

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 57 OF 2017
IN
NOTICE OF MOTION NO. 1040 OF 2015
IN
SUIT NO. 555 OF 2015

Rajesh A Merchant	...Petitioner
<i>Versus</i>	
Sandip A Merchant & Ors	...Respondents

WITH
CHAMBER SUMMONS NO. 1155 OF 2017
IN
SUIT NO. 555 OF 2015

Mr Vishal Kanade, *with Ms Kausar Banatwala, Ms Dipti Shah & Mr Tushar Goradia, for the Petitioner.*
Mr R Shah, *i/b M/s Lex Conseiller, for Respondents Nos. 2 and 3.*

CORAM: G.S. PATEL, J
DATED: 7th June 2018

PC:-

1. It is accepted that there is discrepancy and that amount required to be paid by Respondents Nos. 2 and 3 is Rs.3,70,277/-

and not Rs.3,75,277/. Their Advocate has a pay order in the amount of Rs.3,70,277/- is ready in favour of the Prothonotary and Senior Master. It will be deposited during the course of the day and, in event, before 2:00 pm tomorrow.

2. The Defendants Nos. 2 and 3 (Respondents Nos. 2 and 3 to the Contempt Petition) have also filed Chamber Summons (L) No. 1261 of 2017. The Chamber Summons will be got finally numbered by the end of day tomorrow, 8th June 2018.

3. The Chamber Summons seeks an extension of time of six weeks to comply with the order of 17th April 2017 passed by KR Shriram J and also to condone a delay of 115 days in making that compliance. Mr Kanade for the Plaintiff seeks to file a reply to this Chamber Summons.

4. As regards this Chamber Summons, now that the amount required by paragraph 2 of KR Shriram J's order of 17th April 2017 is at least partly complied, what remains pending compliance is the Affidavit contemplated in paragraph 1 of that order. I clarify that this is without prejudice to Mr Kanade's submissions that the amount deposited does not in fact represent 50% of the market rate. I will leave that contention open for an appropriate proceedings, whether in the pending Contempt Petition or otherwise. However, there can be no denying that the order of 17th April 2017 required Defendants Nos. 2 and 3 to file an Affidavit disclosing the Leave and License Agreement that they entered into in respect of flat at Juhu along

with all further agreements, as also detailed accounts. This has not been done even now.

5. I am informed that 2nd Defendant returns to Mumbai on Sunday, 10th June 2018. On his behalf a statement is made that the while the copies of the agreements are ready, these along with the necessary statements of accounts will be filed no later than 13th June 2018 with a copy to Mr Kanade's attorneys. The statement is accepted as an undertaking to the Court. The delay of 115 days in compliance is condoned as a final opportunity. I do make it clear that there will be no extension of time and a failure with comply with this order will result in *suo motu* contempt action against Defendants Nos. 2 and 3 and I may even consider more coercive action in regard to the flat in question.

6. The Chamber Summons is disposed of in these terms with no order as to costs.

7. List the Suit itself along with the Contempt Petition for directions on 14th June 2018. This is to ensure compliance with the present order. In the meantime Mr Kanade has made a proposal for settlement which Defendants Nos. 2 and 3 agrees to consider.

8. Lastly on behalf of the Defendants Nos. 2 and 3, it is stated that they have taken possession from 4th Defendant and it is they and they alone who are in exclusive possession of the flat in question. This is noted. Defendants Nos. 2 and 3 will not part with possession, encumber, alienate or create any third party rights over

the flat without prior leave of the Court obtained after at least 10 days' prior written intimation to Mr Kanade's attorneys.

(G. S. PATEL, J)