

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

**NOTICE OF MOTION NO. 256 OF 2016
AND
NOTICE OF MOTION NO. 257 OF 2016
IN
COMMERCIAL SUIT NO. 449 OF 2016**

M/s.W.S. Universal Developers	...Plaintiff/Applicant
Vs.	
Abdul Quddus Farooqui & Anr.	...Defendants

Mr.Harish Pandya I/b. Aditya Khanna for Plaintiff.
Mr.Arun Jadhav for Defendant No.1.
Mr.Pankaj Kowli with Ashish Verma I/b. Kookada & Associates for
Defendant No.2.

CORAM : S.C. GUPTE, J.

DATE : 8 JANUARY 2018

P.C. :

Heard learned Counsel for the parties.

2 Notice of Motion No.256 of 2016 seeks appointment of a Court Receiver and an interim injunction against Defendant Nos.1 and 2, whilst Notice of Motion No.257 of 2016 seeks directions for deposit in court of the sale consideration of Rs.2.50 crores paid by the Plaintiff to Defendant No.1. Defendant No.1 is the landlord of the suit property, whereas Defendant No.2 is claimed to be an erstwhile developer of the suit property.

3 Learned Counsel for the Plaintiff submits that the transaction between the two Defendants for development of the suit property, which is a tenanted property, dates back to the year 2008. It is submitted that there

was no development of the suit property in pursuance of that transaction till about 2015. It is submitted that in 2015, the Plaintiff entered into the suit agreement for sale with both Defendants. The consideration under the suit agreement for sale was of Rs.4 crores plus built up premises in the new construction to be made on the suit property. It is the Plaintiff's case that towards part payment of this consideration, a sum of Rs.2.50 crores was paid by the Plaintiff to Defendant No.1. Learned Counsel states that the Plaintiff thereafter offered to pay the balance consideration and called upon the Defendants to execute a conveyance in its favour. Learned Counsel submits that at that stage, Defendant No.1 feigned ignorance of the suit agreement for sale and disputed the rights claimed by the Plaintiff thereunder. Learned Counsel relies on Exhibits M and O to the plaint in this behalf. Learned Counsel submits that presently, there is an ad-interim injunction in favour of the Plaintiff. Learned Counsel, however, submits that a receiver needs to be appointed in the present case considering the dishonest stand taken by the Defendants.

4 There is no reason emanating from the record to indicate that the relief of an interim injunction is not adequate to protect the suit property. The suit property is a tenanted property. If no further third party rights can be created by the Defendants in respect of the suit property including its development, that would be an adequate protection to the Plaintiff. The ad-interim order operating in the matter so far has protected the suit property. There is no averment in the pleadings that in spite of the earlier ad-interim injunction granted by this court, the Defendants have dealt with any part of the suit property.

5 Learned Counsel alternatively submits that Defendant No.1 be

asked to bring in the amount of Rs.2.50 crores paid by the Plaintiff. It is submitted that even the rent payable by the tenants in respect of the suit property should be ordered to be deposited into court. Insofar as the amount of Rs.2.50 crores purportedly paid by the Plaintiff to Defendant No.1 for development of the suit property and the amount of rent payable by the tenants in the suit property are concerned, the claim purely sounds in money. There is no case made out in the plaint or in any of the affidavits in support of the notice of motion that the Defendants are likely to dispose of any property with a view to defeat any decree that may be eventually passed in favour of the Plaintiff, including an order for refund of the amount paid by the Plaintiff to Defendant No.1.

6 There is accordingly no case either for deposit of money or appointment of Court Receiver. The ad-interim injunction granted on 11 March 2016 is accordingly continued as an interim order pending the hearing and final disposal of the suit. The motions are disposed of accordingly. Costs to be costs in the cause.

7 The written statement of Defendant No.2 to be filed within two weeks from today. The suit to come up on board for framing of issues on 25 January 2018.

(S.C. GUPTE, J.)