

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION (L) NO.2125 OF 2018****IN****SUIT NO.357 OF 2014**

Mr. Sankarnarayanan Iyer And Anr. ... Plaintiffs
Versus
Doordarshan Employees Co-Op. Housing Society Ltd. ... Defendant

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Mr. Ashish Kamat, i/b. Pirani & Co., for the Plaintiffs.

Mr. Ketan Parekh, i/b. K.R. Parekh & Co., for Defendant/Applicant in NMSL.

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

DATED : **10 OCTOBER 2018**

P.C.:

. This notice of motion is taken out by the original Defendants for setting aside an ex-parte decree passed in the suit on 15 April 2016 and also for raising of the attachment levied on the movable and immovable property of the Defendant in execution of that decree.

2. The Plaintiffs have filed the present suit for specific performance against the Defendant. In the alternative, the Plaintiffs have prayed for a decree for refund of the sum paid by the Plaintiffs to the Defendant for purchase of the suit flat and also for a further sum towards damages for breach of the agreement for sale. This Court, by its order dated 15 April 2016, has passed a money decree in favour of the Plaintiffs. The decree comprises of two sums, a sum of Rs.12,20,000/- along with

interest at the rate of 15% p.a. from the date of the respective payments till the date of the suit together with further interest at the rate of 12% p.a. from the date of the suit until payment or realization towards refund and a sum of Rs.1,26,30,200/-, together with interest at the rate of 12% p.a. from the date of the suit until payment or realization towards damages. The Plaintiffs are also awarded costs of the suit in the sum of Rs.50,000/-. That decree, passed ex-parte, has been sought to be set aside.

3. After the notice of motion is heard at some length, it is agreed between learned Counsel for the parties that the decree can be varied by maintaining the first part of the decree providing for refund of the amount of Rs.12,20,000/- with interest as provided in the decree and also for payment of costs in the sum of Rs.50,000/- and setting aside the other part of the decree providing for payment of damages in the sum of Rs.1,26,30,000/- together with interest as provided therein. It is agreed between the parties that insofar as damages are concerned, the suit shall be heard on its own merits, keeping all contentions of the parties on merits, including the issue of jurisdiction, open.

4. It is, accordingly, ordered as follows:-

(i) The decree passed on 15 April 2016 in terms of clauses (a) and (c) of paragraph 10, providing for payment of the sum of Rs.12,20,000/- together with interest and the cost in the sum of Rs.50,000/- is maintained. The decree is set aside so far as it relates to damages in the sum of Rs.1,26,30,000/- with interest.

(ii) The Defendant undertakes to pay an amount of Rs.36,50,000/- in full and final satisfaction of the decree confirmed as above within a period of three weeks from today. The undertaking is accepted. After payment of this amount, the decree passed by this Court on 15 April 2016, and as varied by the present order, shall be marked as satisfied.

(iii) The attachment levied on movable and immovable assets of the Defendant shall stand released forthwith.

(iv) At the joint request of the parties, the hearing of the suit is expedited. The Defendant to file written statement on or before 30 November 2018. The restored suit to proceed for the hearing of the Plaintiffs' claim of damages and on contentions of the parties kept open as indicated above.

(v) The suit to come up for directions on 3 December 2018.

(vi) The notice of motion is disposed of in the above terms.

(vii) All parties to act on the authenticated copy of this order.

(S.C.GUPTE, J.)