

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT (L) NO.97 OF 2016
WITH
NOTICE OF MOTION (L) NO.446 OF 2016**

Shree Mahavir Estates	...	Plaintiff
Versus		
Ratan Lal Tantia and Ors.	...	Defendants

Mr. Shiralkar i/by M/s. Shiralkar and Co., for Plaintiff.
Mr. Deepak Lulia, for Defendant No.1.
Mr. Monesh Prem, for Defendant No.2.
Mr. Mahesh Londhe i/by M/s. Sanjay Udeshi and Co., for Defendant No.3.
Defendant Nos.1 and 2 are present in Court.

CORAM: S.J. KATHAWALLA, J.

DATE: 29th FEBRUARY, 2016

P.C.:

1. Heard the learned Advocates for the parties. Defendant Nos.1 and 2 are present in Court. The following order is passed by consent :

(i) An amount of Rs.34,55,100/- shall be paid by the Plaintiff to the Defendant No.1 towards corpus;

(ii) An amount of Rs.53,500/- per month for 18 months shall be paid by the Plaintiff to Defendant No.2 along with Rs.15,000/- towards one time shifting charges at the time of vacating the premises.

(iii) The Plaintiff shall also pay further monthly transit rent to the Defendant No.2 in case of delay in construction of the new flat and obtaining the

occupation certificate.

(iv) The Developer/Society shall hand over possession of the new flat in lieu of permanent alternate premises being Flat No.602 admeasuring 776 carpet area as follows :

(a) LE and C Suit No.61/87 of 2013 seeking eviction of Defendant No.2 from the Suit flat is filed by the Plaintiff in the Small Causes Court, Mumbai (the said Suit). If the Small Causes Court has, by the time, the new flat is ready for occupation, not decided the said Suit, the new flat shall be handed over by Developer/Society to the Defendant No.2, subject to the final outcome of the said Suit.

(b) The new flat shall be retained by the party who finally succeeds in the said Suit and proceedings filed therefrom before the new flat is ready for occupation, the Developer/Society shall handover the new flat to Defendant No.1 or the Defendant No.2 as per the order prevailing on that day.

(c) If the Defendant No.1 prior to the completion of construction of the new flat and/or prior to the developer handing over possession of the same succeeds in the said Suit, the Defendant No.2 shall not be entitled to encash the post dated cheques received from the Plaintiff towards transit rent and it will be the Defendant No.1 who shall be entitled to the monthly transit rent.

(d) this order is passed without prejudice to all the rights and

contentions of the parties in LE and C Suit No.61/87 of 2013 filed before the Small Causes Court.

(e) Defendant Nos.1 and/or are 2 at liberty to move the Small Causes Court seeking expeditious hearing of the said Suit.

2. The Suit as well as Notice of Motion are accordingly disposed of. Refund of Court Fees, if any, as per rules.

(S.J.KATHAWALLA, J.)