

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 3309 OF 1992**

Uma Upendranath Bhrany	...Plaintiff
<i>Versus</i>	
Hamco Steels & Alloys Ltd through the Official Liquidator, Bombay High Court	...Defendant

**Mr Jehangir Jeejeebhoy, with Ms Samrudhi Chothani, Ms Alya
Khan, for the Plaintiff.**
Uma Upendranath Bhrany, Plaintiff is present.

**CORAM: G.S. PATEL, J
DATED: 19th November 2018**

PC:-

1. The present Plaintiff was brought on record upon the demise of her husband, the original Plaintiff.

2. The Suit is for specific performance of an Agreement of Sale of ***Flat No. 16-A*** of about 1618 square feet on the 16th floor, and one Garage No. 25, in the building known as Lands' End CHSL at 29D, Doongersi Road, Mumbai 400 006 ("**the Lands' End property**").

3. The original Plaintiff was a Doctorate in Engineering from Columbia University and a Chartered Engineer with expertise in steel and alloy manufacturing. In 1974, the Defendant employed the

Plaintiff as its President (Operations). By a letter dated 4th October 1974, the Chairman of the Defendant asked the original Plaintiff that he should identify suitable accommodation for himself. The agreement was that the accommodation so identified by the original Plaintiff would be purchased by the Defendant and let out to the original Plaintiff. It would then be transferred to the original Plaintiff at its original acquisition cost, but only after the original Plaintiff completed 16 years of service with the Defendant.

4. The Plaintiff found the Lands' End property suitable. This is described in paragraph 3 of the Plaint (until then he temporarily resided at the Radio Club). The Defendant purchased the Lands' End property in 1975 for Rs.2.80 Lakhs. The Defendant paid another Rs.8,000/- as brokerage and other charges. The total acquisition cost of the Lands' End property was thus Rs.2.88 lakhs.

5. The original Plaintiff took up employment with the Defendant on 1st December 1974. The 16-year period was to expire on 30th November 1990. On 29th September 1988, the Defendant entered in to an agreement by which the original Plaintiff became the monthly tenant of the Defendant at a monthly rent of Rs.1,560/- per month. The original Plaintiff was regular in paying rent. On 19th April 1989, the management of the Defendant changed hands. The new management confirmed the previous commitment regarding the lands and premises.

6. The original Plaintiff completed 16 years of service on 30th November 1990 and thus became entitled to take the Lands' End property in his own name.

7. On 14th December 1990 the original Plaintiff tendered the entire consideration of Rs. 2.88 lakhs by two cheques to the Defendant and requested that the flat be transferred to his name. The Defendant never encashed those cheques. Several discussions followed including as to the question of stamp duty. The original Plaintiff resigned on 23rd November 1991 with effect from 31st October 1991. The original Plaintiff received his gratuity and other dues.

8. It seems that the Defendant was then before the BIFR. Subsequently its name has been changed to the present one.

9. As to the question of service, Mr Jeejeebhoy points out that the original Plaintiff filed Notice of Motion No. 2506 of 1992. The Defendant appeared through its Advocates at the hearing of that Motion, and confirmed service of the Notice of Motion, Affidavit in Support, and the Plaint.

10. The present Plaintiff is and continues to be in occupation of the Lands' End property.

11. The Defendant has failed to enter a Written Statement or to contest the Suit. The Plaintiff is thus entitled to a decree. The original Plaintiff passed away on 3rd March 2014. His widow, the

present Plaintiff, was brought on record. She is present in Court. She has tendered a compilation of 36 documents from Exhibit “P2” to “P37(2)”. These documents are received in evidence with the markings as suggested. Although there is no Written Statement, had the Defendant entered appearance, it would have been entitled to cross-examine the Plaintiff who is available and who has tendered herself for that purpose to the limited extent permissible in law.

12. None is present on behalf of the Defendant. Consequently, the Suit is decreed in terms of prayer clauses (a) and (b). The money claim in prayer clause (b) is for leave encashment but it will carry interest at the rate of 18% per annum and not at 24% per annum as claimed. up to the date of the Suit, and at 12% per annum thereafter until payment or realization. All interest is simple interest only.

13. The decree is to be drawn up accordingly. Drawn up decree expedited.

14. The original documents tendered by the Plaintiff will be returned upon these being substituted with photocopies duly authenticated by the Advocates for the Plaintiff.

(G. S. PATEL, J)

Note: This order is modified as per order dated 22nd November 2018. Corrections are shown in bold and italics.