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

**NOTICE OF MOTION NO.929 OF 2018**
**IN**
**SUIT NO.2440 OF 2012**

Om Shanti Universal Ltd. And 2 Ors. … Plaintiffs
Versus
Blue Lotus Jewellery Pvt. Ltd. And 2 Ors. … Defendants

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Mr. J.P. Sen, Senior Advocate, a/w. Ms. Ferzana Behramkamdin and Ms. Bharti Bhansali, i/b. FZB & Associates, for Defendant Nos. 1 and 2/Applicants.

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

**DATED : 19 SEPTEMBER 2018**

**P.C.:**

. Heard learned Counsel for the Applicants, who are original Defendants to the suit. None appears for the Respondents (Original Plaintiffs). The notice of motion seeks refund of a sum deposited by the original Defendants in the suit.

2. The short facts, which give rise to the present case, may be stated as under :-

The first Defendant Company is engaged in manufacture and development of jewellery. Plaintiff No.2 – Paras Porwal ("Paras") and his wife Manju Porwal ("Manju") advanced a sum of Rs.2.5 crores to the first Defendant on 8 August 2006. (There is some controversy between the parties as to the nature of this advance.) Sometime in March 2007, the first Defendant acquired a certain land with a structure known as 'Shirin Manzil' with a view to diversify its business into real estate development. At that stage, the first Defendant allotted 2 lakh shares of Rs.10/- each at a premium of Rs.100/- each to Paras and Manju, thus appropriating a sum of Rs.2.20 crores from out of the abovesaid deposit of Rs.2.50 crores towards allotment of shares, the balance amount of Rs.30 lakhs each (principal plus interest) due and payable to Paras and Manju being shown as loan of Paras and Manju in the books of the first Defendant. It appears that further loans were advanced by Paras and Manju as well as an associated Company belonging to Paras, one Jyotindra Realtors Pvt. Ltd. ('JRPL'), to the first Defendant in 2007 and 2010 bringing up the total amount advanced to Rs.6.15 crores as of 31 March 2012 in the books of the first Defendant (inclusive of interest). Sometime in August 2010, the first Defendant received from a partnership of Om Shanti Universal, which is a partnership firm of Paras, Manju and their Company, Plaintiff No.1 herein, the firm itself being Plaintiff No.3 to the present suit, a sum of Rs.5.65 crores. Immediately after the receipt of this amount, the advance of Paras and Manju, respectively, in the sum of Rs.4 crores and Rs.1.65 crores, was returned by the first Defendant. It appears that some time later a suit was filed by Plaintiff No.3 firm against the first Defendant herein praying for specific performance of an alleged oral agreement for sale dated 18 August 2010 for purchase of 'Shirin Manzil', the property bought by the first Defendant. The oral agreement for sale was disputed by the first Defendant. The suit was dismissed on the ground of want of maintainability, since, at the date of filing of the suit, Plaintiff No.3 herein (Plaintiff to that suit) was not registered under the Partnership Act. After registering the partnership firm under the Act, the present suit has been filed by Plaintiff No.3 herein along with Om Shanti Universal Ltd. (Plaintiff No.1), a Company belonging to Paras, for specific performance of the alleged oral agreement for sale dated 18 August 2010. (Om Shanti Universal Ltd. along with Plaintiff No.2 and the Porwals are partners, as mentioned above, of Plaintiff No.3 firm.) At the ad-interim stage, in a notice of motion taken out in the suit, with the consent of parties, the amount of Rs.6.15 crores, which included the advance of the Plaintiffs and some interest, was ordered to be paid to Plaintiff No.3. (As mentioned above, in the books of account of the first Defendant, as of 31 March 2012, a sum of approximately Rs.6.15 crores was due and owing by the first Defendant to the Porwals as of that date.) In addition to the amount of Rs.6.15 crores to be paid directly to Plaintiff No.3, the first Defendant agreed to deposit in the office of the Prothonotary and Senior Master a further sum of Rs.3.85 crores. It is the case of the first Defendant that this amount was agreed to be deposited in view of the contention of the Plaintiffs that apart from the amount of Rs.5.65 crores advanced by Plaintiff No.3 firm, there were other amounts shown as due and owing by the first Defendant to Paras and his associates. The amount of Rs.3.85 crores was to secure those dues. The order of the Court passed on that date, however, did not reflect the purpose, for which the said amount of Rs.3.85 crores was agreed to be deposited by the first Defendant. The order records the agreement between the parties to pay and deposit the respective amounts as shown above and an interim injunction against the first Defendant from developing the property of Shirin Manzil only in the case of its failure to pay or deposit the respective amounts. Since the amounts were respectively paid and deposited, there was no restriction on the development of the property so far as the first Defendant was concerned. It appears that the first Defendant even went ahead with the development of the property. In the meantime, it appears that three company winding up petitions were filed against the first Defendant company by Paras, Manju and the associate company of Paras, JRPL, whose deposits were reflected in the first Defendant's accounts, claiming recovery of the amounts as due as on 31 March 2014. By a common order dated 24 February 2017, the petitions were disposed of by allowing the three Petitioners to withdraw diverse sums from the amount of Rs.3.85 crores deposited in the present suit in the following manner :

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| Paras Porwal | Rs.45,22,730/- |
| Manju Porwal | Rs.2,04,86,617/- |
| Jyotindra Realtors Pvt. Ltd. | Rs.80,66,107/- |

These amounts represented the principal amounts owed by the first Defendant to the three Petitioners referred to above. The disputes between the parties as to the interests payable on the amounts were referred to the arbitration of a sole arbitrator. The first Defendant has produced awards now passed by the sole arbitrator in two of these three references. Insofar as Paras is concerned, the amounts awarded are Rs.22.54 lakhs, together with 12% interest from 20 April 2017 and costs of Rs.3.25 lakhs. As far as the associate company of Paras (JRPL) is concerned, the amounts are Rs.14.77 lakhs plus 6% interest, aggregating to Rs.15 lakhs. Insofar as Manju is concerned, her claim is yet to be awarded.

3. On these facts, Mr. Sen, learned Senior Counsel appearing for the first Defendant, requests the Court to pass appropriate orders for

payment from the amount deposited in the present suit of the already awarded sums to Plaintiff No.2-Paras and his associate company – JRPL and such sum as may be awarded to Manju in the pending reference and refund of the balance amount to the first Defendant.

4. The recitation of the facts above makes it clear that in view of the order passed at the ad-interim stage, the claims of the other associate parties having been already adjudicated in the two arbitration references and an award being awaited in the third arbitration reference, there is no purpose for the amount of Rs.3.85 crores to lie deposited in this Court. The amount clearly represented the pending claims of Paras, Manju and JRPL. The claims now having been awarded, the first Defendant should be allowed to pay the awarded dues of Paras and his associate company JRPL from out of this amount and the claim of Manju as and when the same is awarded and the rest of the amount should be refunded to the first Defendant. After all, the other alternative claim in the present suit (i.e. in addition to the claim of refund of Rs.5.65 crores, which already has been effectively granted), is a claim for the sum of Rs.15 crores by way of damages. Such damages will have to be proved by the Petitioners; there is no warrant for any amount to be retained in this Court towards the claim of damages.

5. The notice of motion is accordingly disposed of by passing the following order:-

(i) The Prothonotary and Senior Master of this Court shall permit Plaintiff No.2, and his associate, Jyotindra Realtors Pvt. Ltd., to withdraw the sums representing their awarded claims in accordance with the awards dated 10 July 2018 and 10 August 2018 from the sum of Rs.3.85 crores deposited by the Defendants;

(ii) As and when any award is declared by the sole arbitrator in the case of Manju Porwal, wife of Plaintiff No.1, the amount representing the awarded sum may be allowed to be withdrawn by Manju Porwal from out of the deposit of Rs.3.85 crores;

(iii) The balance amount retained by the Prothonotary and Senior Master shall be then refunded to Defendant No.1.



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