

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

NOTICE OF MOTION NO. 102/2015
IN
SUIT (L) NO.995/2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Rohan R. Kadam a/w. Subhasree Chatterjee
i/b. M/s. Manilal Kher Ambalal & Co. for the
Plaintiff.

CORAM : K. K. TATED, J.

DATE : DECEMBER 5, 2015

P.C.:

1. Heard the learned counsel for the Plaintiff. None for the Defendant. The learned counsel for the Plaintiff submits that they already served the Defendant. To that effect they filed Affidavit of service dated 28/10/2014. Same is taken on record and marked "X" for identification.

2. The learned counsel for the Plaintiff pointed out that when the Notice of Motion was on board before this court (Coram : R. D. Dhanuka, J.) on 03/11/2014, Defendant Nos.1 to 8 represented through their Advocate. In spite of that they failed to file affidavit-in-reply.

3. The learned counsel for the Plaintiff submits that by Memorandum of Understanding (MOU) dated 27/04/2011 and 03/06/2011 Defendant agreed to sell the suit property admeasuring 31 $\frac{1}{4}$ guntha and 19 $\frac{1}{2}$ guntha approximately 5274 sq.mtr. from Sy.No.15 H.No.4, situated at village Bhandup, Tq. Kurla to the Plaintiff for total sum of Rs.10,71,00,000/-. He submits that pursuant to the said MOUs they paid total sum of Rs.1 crore to the Defendants. He further submits that the Defendants were supposed to take appropriate steps as per the said MOUs within stipulated time i.e. removal of electricity high tension line and tower with permission of the Tata Power Co., which they failed to do. As the Defendant failed and neglected to comply with terms and conditions of the MOUs, they filed the present suit for specific performance of MOUs dated 27/04/2011 (Exhibit – C) and 03/06/2011 (Exhibit – E). He submits that during pendency of the present suit, if the Defendants create third party right, title or interest in suit property, nothing will survive in the present proceedings. Hence, they filed the present Notice of Motion. He submits that in the interest of justice, this Hon'ble Court be pleased to restrain the Defendants from creating any third party right, title and interest in respect of the suit property till

hearing and final disposal of the suit. He submits that if relief, as prayed, is not granted, irreparable loss and injury will be caused to them.

4. Heard the learned counsel for the Plaintiff at length. There is no dispute that the MOUs dated 27/04/2011 and 03/06/2011 were executed between the Plaintiff and the Defendants for sale of the suit property. Pursuant to those MOUs, the Plaintiff paid sum of Rs.1 crore to the Defendants. If Defendants create third party right, title and interest in respect of the suit property during pendency of the present proceedings, it will affect the Plaintiff's rights.

5. Considering the submissions made by the learned counsel for the Plaintiff, averments made in the affidavit in support of the Notice of Motion and as the Plaintiff has already paid more than Rs.1 crore to the Defendants, I am satisfied that the Plaintiff has made out a case for allowing the Notice of Motion.

6. Hence, following order is passed:

a. Notice of Motion is allowed in terms of prayer clause (a) which reads thus:

“(a) That pending hearing and final disposal of the suit, this Hon'ble Court be pleased to

issue a temporary order of injunction restraining the Defendants and their family members, servants, agents or any person claiming through or under them, to create or admit any third party rights or encumbrances on the suit property behind the back of the Plaintiff in the nature of sale, transfer, gift, lien, license, tenancy, recognizing claims, rights or admitting the rights or claims of any third party defeating the rights of the Plaintiff in the suit property (Exhibit-A to the plaint)."

b. Notice of Motion stands disposed of accordingly.

JUDGE