

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

**NOTICE OF MOTION NO. 1343 OF 2013  
IN  
SUIT NO. 441 OF 2013**

Rajesh Govindas Sampat

...Plaintiff/Applicant

vs.

Dimple Kalpesh Patel & Anr.

...Defendants

Mr.P.M. Shah with Meetal Savla for Plaintiff.

None for Defendants.

**CORAM : S.C. GUPTE, J.**

**DATE : 9 OCTOBER 2018**

**P.C. :**

Heard learned Counsel for the parties.

2           The relief sought in the present notice of motion is in the nature of a relief which can be claimed under Order 38 Rule 5 of the CPC. The Plaintiff has not made out any case that the Defendant is either removing his assets from the jurisdiction of the court or disposing them of with a view to defeat any decree that may be passed in favour of the Plaintiff in the present suit. Hence, there is no case made out for any interim relief.

3           Learned Counsel for the Plaintiff submit that there is an averment in the plaint that the Defendant has disposed of the flat which was the subject matter of the MOU between the parties. The MOU was for sale of the flat. The Plaintiff in the present case does not seek any specific

performance of that agreement. The Plaintiff seeks refund of the earnest money paid by him to the Defendant. Disposal of the flat, in the premises, has no significance. Besides what is important to note is that the disposal of the flat is not said to be with a view to defeat a final decree that may be passed in favour of the Plaintiff. No relief, in the premises, can be granted to the Plaintiff.

4           The notice of motion is dismissed. Costs to be costs in the cause

**(S.C. GUPTE, J.)**