

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.512 OF 2013****IN****SUIT NO.523 OF 2013**

Vijaya Manohar Sheth And Anr. .... Applicants  
(Original Defendant Nos. 1 and 2)

**IN THE MATTER BETWEEN**

Pancham Associates & 2 Ors. ... Plaintiffs  
Versus  
Vijaya Manohar Sheth And 4 Ors. .... Defendants

**WITH****NOTICE OF MOTION NO.524 OF 2013****IN****SUIT NO.523 OF 2013**

Rajiv Manohar Seth & Anr. ... Applicants  
(Original Defendant Nos. 3 and 4)

**IN THE MATTER BETWEEN**

Pancham Associates & Ors. ... Plaintiffs  
Versus  
Vijaya Manohar Sheth & Ors. .... Defendants

**WITH****NOTICE OF MOTION NO.1210 OF 2013****IN****SUIT NO.523 OF 2013**

Pancham Associates & Ors. ... Applicants/Plaintiffs  
Versus  
Vijaya Manohar Sheth & Ors. ... Defendants

.....

Mr. Vijay S. Gharat, for the Plaintiff/Applicant in NMS/1210/13.

Mr. J.S. Kini, a/w. Ms. Sapna Krishnappa, i/b. Mr. Suresh Dubey, for Defendant Nos. 1 and 2/Applicants in NMS/512/13.

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

**DATED** : 25 SEPTEMBER 2018

**P.C.:**

. Notice of Motion Nos.512 of 2013 and 524 of 2013 are filed by two different sets of Applicants (Original Defendants) for the same relief under Order 7 Rule 11 of the Code of Civil Procedure. The motions are on the footing that the plaint, as framed, does not disclose any cause of action. The present suit is filed by the Plaintiffs, who claim to be agreement purchasers and developers of the suit property. The Plaintiffs claim to be in possession of the suit property and it is their grievance that they were illegally and forcibly dispossessed of the same without following due process of law and without their consent. As a result, the Plaintiffs seek a decree of possession under Section 6 of the Specific Relief Act. The averments of possession and its rightfulness, and dispossession otherwise than by due process of law having been made in the plaint, prima facie the plaint discloses a cause of action.

2. Learned Counsel for the Applicants/Defendants, however, submits that while ordinarily it would be so, that is to say, on these averments, a cause of action can be said to be disclosed, in this particular case, having regard to the orders passed by this Court earlier and the documents, on which the Plaintiffs themselves place reliance, it can be demonstrated that the Plaintiffs were never in possession of the suit premises and could not be said to have been dispossessed either with or

without the process of law. Truly speaking, this plea reflects on the defence of the Defendants rather than the plaint disclosing a cause of action. If one has regard to the orders referred to in this behalf by the Defendants, it is apparent that earlier there were cross-suits filed by the parties against each other. The present Plaintiffs had filed a suit, as agreements purchasers and developers, for specific performance of their agreement, whereas the Defendants had filed a suit against the Plaintiffs herein complaining of breach of contract on the part of the Plaintiffs and a decree of damages. The Court dismissed the specific performance suit of the Plaintiffs herein on the ground that there was no case made out for specific performance and granted damages to the Defendants. These orders by themselves do not imply that the question of possession of the suit property stands finally disposed of or determined. Be that as it may, even if it were to be so, that is clearly a matter of defence. The Defendants' contention, at its highest, implies that the Plaintiffs have no good case on merits. For the purposes of an application for rejection of the plaint under Order 7 Rule 11, the Court is essentially called upon to proceed on the basis that the allegations made in the plaint are true and correct. If the plaint, despite the allegations being true and correct, does not disclose any cause of action, then the Court rejects it. In the present suit that is not so. In the premises, the notices of motion of the Defendants are liable to be dismissed.

3. The third notice of motion, namely, Notice of Motion No.1210 of 2013, is for appointment of Court Receiver. The notice of motion is taken out by the Plaintiffs, who, as noted above, claim to be developers and agreement purchasers in respect of the suit property. The Plaintiffs' earlier

suit, which inter alia prayed for appointment of a court receiver, having been comprehensively rejected, there is no prima facie case for appointment of a Court Receiver in the present case. The notice of motion has been pending for last over five years. There has not been any ad-interim relief in favour of the Plaintiffs. In the premises, there is no merit in the notice of motion and the same deserves to be dismissed.

4. Accordingly, all three notices of motion are dismissed. No order as to costs.

5. At the joint request of the parties, the hearing of the suit is expedited. Since written statements have been filed by all the Defendants in the suit, the suit can be taken up for framing of issues. Place the suit for issues on 25 October 2018.