

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.2077 OF 2012****IN****SUIT NO.1403 1975**

Cyril Henriques

...Applicant (Defendant No.4)

In the matter between

Sudruddin Mahamed Nanavati & Ors.

... Plaintiffs

Versus

Anthony Cosmos Henriques & Ors.

... Defendants

.....

Mr. A.J. Almeida, for the Applicant/Original Defendant No.4.

Ms. Deepti Panda, i/b. Pardiwala & Co., for Plaintiff No.2(B).

Mr. Ankit Lohia, i/b. Jacinta D'silva, for Defendant Nos.1A to 1C.

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CORAM**: S.C.GUPTE, J.****DATED****: 1 AUGUST 2017****P.C.:**

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Heard learned Counsel for the parties.

2. This Notice of Motion is taken out in a disposed of suit. The suit was for specific performance of an agreement for sale. Pursuant to a decree passed in that suit on 6 April 1990 and modified on 9 August 1995, a conveyance was executed between the Defendants as vendors and the original Plaintiffs as purchasers. This conveyance was executed on 20 July

1995. The present Notice of Motion is taken out seeking an order of recall of that order or cancellation of conveyance purportedly on ground that the conveyance was subject to certain conditions, which have not been complied with by the Plaintiff purchasers. If the Applicant/Defendant has any grievance in this behalf, he will have to agitate his grievance before the Court in appropriate proceedings and cannot come by way of a Notice of Motion in a disposed of suit. Upon this being pointed out by learned Counsel for the Plaintiffs, the Applicant/Defendant offers to withdraw the Notice of Motion with liberty to raise the same issues before the Court in appropriate proceedings. Learned Counsel also requests that the ad-interim order granted by this Court in the present Notice of Motion on 20 April 2015 should be continued for a limited period to enable the Applicant/Defendant to obtain continuation of ad-interim reliefs in the proceedings that may be filed by him.

3. Accordingly, the Notice of Motion is dismissed as withdrawn with liberty as prayed. The ad-interim relief granted on 20 April 2015 in the Notice of Motion shall continue for a period of six weeks from today.

4. It is made clear that this Court has not applied its mind whilst continuing the ad-relief in favour of the Applicant/Defendant.

5. All rights and contentions of the parties on merits are kept open.

(S.C.GUPTE, J.)