

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.713 OF 2014
IN
NOTICE OF MOTION NO.963 OF 2014
IN
SUIT NO.699 OF 2014**

M/s. Fiorano Motors LLP & Ors Appellants.

V/s

M/s Divi's Properties
Pvt. Ltd. & Ors. Respondents.

Mr. Rushil Mehta for the Appellants.
Mr. Devvrat Singh i/b Prateek Sanghvi for Respondent No.1.
Mrs. Gulekar, Section Officer from the Office of the Court
Receiver, present.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE: 19th January, 2015

P.C.:-

1. Heard the learned Counsel appearing on behalf of the Appellants and the learned Counsel appearing on behalf of Respondent No.1.
2. Appellants are aggrieved by the order passed by the learned Single Judge in Notice of Motion No.963 of 2014 taken out by the Plaintiffs in Suit No.699 of 2014. In the Notice of Motion, Plaintiffs had sought appointment of Court

Receiver in respect of the suit vehicle with a direction to take possession of the suit vehicle from Defendant Nos. 1 to 6 and to handover the same to the Plaintiffs on such terms and conditions as this Court deems fit and proper and for other consequential reliefs.

3. Brief facts are that the Plaintiffs wanted to purchase a Ferrari Car from Defendant No.1 - Appellant No.1 herein who is dealing in sale of imported motor vehicles. By an agreement dated 22/01/2013, M/s Fiarano Motors and Mr. Ashish Chordia agreed to sell and import Ferrari Car and the Plaintiffs agreed to purchase it. Certain payments were made by the Plaintiffs. According to the Plaintiffs, total consideration amount of Rs 5,01,88,991/- has been paid. It is alleged that Defendants claimed an additional amount of Rs 50,00,000/- which also has been paid. However, Plaintiffs' grievance is that the delivery of the Car was not made in time despite the payment of Rs 50,00,000/- which was charged for expeditious delivery of the said Car. It is submitted that since the Car was not delivered despite the payment of full amount, Plaintiffs had no other option but to file a suit and in the said suit Plaintiffs filed the said notice of motion for appointment of Court Receiver.

4. On the other hand, Defendants claimed that the entire amount has not been paid. According to the Defendants, the

price which was required to be paid by the Plaintiffs was approximately Rs 5,91,00,000/-. It is submitted that since the Plaintiffs did not pay the entire amount, the Car was not delivered.

5. The learned Single Judge, after hearing both sides, came to the conclusion that prima facie case was made out by the Plaintiffs for grant of interim relief and, therefore, appointed a Court Receiver with a direction to appoint Plaintiffs as agent of the Court Receiver. A direction was given to the Plaintiffs to make payment of the customs duty and other requisite charges including payment of warehousing charges and take delivery of the vehicle from Defendant Nos. 1 to 6. The contentions of both the parties were kept open. Defendant Nos.1 to 6 were directed not to create any third party rights in respect of the suit vehicle. Plaintiffs have been directed to furnish a security of Rs 50 lacs.

6. The learned Counsel appearing on behalf of the Appellants has submitted that the Plaintiffs have not paid the entire amount. It is submitted that the Plaintiffs have not complied with the directions given by this Court in para 27(a) of the order dated 16/12/2014 passed by the learned Single Judge and other requisite charges have not been paid by the Plaintiffs. He has taken us through the various

invoices issued to the Plaintiffs. He submitted that the value of the Car was Rs 5,91,00,000/- and not Rs 5,01,88,991/- as alleged by the Plaintiffs. He submitted that as long as the entire amount is not paid, the question of delivery of the Car did not arise.

7. In our view, there is no substance in the submission made by the learned Counsel appearing on behalf of the Appellants/Defendants. It is not in dispute that the Plaintiffs already had paid an amount of Rs.5,01,88,991/- which includes customs duty which is payable. Over and above, an amount of Rs 50,00,000/- was paid for expeditious delivery of the vehicle which apparently does not form part of the invoices which have been exchanged between the parties. In our view, therefore, the learned Single Judge, after taking into consideration the rival submissions and after keeping the contentions of both parties open, has protected the rights of both the parties. We, therefore, do not propose to interfere with the said order. Hence, appeal is dismissed.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)