

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

**NOTICE OF MOTION NO.514 OF 2017
IN
COMMERCIAL SUIT NO.617 OF 2017**

Mrs.Yasmita Asutosh Desai)....Applicant/Plaintiff

V/s.

M/s.Ayyappa Construction Co. & Ors.)....Defendants

Ms.Madhavi Tavanandi for applicant/plaintiff.

Mr.V.S.Pandey I/by S.U.Pandey for defendant no.1.

Ms.Shweta Gupta I/by Bhavin R.Bhatia for defendant nos.2 & 3.

Mr.S.S.Dube a/w Mr.Nagendra S.Dube for defendant nos.6 & 7.

CORAM : K.R.SHRIRAM,J

DATE : 18.12.2018

P.C.:-

1. Heard the parties.
2. It is the case of plaintiff that defendant no.1 had agreed to sell two flats being flat nos.903 & 904 on 9th floor of building Sarvodaya Co-operative Housing Society Ltd., situated at Shastri Nagar, Goregaon (East), Mumbai-400104 and plaintiff had paid the entire consideration for both the flats which has not been disputed by defendant no.1. It is the case of plaintiff that defendant no.1 after agreeing to sell these two flats and after collecting the entire consideration, sold flat no.903 to defendant nos.2 & 3 and flat no.904 to defendant nos.4 & 5. Defendant nos.4 & 5 in turn, sold flat no.904

to defendant no.6. Defendant nos.4 & 5 are not appearing though served, perhaps, they are not concerned as they have already sold flat no.904 to defendant nos.6 & 7.

3. On 29.3.2017 the following order came to be passed :-

“There are several matters filed in this Court against M/s.Ayyappa Construction Co.. Their Advocate Mr.Pandey is never on time and the client always comes and make a request that the matter be kept back. The matter is for urgent ad-interim reliefs. It was partly heard on 27-03-2017 and the Defendants were asked to file their Affidavit in Reply. Neither the Advocate for the Defendants is present, nor the Affidavit in Reply is tendered in Court. The learned Advocate for the plaintiff states that an attempt was made to serve Defendant Nos.2, 3, 6 and 7. However, the serving Clerk was informed that they have left the premises. In view thereof, the Court Receiver, High Court, Bombay shall visit the Suit Flats Nos.903 and 904 on the 9th Floor, Sarvodaya, at Shastri Nagar, Goregaon (W), Mumbai-400 104 and ascertain as to who is in possession of the same. The parties are also directed to maintain status quo as of today in respect of Suit flat Nos.903 and 904. The Court Receiver shall submit his Report to this Court on 30-03-2017 at 3.00 p.m. Stand over to 30-03-2017 at 3.00 p.m.”

4. On 30.3.2017 the following order came to be passed :-

“1. The Court Receiver has informed the Court that Flat No.903 is owned by Defendant No.2 and one Mr.Das Subrata, who is using the said flat as the Licensee. As far as Flat No.904 is concerned, the same is owned by Defendant No.6-Mr.Arunlal Jain and the same is occupied by his son-Mr.Sumit Jain, they have purchased the said flat from Mrs.Nivedita Ashok Saraf and Mr.Ashok Laxman Saraf. The Defendant Nos.2 and 6 are even today not

present before this Court. In view thereof, Defendant Nos.2 and 6 shall maintain status quo as of today in respect of their respective flats.

*2. The following issue is framed as preliminary issue under Section 9A of Code of Civil Procedure, 1908 :
Whether the above Suit as filed is barred by the Law of Limitation ?*

3. Stand over to 3rd April, 2017 for directions.”

5. The Court Receiver therefore, is in possession of both the flats. Defendant no.1 and counsel for defendant nos.2 and 3 and 6 & 7 state that the order dated 29.3.2017 read with order dated 30.3.2017 could be continued as an order in the Notice of Motion and Notice of Motion be disposed.

6. Ms.Tavanandi appearing for plaintiff seeks possession of the flats. In my view, such a relief cannot be granted at the interim stage because that would amount to decreeing the suit. Defendants have to be heard. Therefore, in my view, it will be in the interest of all the parties if order dated 29.3.2017 read with order dated 30.3.2017 are confirmed as orders in the Notice of Motion and Notice of Motion disposed.

Notice of Motion accordingly disposed.

7. Mr.Pandey for defendant no.1 states that written statement is ready and will lodge the same in the registry during the course of today. Ms.Gupta for defendant nos.2 & 3 and Mr.Dube for defendant nos.6 & 7 state that they will file written statement within two weeks from today and serve copy thereof upon plaintiff.

8. Ms.Tavanandi states that defendant nos.4 & 5 have been served writ of summons and undertakes to file affidavit of service within two weeks from today. Suit therefore, to proceed against defendant nos.4 & 5 as undefended suit.

9. Stand over to 4.1.2019 for directions. Liberty to plaintiff to take out the Notice of Motion to direct the license fees being received by defendant nos. 2 & 3 for flat no.903, to be deposited with the Prothonotary & Senior Master, High Court, Bombay.

(K.R.SHRIRAM,J)