

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

**SUIT NO.974 OF 2015
WITH
NOTICE OF MOTION NO.1898 OF 2015**

Modispaces Real Estate Pvt. Ltd. ... Plaintiff
versus
Tashkent Co-op. Housing Society Ltd. and Ors. ... Defendants

Dr. B.B.Saraf with Mr. Sachin Mahagavkar, Mr. Mohanish Patkar i/by
M/s. Divya Shah Associates, for Plaintiff.

Mr. Vishal Kanade i/by M/s. Ashok Purohit and Co., for Defendant
No.1.

Mr. Deepak Lulia, for Defendant No.3.

Mr. Pradeep Thorat, for Defendant Nos.5 to 10.

Ms. Vijayaben Himatlal Makvana, Defendant No.2 and Ms. Rupa
Vinod Tank, Daughter of Defendant No.2, present.

Ms. Jayaben B. Mandora, Defendant No.3 and Ms. Neeta S. Rathod,
Daughter of Defendant No.3 present.

CORAM: S.J. KATHAWALLA, J.

DATE: 21st NOVEMBER, 2015

P.C.:

1. The learned Advocate for the Plaintiff states that Defendant No. 4 has already notified the Society that Defendant No.4 is not claiming any right in Flat No. C-25 on the 2nd floor of 'Tashkent Co-op. Housing Society Ltd.' and seeks to delete Defendant No. 4 from the array of parties. Permission granted.
2. Heard the learned Advocates for the Plaintiff, Defendant Nos. 1, 3 and 5 to 10 and also heard the Defendant Nos.2 and 3 along with

their respective daughters, who are present in Court and the following order is passed by consent :

(i) The Court Receiver, High Court, Bombay is appointed as Receiver in respect of Flat bearing No.C-25, on the 2nd Floor of the Building “Tashkent Co-operative Housing Society Ltd.” at Mandpeshwar Road, Near Bhagwati Hospital, Borivali (W), Mumbai – 400 103.

(ii) The Court Receiver shall make an Inventory of all the movable goods in the said flat in presence of the Defendant Nos.5 to 10 or their representatives. After the inventory is made, Defendant Nos.5 to 10, who claim to be the heirs of late Mrs. Ulka Korlekar (since deceased) the owner of the said flat, or their representative, shall be permitted by the Court Receiver, High Court, Bombay to remove the movable goods from the said flat within 7 days from the date of this order.

(iii) The Court Receiver, High Court, Bombay to hand over possession of the said flat to the Plaintiff within two weeks from the date of this order. The Plaintiff shall be entitled to demolish the said flat immediately after taking possession from the Court Receiver to carry out the redevelopment work as per the Development Agreement dated 16th July, 2014. The Plaintiff shall after completion

of the redevelopment work, hand over the possession of new flat with increased area as per the terms of the Development Agreement dated 16th July, 2014 and corresponding parking space to the Court Receiver, High Court, Bombay. The Court Receiver, High Court, Bombay, shall hold the new flat and the corresponding parking space and hand over the same to such of the heirs of late Mrs. Ulka Korlekar, who shall prove his/her/their heirship to inherit the said flat.

(iv) The Plaintiff agrees to deposit with the Prothonotary and Senior Master, High Court, Bombay, all the amounts payable to late Ulka Korlekar under the Development Agreement dated 16th July, 2014 including the rents, Flat Owner Hardship Compensation, Shifting charges and any other benefits offered to other flat purchasers. The Prothonotary and Senior Master, High Court, Bombay shall invest amount paid by the Plaintiff on account of late Mrs. Ulka Korlekar in a fixed deposit and handover the said amount with interest to the Defendant Nos.5 to 10 or either of them who shall establish his/her/their entitlement in respect of the said flat.

(v) The Defendant No.3 is in occupation of Garage No.G-2 in Defendant No.1 Society. The Defendant No.2 claims to be the owner of the said Garage No.2. According to Defendant No.2, the

Defendant No.3 is a licensee of Defendant No.2. However, Defendant No.3 is admittedly in occupation of the said garage since the last forty years. The developer has agreed to pay on or before 2nd December, 2015 an amount of Rs.36,00,000/- for the said garage to the Defendant Nos.2 and 3, which Defendant Nos.2 and 3 have agreed to receive as follows :

Rs.21,60,000/- to be paid to Defendant No.3

Rs.14,40,000/- to be paid to Defendant No.2

The Developer has also agreed to pay an additional amount of Rs.15,000/- to Defendant No.2 since Defendant No.2 submits that she has paid certain maintenance charges aggregating to approximately Rs.15,000/- in the last five years.

(vi) Both Defendant Nos.2 and 3 agree that upon receipt of the payments as set out hereinabove, they shall have no right, title or interest of any nature whatsoever in the said Garage No. G-2 and/or any claim against each other or against any of the parties to the Suit. Simultaneously upon receipt of the said amounts, Defendant No.3 and her family members shall forthwith handover quite, vacant and peaceful possession of the said Garage No.G-2 to the Plaintiff.

(vii) The Plaintiff and Defendant Nos. 2 and 3 to meet at

the Garage No. G-2 on 2nd December, 2015, at 11.00 a.m. for handing over possession and payment of the amounts. If Defendant No.3 does not hand over possession, the Court Receiver shall stand appointed with power to take possession of Garage No. G-2 and hand over the same to the Plaintiff.

` (viii) The Defendant No.1 undertakes to this Court that the Defendant No.1 shall withdraw L.C. Suit No.1433 of 2015 filed by the Defendant No.1 herein in the City Civil Court at Dindoshi within four weeks from the date of this order.

(ix) The Suit as well as the Notice of Motion are accordingly disposed of. Refund of Court Fees, if any, as per rules.

(x)The Court Receiver, High Court, Bombay, shall continue for the purpose of implementing this order.

(S.J.KATHAWALLA, J.)