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

**CHAMBER SUMMONS NO. 108 OF 2015
IN
EXECUTION APPLICATION (L) NO. 1149 OF 2013
IN
SUIT NO. 1301 OF 2009**

Dhawal Ashchandra Jhaveri & Anr. ...Applicants

In the matter between:

Narang and Ruchi Developers ...Plaintiff
Vs.

Ansuya Ashchandra Jhaveri & Ors. ...Defendants
And

Court Receiver, High Court, Bombay ...Respondent

Mr. Sarul Gangan a/w. Mr. Jayesh Mistry
i/b. RMG Law Associates for the Plaintiff

Mr. A.S. Doctor i/b. M/s. Sonal Doshi for Defendant No.1

Mr. C.V. Golawala i/b. M/s. V.N. Golawala & Co.,
for Defendant No.3

Mrs. Geeta Nair, S.O. Officer of Court Receiver present

CORAM : MRS. ROSHAN DALVI, J.

DATED : 9TH JUNE, 2015

ORDER:

1. This chamber summons is for payment / recovery of the surplus of the sale proceeds of what is stated to be the tenanted flat of the applicants. The applicants are defendant Nos. 2 and 3 in the suit. The suit is filed by the developer for specific performance of an MOU executed by the plaintiff and

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defendant No.1 on 24th April, 2008. Under the said MOU earnest amount of Rs. 3 crores was paid by the plaintiff. It was stated to have been received by the defendant No.1. It was paid in the account of defendant No.1 as a senior citizen in ICICI Bank held jointly with defendant No.3. The amount is received and credited on 26th April, 2008. The total balance is shown to be Rs.3,00,05,215/-. Hence prior to the receipt of Rs. 3 crores only Rs.5,215/- was in that account. On 28th April, 2008 two days thereafter Rs.2.97 crores is withdrawn and transferred to the account of defendant No.1 leaving a balance of Rs.3,05,131/-.

2. The applicants who are the son and daughter-in-law of defendant No.1 claim that they were the tenants of the suit flat and that they have an interest in the said amount.
3. The amount was to be returned to the plaintiff. The defendants agreed to return the interest amount. Despite the agreement under consent terms as also certain undertakings given to the Court the amount was not returned. Court Receiver came to be appointed in respect of the entire suit premises including a flat of which tenancy is claimed by defendant Nos. 2 and 3. After much ado the suit flat came to be sold. The sale proceeds far exceeded the earnest amount. The sale proceeds were deposited in the Court. The plaintiff has been paid off the earnest amount along with the interest.

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4. Defendant No.1 applied for being paid off the surplus amount. She has been allowed to do so. This was in an application taken out by the plaintiff in a Court Receiver's Report to which defendant Nos. 2 and 3 did not reply.
5. The dispute is now only between defendant No.1 on the one hand and defendant Nos. 2 and 3 on the other in respect of the surplus amount.
6. Defendant Nos. 2 and 3 have now applied for being paid off that amount.
7. Their claim of tenancy is disputed. That would, therefore, have to be proved. Both parties claim to be in possession of the said flat and claim to deny the possession of the other. These aspects would require oral evidence. Aside from that the evidence with regard to how Rs.2.97 crores out of Rs.3 crores came to be transferred to the account of defendant No.1 two days after the credit of the said amount would also have to be seen given that defendant No.1 alone is shown to have executed the MOU with the plaintiff and must, therefore, be the only recipient of the earnest amount given under the MOU.
8. Consequently the amount cannot be paid off to the

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applicants in the chamber summons. The applicants shall have to file a separate suit for recovery of the said amount and pay Court Fee thereupon. They would require to give oral evidence and be cross examined upon the aforesaid two aspects.

9. Hence there shall be no order in the chamber summons.
No orders as to costs.

10. Chamber Summons is disposed off accordingly.

(ROSHAN DALVI, J.)