

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

**NOTICE OF MOTION NO. 183 OF 2017
IN
SUIT NO. 535 OF 2013**

M/s.Simar Pride Ventures & Ors.	...Plaintiffs/Applicants
vs.	
Birla Cotsyn (India) Pvt.Ltd. & Ors.	...Defendants

Dr.Birendra Saraf with Mr.Simil Purohit, Manoj Agre I/b. G.B. Kedia for Plaintiffs.

Ms.Krishma Shah I/b. Subir Kumar for Defendant No.1.

Mr.Rohaam Cama with Nishit Dhruva and Prakash Shinde and Ambreen Saheed I/b. MDP & Partners for Defendant Nos.2,7,8, 9 to 11.

CORAM : S.C. GUPTE, J.

23 JUNE 2017

P.C. :

This notice of motion is taken out by original Plaintiffs in a suit for specific performance. The motion seeks execution and registration of conveyance in respect of the suit property. The motion is on the footing that Defendant No.1, who is the vendor in respect of the suit agreement for sale, has admitted before this court that it has no objection if Defendant No.1 is directed to execute conveyance deed, as prayed for by the Plaintiff. This court in its order dated 2 May 2017 accepted the statement and stood over the matter.

2 Learned Counsel for the Plaintiffs submits that this motion may be treated as a notice of motion under Order 12 Rule 6 of CPC for a decree

on admission. It is submitted that the Plaintiffs have in the suit averred that there is an agreement for sale in respect of the suit property executed by Defendant No.1 in favour of the Plaintiffs. Defendant No.1 does not dispute this. There is, in fact, a letter addressed by Defendant No.1 to the Plaintiffs confirming the agreement for sale executed between the parties. The letter also confirms that the entire consideration has been received by Defendant No.1 in respect of this agreement. From the reading of the plaint, it is apparent that the original reason why the conveyance was held up was that a security was created in respect of the suit property in favour of Defendant Nos.2 to 11. It is the grievance of the Plaintiffs in their suit that in spite of receipt of the entire consideration, Defendant No.1 had failed to obtain the necessary NOC from the consortium banks and obtain the release of the charge as well as original title deeds deposited with the lead bank and thereafter execute a conveyance in respect of the suit property in favour of the Plaintiffs.

3 It is an agreed position between the parties that these NOCs have since come about. In their notice of motion, the Plaintiffs have referred to these NOCs in paragraphs 8 and 9 of the affidavit in support of the notice of motion. The respective NOCs issued by Defendant Nos.2 to 11, are all annexed as exhibits to the affidavit (Exhibit A1 to A9).

4 In these facts, coupled with the statement of Defendant No.1 that it has no objection if it is directed to execute the conveyance deed in favour of the Plaintiffs, as prayed for, the suit can be disposed of by passing a decree on admission in terms of prayer clauses (a), (b) and (f). The Plaintiffs do not press their other prayers.

5 The suit is, accordingly, disposed of by passing a decree on admission in terms of prayer clauses (a), (b) and (f). No order as to costs.

(S.C. Gupte, J.)