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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2781 OF 2016
IN
SUIT NO. 268 OF 2016**

Triumph Buildings LLP ...Plaintiffs
Versus
Mandlik Nagar Cooperative Housing Society Ltd ...Defendants
& Ors

**Mr Pravin Samdani, Senior Advocate, with Mr Kamal Khata &
Mr Hemant Mehta, i/b M/s Mehta & Co, for the Plaintiff.**
**Mr Farhan Dubash, with Mr Vasim Shaikh, i/b Pravin Mehta &
Mithi & Co, for Defendant No. 1.**
Mr Ankit Lohia, i/b Ms Vidhya A Mangavde, for Defendant No. 53A.
**Mr Kalpesh Joshi, i/b Kalpesh Joshi Associates, for Defendant No.
53B.**

CORAM: G.S. PATEL, J
DATED: 16th January 2017

PC:-

1. The society in question had six buildings. There were 116 members. The Plaintiff is a developer. Fully 115 of the 116 members of the society have settled with the developer. The only existing dispute is between the developer and the society on one hand and the Defendants Nos. 53A and 53B (“**Lata**” and “**Indu**”,

respectively) on the other hand. The tussle between is in respect of Flat No. 204 in the existing building known as “B1”.

2. The entire project has two components, as is common in such cases. There is a rehabilitation component, where the developer has to put up construction for certain categories of public housing, and there is a free sale component. Mr Samdani for the Plaintiff states that the rehabilitation component is partly complete. Now four buildings of the Society need to be demolished. This is necessary for the completion of the rehab component and to start construction of the free sale component.

3. Indu is Lata’s husband’s brother’s wife. It is not disputed that Indu, Defendant No. 53B, is in actual physical possession of Flat No. 204 in Building “B1”. Lata claims that Indu is a gratuitous licensee. Indu claims that she is also an Associate Member of the society and that her own husband is the nominee in respect of this very flat.

4. These are not disputes that I can decide. They lie clearly within the jurisdictional remit of the Court of Small Causes at Bombay, and indeed Lata has already filed an appropriate suit in that Court, which is pending. There is no dispute that the person entitled to Flat No. 204 in the old building is allotted Flat No. B502 on the 5th Floor of the newly redeveloped building. Whether this is Lata or Indu is not only something between them but something that the Court of Small Causes will decide in the fullness of time.

This does not mean that the entire project can be come to a halt while this litigation winds its way through the legal system.

5. In my view, the correct course would be to preserve the rights of both Lata and Indu in *status quo* so that neither is prejudiced. Mr. Samdani states that of course there is no question of transit accommodation because members are being given flats as they are built against their vacating the old flats, it being a quite substantial development where such an arrangement is possible.

6. I will, therefore, appoint the Court Receiver of the new Flat No. B502 on the 5th Floor of the project site which is at Mandlik Nagar, Malad (West), Mumbai 400064. The Court Receiver will take possession of this flat from the Plaintiff. The Court Receiver will also take possession of Flat No. B204 in Building “B1” from Defendant No. 53B and hand this over against an appropriate possession receipt to the Plaintiff directly (the 1st Defendant confirming before me that it has no objection to this).

7. The Court Receiver will allow Defendant No. 53B, Ms. Indu Mehta, to use and occupy the newly developed Flat No. B502 as his agent but without payment as to royalty or compensation. However, Defendant No. 53B will pay the maintenance and outgoings but will not claim any equities on that basis.

8. Defendant No. 53A will be at liberty at any time to apply to this Court in this Suit after the decision of the Court of Small Causes at Bombay. Similarly, Defendant No. 53B, Ms. Indu Mehta,

who is also presently 'contemplating' legal action, will be entitled to apply as and when that litigation is not only filed but receives some sort of result.

9. I am making it clear that as between Defendant No. 53A and Defendant No. 53B, their internal dispute cannot be allowed to hold up the completion of the project and most importantly the interests of the 1st Defendant Society and its other members.

10. Mr. Lohia for Defendant No. 53A and Mr. Joshi for Defendant No. 53B at least agree on this, viz., that neither of their clients are opposing the development project.

11. The Court Receiver to take possession from Defendant No. 53B of the old flat on or before 10th February 2017.

12. All rights and contentions are expressly kept open in the proceedings before the Court of Small Causes at Bombay and in any other proceeding before any Court before which Mr. Joshi's clients institute a litigation. These proceedings will be decided on their own merits uninfluenced either by this order or even the filing of the present suit and all orders, interim or ad-interim, in this suit.

13. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)