

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

NOTICE OF MOTION NO.1909 OF 2016

IN

SUIT NO.653 OF 2016

Zee Infra Projects Private Limited

....Applicant/Plaintiff

Vs.

Bhartiben Dhiraj Shah @ Bharti

Dhirubhai Shah & Anr.

....Defendants

Mr. Atul Damle, senior advocate a/w. Ms. P.M. Bhansali and Mr. Nikhil Salian i/b. Mr. Ritesh K. Jain for the applicant/plaintiff.

Mr. Manoj Jain, Chartered Accountant and duly authorised representative of the plaintiff.

Mr. Anilkumar Patil for the defendant no.1.

Mr. Bhadrasethe i/b. Sriraj G. Menon for the defendant no.2.

Smt. Hemalata Shrinivas Tillu, Member of defendant no.2 society.

Smt. Vidyalakshmi Pundalik Kini, Member of defendant no.2 society.

Mr. Nagesh Narayan Balgi, Member of defendant no.2 society.

Dr. G.B. Rajale, Member of defendant no.2 society.

Smt. Bhartiben Dhiraj Shah, defendant no.1 a/w. her son Mr. Mitul Shah present.

**CORAM : K.R.SHRIRAM, J.
(IN CHAMBER)**

DATE : 23rd NOVEMBER, 2016

P.C.

1 When the notice of motion was listed on 27th October, 2016 the opposing counsel informed the court that the plaintiff and defendant no.1 have not been able to come to an understanding and the agreement has not been signed. The matter was, therefore, stood over to 17th November, 2016 and on 17th November, 2016 it was stood over to 21st November, 2016. On 21st November, 2016 the court directed the parties to assemble in chamber on 22nd November, 2016 to see whether the notice

of motion could be worked out. The hearing in chamber on 22nd November, 2016 could not take place and it was taken up today in chamber.

2 The parties to the suit and some of the members of the defendant no.2 society are also present in chamber. The counsel for the plaintiff and counsel for the defendant no.1, on instructions from their respective clients, who are present in chamber, invited the court, by consent, to pass the following order :

(a) The plaintiff will give to defendant no.1 flat which is at serial no.30 at page 83 to the plaint, i.e., 4th floor in B wing tentatively numbered as 402 admeasuring 977 sq. ft. carpet area;

(b) Mr. Damle, senior counsel for the applicant, on instructions states that for this above flat the defendant no.1 has to pay an extra amount of Rs.17 lakhs. According to Mr. Patil, counsel for defendant no.1 the amount payable by defendant no.1 will be only about Rs.7 lakhs and not Rs.17 lakhs. Purely as an interim arrangement, both parties agreed that defendant no.1 will pay Rs.12 lakhs only to plaintiff, which will be subject to outcome of this suit, as per the break up given in (e) below.

(c) Both the counsel agreed that at the time of signing the agreement for permanent alternate accommodation, the plaintiff will have to pay to the defendant no.1
(i) a sum of Rs.18,93,780/- towards corpus fund and
(ii) for temporary alternate accommodation, the plaintiff will also have to pay to the defendant no.1 towards one year advance rent plus brokerage plus shifting and re-shifting expenses totaling to Rs.7,67,100/-.

(d) Within 15 days of execution of the permanent alternate accommodation agreement and handing over

of possession, whichever is later, the plaintiff will have to pay the corpus fund of Rs.18,93,780/- to the defendant no.1.

(e) Both the counsel agreed that the amount of Rs.12 lakhs will be adjusted by the plaintiff as under :

(i) Rs.7,67,100/- from amount payable for one year advance rent plus brokerage plus shifting and re-shifting expenses and

(ii) Rs.4,32,900/- from the corpus amount of Rs.18,93,780/-.

3 Both the parties undertake to this court that within one week from today they will execute the permanent alternate accommodation agreement and also make themselves available for the purpose of registration of the agreement before the appropriate authority and also strictly and meticulously comply with the terms and conditions of the permanent alternate accommodation agreement. Any additional stamp duty that will be payable for this permanent alternate accommodation agreement (for extra area of 25 sq. ft.) will be paid by the plaintiff for the time being to be adjusted from the balance amount of corpus, i.e., Rs.18,93,780/-. Mr. Damle, on instructions states that the permanent alternate accommodation agreement to be entered between the plaintiff and defendant no.1 will also include allotment of one car parking space to defendant no.1.

4 Within one week of execution of the permanent alternate accommodation agreement, the defendant no.1 shall vacate the premises in accordance with the agreement. It is also clarified that the permanent alternate accommodation agreement will be on the same terms and conditions, except flat number, area and the amount payable which have been addressed above, that has been agreed between the plaintiff and one Mr. Prashant M. Keni, who is one of the office bearer of defendant no.2 society.

5 In view of the above, the notice of motion stands disposed. Contentions of both the parties are kept open to be agitated at the hearing of the suit.

6 Within four weeks from today the defendants to file their written statement and serve a copy thereof upon the plaintiff. Within two weeks thereafter the parties will also file their respective affidavit of documents, complete discovery and inspection and file and exchange their statement of admission and denial with reasons for denial.

7 Suit to be listed for issues on 20th February, 2017.

(K.R. SHRIRAM, J.)