

Sharayu.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1670 OF 2015
IN
SUIT (L) NO. 644 OF 2015

Ms. Kanchan Purushottambhai Painter & Anr.	...Applicant
<i>In the matter between</i>	
Ms. Kanchan Purushottambhai Painter & Anr.	...Plaintiffs
<i>Versus</i>	
Mr. Sunil Beharilal Makhija & Anr.	...Defendants

Mr. Simil Purohit, a/w Mr. Gauraj Shah i/b Tejas Shah, for the
Plaintiffs.
Mr. Aditya Chitale, i/b Dipesh Siroya, for the Defendants.

CORAM: G.S. PATEL, J
DATED: 1st July 2015

PC:-

1. Pursuant to the order passed yesterday, the following consent order is passed. It is noted that the 1st Defendant is personally present in Court today as well.
2. The 1st Defendant confirms that he has received payment of the two amounts of Rs. 1 crore and Rs. 4 lakhs. The 1st Defendant

also confirms and acknowledges that the Plaintiffs are the owners of the suit flat namely Flat No. 904-A, 9th Floor, Surya Apartments Cooperative Housing Society, B. Desai Road, Mumbai – 400 026 (“**the Flat**”).

3. In a situation such as this, where the entire consideration has been received and all necessary documents signed, ordinarily, the 1st Defendant would be required to put the Plaintiffs an immediate possession of the flat.

4. However, so that the 1st Defendant is not put to undue hardship, and only for that purpose, but without in any way acknowledging that he has any right to continue in possession, time is given to the 1st Defendant till 2.00 p.m. on 7th August 2015 to vacate and hand over vacant possession of the Flat to the Plaintiffs. In order ensure that this is done without any controversy, possession will be handed over in the following manner:-

- (a) By 2:00 pm on 7th August 2015, the 1st Defendant will hand over vacant possession of the Flat to the Court Receiver, High Court Bombay. The 1st Defendant agrees and undertakes to do so. This undertaking is accepted as an undertaking to the Court.
- (b) The Court Receiver shall then forthwith put the Plaintiffs in the possession of the Flat.
- (c) Should there be any default by the 1st Defendant in handing over possession of the Flat to the Court

Receiver by 2.00 p.m. on 7th August 2015, the Court Receiver shall immediately take physical possession of the Flat, with police assistance if necessary, and remove the 1st Defendant and his belongings from the Flat and proceed to put the Plaintiffs into possession of the Flat. The 1st Defendant confirms that he consents to this portion of the order as well.

- (d) Upon handing over possession to the Plaintiff as aforesaid, the Receiver will stand discharged without passing accounts, subject only to payment of his reasonable costs by the Plaintiffs.

5. It is clarified that the Receiver is appointed only for that purpose of taking and handing over possession and is not appointed receiver of the Flat.

6. It is also clarified that the time given to the 1st Defendant till 2.00 p.m. on 7th August 2015 is only by way of an indulgence by the Court and not because the Plaintiffs have accepted that the 1st Defendant has any right to continue in possession after today.

7. The Defendant accepts, admits and acknowledges that he has received the entire consideration from the Plaintiffs in respect of the sale of the Flat along with all interest as agreed till date. The Defendant confirms that he will not make any claim against the Plaintiffs by which he will apply for any order letting him continue in possession of the Flat or any part of it beyond the grace period afforded to him by the Court.

8. As regards the title documents, these are said to be lying in custody of Mr. Sandeep Vimadalal, Advocate and Solicitor of this Court. Mr. Vimadalal is requested, acting on an ordinary copy of this order, to release these title documents to the Advocates for the Plaintiffs forthwith.

9. The 1st Defendant confirms that he has not encumbered or created any third party rights or parted with possession of the Flat to any person. He agrees and undertakes that he will not in any manner whatsoever create any sort of third party rights (including by way of leave and licence), alienate or encumber the Flat or any part thereof. These statements, made by Mr. Chitale, learned Advocate, on instructions of the 1st Defendant, who is personally present in the Court, are accepted as undertakings to the Court.

10. Upon possession being handed over to the Plaintiffs as directed above, the present Notice of Motion and Suit will both stand disposed of with no order as to costs. Upon such disposal, refund of Court fees, if any, in accordance with rules.

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

12. A copy shall also be immediately forwarded to the Court Receiver, High Court, Bombay for his immediate attention.

(G. S. PATEL, J.)