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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.4302 OF 2008

IN

SUIT NO.3388 OF 2008

Chetan N. Khara ...Plaintiff

vs

Jyoti Plastics And Allied Industries Ltd. And 2 Ors. ...Defendants.

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Mr. D.S. Chandanani, i/b. Lexim Associates, for the Plaintiff.

Ms. Urjita Badhekar, i/b. S.K. Shrivastav & Co., for Defendant Nos.1 (a) to 1(d).

Mr. Sidharth Samantaray, i/b. M/s. Shiralkar & Co., for Defendant No.2.

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CORAM : S.C. GUPTE, J.

DATED: MARCH 11, 2015

P.C. :

. The present suit is filed for specific performance of an oral agreement for sale of an immovable property. The terms of the oral agreement are set out in para 6 of the plaint. It is the case of the Plaintiff that under this oral agreement the Plaintiff agreed to purchase the suit property, which consists of a plot in an industrial estate at Charkop in Mumbai with a constructed building of ground plus one floor, at or for a consideration of Rs.1.44 crores.

2. The oral agreement is disputed by the Defendants. Apart from a mere statement of the Plaintiff, there is nothing placed on record to support the case of a concluded agreement for sale between the

parties. The Plaintiff relies upon a document showing the so called offer of Defendant No.1(a) which is annexed to the plaint. This document is supposed to contain certain figures in the handwriting of Defendant No.1(a). One cannot make a head or tail of what is written in the document, leave aside the question of handwriting, which is also a matter of dispute between the parties. Secondly, the document bears a date of 31 January 2005, when the so called oral agreement is said to have been entered into on 1 November 2005, as per the averments in the plaint. The date '31 January 2005' is said to be a mistake according to the submissions made across the bar by learned Counsel for the Plaintiff. That is a perfect example of *ipse dixit* of Counsel. Besides, in an additional affidavit filed in the present Motion, the Plaintiff has relied upon another writing showing the terms offered by Defendant No.1(a), which is claimed to *prima facie* show "*that there was a transaction of sale and purchase of the suit property on the terms and conditions set out*" therein. This document not only does not reflect the terms of the so called oral agreement or the figures mentioned in the plaint, but is at clear variance with the so called writing of Defendant No.1(a) annexed to the plaint and referred to above.

3. Learned Counsel for the Plaintiff next relies upon a purported admission of the Defendants in a criminal proceeding between the parties in a connected matter. That admission is said to be reflected in an order passed by the Court of Sessions at Dindoshi on 4 October 2008 on an anticipatory bail application of Defendant Nos. 1(b) and 1(c). Whilst recording the say of the Respondent- State (i.e. the prosecution), the learned Sessions Judge noted that "*there had been*

transactions between complainant and applicants; under the guise of selling that property, applicants sought complainant to shell out sum of Rs.36,11,000/-. First of all, it is no admission of the Defendants. It is the Respondent State's say, presumably on the basis of the complainant's (i.e. the Plaintiffs) complaint. Secondly, it hardly brings out the case of a concluded agreement for sale.

4. The payments made by the Plaintiff to Defendant No.1(a) (of Rs.21,76, 306) are admitted by Defendant No.1(a) but explained as friendly loan. The Plaintiff and Defendant No.1(a) are cousins. Defendant No.1(a) is claimed to have helped the Plaintiff earlier in certain financial transactions; and in the face of financial difficulties of Defendant No.1(a) the Plaintiff is claimed to have helped the former by extending that loan. There is nothing to contradict these statements. At any rate, there is nothing on record to suggest that any payment made by the Plaintiff was towards the purchase of the suit property.

5. There is, thus, no *prima facie* case made out for grant of any interim relief. The Plaintiff had earlier filed another suit, Suit No.2860 of 2007, on the same cause of action. In a Motion taken out in that suit, no relief was granted by this Court. That suit was withdrawn by the Plaintiff with liberty to file a fresh suit, purportedly in view of certain subsequent events. Though such liberty was granted, all contentions of the parties were kept open. This suit is filed under the liberty so reserved. The ad-interim application in the present Notice of Motion was rejected by a detailed order. There is no case made out why this Court should now take a different view.

6. The Motion is, accordingly, dismissed. Costs to be the costs in the cause.

7. At this stage, learned Counsel for the Plaintiff applies for a limited order of status quo. The application is, to say the least, strange. Status quo was refused when the ad-interim order was passed six years back. Today, when I am confirming that order and rejecting the Notice of Motion finally, it is incomprehensible how an application for status quo would lie. The application is rejected.

(S.C. GUPTE, J.)