

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

**NOTICE OF MOTION NO. 2118 OF 2016
IN
SUIT NO. 974 OF 2015**

Smt. Sujata Vijay Gupte .. Applicant

IN THE MATTER BETWEEN

M/s. Modispaces Real Estate Pvt. Ltd. .. Plaintiff

Vs.

Tashkent Co.Operative Housing Society Ltd. & Ors. .. Defendants

Mr. Niraj Malaviya i/b Divya Shah Associates for the Plaintiff.

Mr. Vishal Kanade a/w Mr. Manav Mandara i/b Ashok Purohit and Co. for Defendant No.1.

Mr. Pradeep J. Thorat for defendant Nos.5 to 10 and for Applicant in NMS/2118/2016.

CORAM : K.R. SHRIRAM, J.

DATED : 7TH OCTOBER, 2016.

P.C.

1 The plaintiff has filed the suit seeking a declaration that the development agreement dated 16.07.2014 entered into between the plaintiff and defendant No.1 is valid, subsisting and binding on the defendants and for the specific performance of the development agreement dated 16.07.2014. The plaintiff had also sought possession of flat No.25 situated on the 2nd floor of the building that was to be redeveloped and a garage No.62 on the ground floor of the same building. The suit has been disposed as settled.

2 The flat No.C-25 was owned by one Smt. Ulka Srinivas Korlekar who expired intestate on 02.06.2014 even before the suit was filed. Her husband had predeceased her and she also did not have any issues from her marriage. Therefore, defendant Nos.5, 6, 7, 8, 9 and 10 were added to the suit as the legal heirs of late Smt. Ulka Srinivas Korlekar. Applicant herein is defendant No.8.

3 The applicant herein, defendant No.8, filed Testamentary Petition No.224 of 2016 in this Court seeking letters of administration to the property and credits of late Smt. Ulka Srinivas Korlekar. In the said proceedings defendant Nos.5, 6, 7, 9 and 10 have given their affidavits of consent to grant the letters of Administration in favour of the applicant, on the basis on which this Court issued the letter of administration dated 17.06.2016 in favour of the applicant in respect of the suit property and credits of late Smt. Ulka Srinivas Korlekar. Copy of the letter of administration is annexed at Exh.C to the affidavits in support of the Notice of Motion.

4 On the basis of the letters of administration the applicant has taken out this present Notice of Motion for the reliefs as sought therein

which are reproduce as under :-

a) That by an Order of this Hon'ble Court the Prothonotary and Senior Master, High Court of Bombay be directed to pay and hand over to the Applicant the amounts paid by the Plaintiff towards the rents, Flat Owner Hardship compensation, shifting charges and other benefits in respect of Flat No.C-25, 2nd Floor, Tashkent Co.op. Housing Society Ltd., Mandpeshwar Road, Near Bhagwati Hospital, Borivali (W), Mumbai 400 103.

b) That by an Order of this Hon'ble Court the Plaintiff and Court Receiver, High Court of Bombay be directed to enter into Agreement for Permanent Alternate Accommodation in favour of the Applicant in lieu of Flat No.C-25, 2nd Floor, Tashkent Co.op. Housing Society Ltd., Mandpeshwar Road, Near Bhagwati Hospital, Borivali (W), Mumbai 400 103.

c) Ad-interim reliefs in terms of prayer Clause (a) and (b) above may kindly be granted.

d) For such other and further reliefs as this Hon'ble Court may deem fit and proper. ”

5 Shri Kanade appearing for defendant No.1 Society states that once the applicant applies for transfer of the share certificate in favour of the applicant relying upon the letters of administration, the Society will transfer the share certificate in favour of the applicant.

6 Having considered the affidavit in support and in view of the statement made by Shri Thorat, that he appears for defendant Nos.5, 6, 7, 9 and 10 also, this Notice of Motion is allowed in terms of prayer clauses (a) and (b) and accordingly disposed.

(K.R. SHRIRAM, J.)