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

**NOTICE OF MOTION NO. 1949 OF 2012
IN
SUIT NO. 1877 OF 2012**

M/s. Hersha Hotels Private Limited ...Applicant/Org. Plaintiff
Vs.
Smt. Samina Aarif Khan & Ors. ...Respondents/Defendants

Dr. Surat Singh with ms. Arzin Ansari
i/b. A. Purohit & Co., Advocates for the Plaintiff

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 30TH MARCH, 2015**

P.C. :

1. Upon a development agreement dated 11th January, 2008 with further modifications in supplementary agreement dated 23rd August, 2010 the plaintiff entered into an agreement in respect of the suit property with defendant No.1 who claims to be the owner of the suit property. The plaintiff claims rights under the aforesaid agreements. The plaintiff has made payment initially Rs.6.98 crores and later of Rs. 10 lakhs. Defendant No.1 was required to thereafter obtain appropriate order from the Revenue Authorities (it is not known which order was to be obtained) and give vacant possession of the suit property upon which the plaintiff was to make further payment of Rs.25 lakhs and Rs.10 lakhs

respectively. The plaintiff states that the plaintiff is ready and willing to make the balance payment and claims that it had made a large payment already and hence applied for specific performance of these agreements.

2. However the title of defendant No.1 is not clear. Defendant No.1 has produced photocopies of certain 7 x 12 extracts as also mutation entries which show rights claimed not only by her, but by others.
3. Defendant No.4 is also made a party defendant upon a premise that it claims ownership rights in para 20 of the plaint. The defendant No.4 has produced the original indenture of transfer dated 29th July, 1981 duly registered and stamped under registration No. 2185 in respect of the suit property.
4. Consequently it is seen that defendant No.1 has sought to transfer the property which is not owned by defendant No.1. Defendant No.1 cannot transfer a better title than what she has. For want of such marketable title the plaintiff cannot be granted the reliefs sought.
5. The plaintiff may, of course, be entitled to repayment of the price paid under the aforesaid agreements to defendant No.1 which is specifically not claimed in the suit. It may be

claimed under prayer (b) relating to damages which are far more than the amount paid by the plaintiff. This aspect can be considered in the suit. No interim relief can be granted. Hence the notice of motion is dismissed.

6. The defendants shall file their written statement within 30 days failing which an ex-parte decree shall be passed.
7. The suit is adjourned to 17th June, 2015.

(ROSHAN DALVI, J.)