

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO. 369 OF 2017

IN

NOTICE OF MOTION NO. 727 OF 2017

Sangeeta Ajithan

...Appellant

Versus

Neptune Ventures And Developers Private

Limited And Others

...Respondents

Mr.Sachin Daga with Ms.Hemali Bhatia, for the Appellant.

Mr.Akshay Patil i/b. Mayur Thorat, for the Respondents.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.****DATE : 20th APRIL 2018****P.C.:**

1. The appellant who is a plaintiff has filed a suit for specific performance. The learned Counsel for the appellant submits that inspite of payment of substantial amount, the respondent-developer has failed to hand over the possession of the flat, instead created third party interest by selling the flat to the purchaser who is also a party to the suit. On behalf of the developer, it was submitted that the appellant accepted the refund amount of Rs.13,91,423/- (after deduction of Rs.2,00,000/-) towards refund of consideration for purchase of the suit flat. The learned Counsel submits that the learned Single Judge has rightly rejected the prayer for interim relief in the notice of motion.

2. We have perused the record placed before us and the impugned order passed by the learned Single Judge. In the facts, the ad-interim relief as prayed by the appellant was rejected. Considering the facts it is open to the appellant to lead necessary evidence in the suit in support of the claim. We see no reason to interfere in the impugned order. The appeal is accordingly dismissed.

3. Needless to observe that the learned Single Judge would deal with the adjudication of the suit, without being influenced by this order of dismissal of the appeal. All contentions of the parties on merits of the suit are expressly kept open.

4. The learned Counsel for the Developer assures that within three weeks, a written statement would be submitted before the learned Single Judge.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]