

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION.**

**NOTICE OF MOTION NO. 1398 OF 2015
IN
SUMMARY SUIT NO. 572 OF 2015**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
--	---------------------------

Mr. Sachin Masurkar a/w Sunita Parimal for the Applicant/Plaintiff.

Ms. Maya Dave for the Defendants.

**CORAM : K. K. TATED, J.
DATED : 22/12/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This Notice of Motion is preferred by Plaintiff under Order 38 Rule 5 of Code of Civil Procedure, 1908 for attachment before Judgment.

3 It is the case of the Plaintiff that pursuant to the Memorandum of Understanding dated 08.05.2014, Defendant No.1 admitted his claim to the extent of Rs.2,66,00,000/- He submits that in that Memorandum of Understanding, the Defendant No.1 stated that if he failed to return the said amount within six months, then he will sell his flat i.e. Flat No.4, Ashiyana Bldg. 13th N.S. Road, Juhu, Mumbai – 400 049, for refund of the said amount.

Paragraph 3 of the said MOU reads thus:

“3. That the party of the one part has also agreed to return back the said taken amount if he fails to return back the amount within 6(six) months, then he will sell back his flat situated at Flat No.4, Ashiyana Bldg. 13th N.S. Road, Juhu, Mumbai – 400 049, standing in the name of his wife Mrs. PARVEEN MOHAMMED AZAM BUTT.”

4 The learned Counsel for the Plaintiff submits that Defendant No.2 Mrs. Parveen Mohammed Azam Butt is the wife of Defendant No.1. He submits that Plaintiff has apprehension that to deficit the plaintiff's claim in Summary Suit No. 572 of 2015, the Defendant may create third party rights, title and interest in respect of suit flat. In support of that Plaintiff also filed affidavit in rejoinder dated 07.12.2015.

5 The learned Counsel for the Plaintiff submits that if attachment before Judgment is not granted under Order 38 Rule 5 of Code of Civil Procedure, 1908, irreparable loss and injury will be caused to the Plaintiff.

6 On the other hand, the learned Counsel for the Defendants vehemently opposed the present Notice of Motion.

7 I heard both the sides at length. It is to be noted that Summary Suit filed by the Plaintiff on the basis of Memorandum of Understanding dated 08.05.2014. That was signed by Defendant No.1

and not by Defendant No.2. Defendant No.2 signed the said document just as a witness and as on today admittedly the suit flat stands in the name of Mrs. Parveen Mohammed Azam Butt, Defendant No.2.

8 Considering the fact that Defendant No.2 has not admitted any liability under the Memorandum of Understanding dated 08.05.2014, the Plaintiff is not entitled to any relief in the present Notice of Motion.

9 Hence, Notice of Motion stands rejected.

(K.K.TATED, J.)