

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

**APPEAL NO.326 OF 2017
IN
NOTICE OF MOTION NO.1233 OF 2017
IN
SUIT NO.371 OF 2017**

Dr.Shashinath Mahendra Jha

.... Appellant

versus

Amod Umesh Chandra Sharma

... Respondent

.....

- Mr.K.H. Giri, Advocate for the Appellant.
- Mr.Anoshak Daver, a/w Mr.Sumit Raghani, a/w Ms.Dipika Batheja, Ms.Dimple Majithia, i/b. Argud Partners, Advocate for the Respondent No.1.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 29th NOVEMBER, 2017.**

P.C. :

1. The above Appeal takes exception to the order dated 05/06/2017 passed by a learned Single Judge of this Court. By the said order the Notice of Motion filed by the Appellant/Original Plaintiff came to be dismissed. The specific performance sought in the suit is of an alleged oral agreement

for sale of immovable property being flat bearing No.1502 admeasuring 990 sq.ft., Dhiraj Savera Complex, Siddharth Nagar, Borivali (East), Mumbai-400 066.

2. By the above Notice of Motion, the Plaintiff sought certain interim protection in respect of the said flat. It seems that between the Plaintiff and Defendant, a leave and license agreement came to be entered into on 05/01/2009 initially for a period of 3 years and therefore renewed orally from time to time. It is pursuant to the said leave and license agreement that the Plaintiff was in possession of the suit flat pursuant to the said agreement till January 2016. It is the case of plaintiff that pursuant to the said leave and license agreement the Plaintiff has made payments of Rs.25,000/- and thereafter Rs.35,000/- from month to month. It is the case of Plaintiff that there was an oral agreement between the parties for sale of the suit flat for a lump sum consideration of Rs.85 lakhs. It is the case of Plaintiff in furtherance of the said agreement, the Plaintiff has paid various installments, the last of which was dated 14/10/2014,

and the aggregate amount paid by the Plaintiff was Rs.1,01,33,600/-. It was therefore the case of the Plaintiff that he has ended up paying an additional amount of Rs.16,33,600/-. It is further case of the Plaintiff that on 22/02/2016, the Defendant illegally and forcibly took possession of the suit property without the knowledge and consent of the Plaintiff.

3. In the context of the said case of the Plaintiff, the notices sent on behalf of the Plaintiff assume importance. In the first two notices i.e. the notice dated 12/05/2016 and 07/06/2016, the case of the Plaintiff is about the leave and license agreement entered into between the Plaintiff and the Defendant and the payments made thereunder and the alleged forcible dispossession of the Plaintiff. It is only in the notice dated 23/01/2017 that the case of the flat being agreed to be sold by the Defendant to the Plaintiff and the amounts paid by the Plaintiff as license fees are sought to be attributed to the purchase of the said flat. The learned Single Judge in the context of the said notice has therefore observed that till the

stage of the said notice, there was no case of any oral agreement for sale as urged by the Plaintiff. It is only in the said context that the learned Single Judge has observed that there was not a whisper as to the purported oral agreement for sale pleaded in the present suit and that it is in the notice dated 23/01/2017 that for the first time, the case of the oral agreement for sale was urged by the Plaintiff. The learned Single Judge has not considered the case of the Plaintiff that various payments of Rs.25,000/- and Rs.35,000/- or their multiples forming part of the alleged total consideration shown as paid by the Plaintiff to the Defendant towards the purported oral agreement for sale. The learned Single Judge has observed that admittedly rent of Rs.25,000/- and later on Rs.35,000/- was payable by the Plaintiff to the Defendant under the leave and license agreement and that further payments were made by the Plaintiff by cheque from time to time aggregating to Rs.80,73,000/-.

4. The learned Single Judge has also commented upon the fact that it is mentioned in the legal notice dated

12/05/2016 that further payments were made by cheques by the Plaintiff from time to time aggregating to Rs.80,73,000/- towards percentage and total value procured and to be procured by the Defendant for the Plaintiff. It is in the background of the aforesaid facts that the learned Single Judge found the case of the Plaintiff totally unbelievable and therefore dismissed the Notice of Motion. In the teeth of the facts as aforesaid we are of the view that no exception can be taken to the order passed by the learned Single Judge. The Appeal is accordingly dismissed.

5. In view of the dismissal of the Appeal, the Notices of Motion filed by the Appellant being Nos.1698/17 and No.1696/17 would not survive and to accordingly stand disposed of. However, the Appellant would be at liberty to file an appropriate application in the suit to bring the said material on record if so advised.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)