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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2087 OF 2010

IN

SUIT NO.2037 OF 2010

Sameer Gopaldas Sampat

..Plaintiff

-Versus-

Paresh Satyendra Vohra & Ors.

..Defendants

.....
Mr. Nilesh Modi i/b. Rustamji & Ginwala for the Plaintiff.

Mr. Nirav J. Marjadi i/b. M/s. Mansukhlal Hiralal & Co. for Defendant No.8.

.....

CORAM: A. K. MENON, J.

DATE : 11th AUGUST, 2015.

P.C.:

The Notice of Motion is taken out for an injunction restraining the defendant nos.1 to 8 from selling, alienating, transferring, encumbering, mortgaging, creating third party rights and/or interests and/or dealing with disposing of or parting with possession of the suit flat and for appointment of Court Receiver, High Court, Bombay in respect of the said property.

2. The order dated 17th August, 2010 was passed without notice to defendant nos.1 to 7. Learned counsel for defendant no.8 had appeared and on instructions stated that he had nothing to do with the suit flat. The facts reveal that the plaintiff had surrendered his old tenement and was expecting a flat by way of permanent alternate accommodation in the new building construction of which had progressed upto 8th floor. In the circumstances, the Court passed an ad-interim order restraining the defendant nos.1 to 7 from creating third party

rights in suit flat no.402. As and when the suit flat was constructed, the defendant nos.1 to 7 were restrained from parting with possession thereof. As far as defendant no.8 is concerned, a statement was recorded by this Court.

3. Mr. Modi submits that a copy of the order dated 17th August, 2010 along with the plaint and proceedings were served on the defendant nos.1 to 7 on 18th March, 2011. An affidavit of S D. More, the officer of the plaintiff has been filed to the effect that the service has been effected upon the defendant nos.1 to 7 personally as set out in the said affidavit and upon the advocates for defendant nos.8. Thus, in view of the Motion having been duly served and the fact that the interim order has been operating since 17th August, 2010 and the defendants being absent when called out the ad-interim is liable to be confirmed. While confirming the ad-interim order dated 17th August, 2010 Mr. Modi submits that as far as the prayer for appointment of a Receiver is concerned, in view of the fact that he is now proposing an amendment to the plaint in view of changed circumstances to join the new partners of the project, he seeks leave to take out a separate Motion after amendment is carried out for seeking appointment of the Court Receiver in respect of the suit flat. Accordingly, if such amendment is carried out, plaintiff shall have the liberty to take out a fresh Motion seeking appointment of Court Receiver and such other reliefs as he may deem fit. Ad-interim order dated 17th August, 2010 shall operate pending disposal of the suit. Notice of Motion is disposed of. No orders as to costs.

(A. K. MENON, J.)