builders who was the contractor who constructed the building made out in the name of the applicant for the receipt of certain amount in respect of flat No.15 on third floor of the building. He claims that this would also show that the applicant's case is fabricated.
8. Counsel on behalf of the applicant states that the numbers of the flats have been given later. The Court cannot enter upon the controversy with regard to the numbers of the flat when the flat numbers are specially mentioned in the interim order appointing Court receiver by consent of the parties and passing directions with regard to the specified premises.

9. Counsel on behalf of the plaintiff has shown the Court other orders also passed in the suit including the order of this Court dated 30th August, 2006 in which Court receiver has been discharged and in which the parties including the plaintiff have accepted that position. This would be because the Court Receiver would require to be discharged in respect of undisputed premises.
10. Since flat No.602 is undisputed, since the applicant claims to be the flat purchaser of the undisputed flat, the Court Receiver need not continue as receiver in respect of the flat of the applicant as has been done in case of various other applicants.
11. The brother of the plaintiff claims that the Court Receiver has to make the report within 8 weeks under clause 7 of the order dated 18th October, 2002 and the report is not made. It is for the plaintiff to pursue with the Court Receiver to make his report. It is for the applicant to take out any other application if the Court Receiver fails to make any report despite the plaintiff pursuing that aspect. The report, which has to be made by the end of December, 2002, if not made after 13 years cannot be considered not to give the applicant her right to have her flat released from the appointment of the Court Receiver.
12. Consequently prayer (a) in the notice of motion is granted.

13. The Court Receiver is discharged in respect of flat No.602 without passing accounts and on payment of his costs, charges and expenses.
14. Notice of Motion is disposed off accordingly.

(ROSHAN DALVI, J.)