

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL SIDE JURISDICTION

NOTICE OF MOTION (L) NO.1982 OF 2015
IN
SUIT NO.743 OF 2015

Shardaben R Tanna & Anr.	...	Applicants / Plaintiffs
Vs.		
Piedad P Cordeiro	...	Defendant

Naushad Engineer, Adv. a/w. Anand Patel, Adv. i/b. Yogesh Adhia,
Adv. for plaintiffs / applicants.

Vijay Mehta, Adv. a/w. Sunitha Peremal, Adv. i/b. Sachin Masurkar,
Adv. for defendant.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 28th August, 2015.

P.C. :

1. The plaintiffs claim to have purchased the suit premises from the defendant. The defendant owned and possessed the suit premises which is a flat of 484 Sq.ft. in Rushabh CHS Ltd., in Andheri. The plaintiffs paid consideration of Rs.41 lacs. That is stated to be the full consideration at market value. The defendant has accepted the receipt of the consideration. The agreement is registered and stamped. The defendant claims that the agreement is a sham and was only made for security. The defendant must show the contract between the parties for such security to be given. The defendant has shown that Rushabh Society entered into the agreement for redevelopment with one builder, Vinay Gandecha. The members were to get permanent alternate accommodation upon redevelopment of their building. The defendant was to get 565 Sq.ft. of premises in exchange for 484 Sq.ft. + Rs.88 lacs. The redevelopment agreement does not

mention this amount. That is because this was only by way of security. The defendant, as also one other member, agreed to enter into an agreement with an investor of Vinay Gandecha. The investor was plaintiff No.2. Under the oral arrangement between the parties the defendant was to be paid part of the amount which was Rs.41 lacs and which is received by the defendant.

2. The plaintiffs have admitted in paragraph 7 of the affidavit of rejoinder of plaintiff No.2 that the plaintiffs were introduced to the defendant by Vinay Gandecha in April / May, 2012. The agreement has been entered into on 24th July, 2012. Nothing has transpired thereafter. No application is made to the society for the no objection certificate of the society for admission of the plaintiffs as members of the society and for transfer of the flat from the defendant to the plaintiffs. The suit has been filed on the last day of limitation on 23rd July, 2015.

3. The plaintiffs have claimed in paragraph 8 of the plaint that the defendant has paid the full purchase consideration upon the execution of the agreement but did not hand over the possession, but apply for time due to the monsoon at that time. However, thereafter also the plaintiffs have not claimed possession from the defendant. The defendant claims that possession was not to be handed over under the agreement between the parties and that the amount was for security in respect of the investment made by plaintiff No.2 (along with other investors) with the developer.

4. The defendant has fairly accepted the receipt of the consideration and have offered to pay back consideration amount to

the plaintiffs. The defendant who is present in Court gives an undertaking that she does not desire to and will not dispose of the suit flat or transfer, alienate, encumber or create any third party rights or part with possession of the suit flat pending the suit.

5. Hence the following order.

1. The defendant shall deposit the consideration received by the defendant of Rs.41 lacs in Court within 4 weeks from today.
2. The defendant shall not sell, transfer, alienate, encumber or create any third party rights or part with possession of suit premises pending the suit.
3. The defendant is deemed to have been served the writ of summons.
4. The defendant shall file written statement within 30 days.
5. Notice of Motion is disposed of accordingly.
6. Suit to be on board on 15th October, 2015.

(ROSHAN DALVI, J.)