

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2043 OF 2018
IN
SUIT NO. 3124 OF 2010

Dolly B Madhian & Anr	...Plaintiffs
<i>Versus</i>	
Ajay R Chopra & Ors	...Defendants

Mr Sanskar Marathe, i/b , for the Plaintiffs.
Mr Rvi Punjabi, for the Defendants.

CORAM: G.S. PATEL, J
DATED: 12th December 2018

PC:-

1. Leave to amend to add the names of Defendants Nos. 1(a), 1(b), 1(c) as heirs and legal representatives of deceased original 1st Defendant. Amendments to be carried out on or before 17th December 2018 without need of re-verification.

2. Plaintiffs Nos. 1 and 2, Defendants Nos.1(a), 1(b), 1(c) and 2 are present in Court. After several discussions over the last two or three days parties have now agreed before me that it is in the interest of all concerned that the Suit itself be settled. The Suit is for specific performance in respect of Flat No.201 on the second floor of the 3rd

Defendant-society at Bandra (West), Mumbai 400 050. The legal heirs of 1st Defendant and 2nd Defendant have agreed to submit to a decree. This needs some clarification in view of what was agreed. The Plaintiffs are the purchasers of the flat in question. They are admittedly in use and occupation of the flat. By an order of 30th October 2012 of a Division Bench (Mohit Shah CJ & NM Jamdar J), the Plaintiffs were called upon to deposit with the Registry an amount of Rs.35 lakhs. This amount has been invested and the interest accrued till date is roughly Rs.18 lakhs. The Defendants agree and undertake to execute the necessary documents to complete the sale transaction in favour of the two Plaintiffs jointly, upon the Defendants Nos. 1(a), 1(b), 1(c) and 2 being permitted to withdraw the amount Rs.35 lakhs with a portion of the accrued interest.

3. I say this because pursuant to negotiations it is now agreed that the Plaintiffs will receive an amount of Rs.6.90 lakhs from the accumulated interest. The Defendants will also provide under-stilt parking space associated with the flat in question.

4. In addition, there is a claim made in regard to payment of society dues. According to the Plaintiffs, some amount was payable by the Defendants to the society for the period before the Plaintiffs were put in possession. I find that some amounts in parallel were deposited with the Court Receiver. The Court Receiver has made payments to the society of various amounts from time to time and there is an amount of Rs.13,407/- lying in balance with the Court Receiver.

5. It is agreed between the parties that the amount of Rs.35 lakhs will be refunded as follows, that is to say: 50% will be refunded to 2nd Defendant and the balance 50% of Rs.35 lakhs will be distributed equally between Defendants Nos. 1(a), 1(b), 1(c).

6. Coming now to distribution of interest, first an amount of Rs.6,90,000/- from the accumulated interest will be paid out to the name of the Plaintiffs jointly. The balance is to be distributed between Defendants Nos. 1(a), 1(b), 1(c) and 2 in the same proportion as above i.e. 50% of the balance to 2nd Defendant and the remaining 50% to be distributed equally between Defendants Nos. 1(a), 1(b), 1(c).

7. The Court Receiver will refund the amount lying in balance to the Plaintiffs. The Plaintiffs agree that all costs, charges and expenses of the Court Receiver will be borne by the Plaintiffs.

8. The Prothonotary and Senior Master and the Court Receiver will act on production of an authenticated copy of the order.

9. The refund and remittance may be made by online transfer to accounts nominated or designated by the parties in question.

10. The Defendants agree and undertake to sign the necessary society and share certificate transfer forms and the Plaintiffs who are in possession and occupation will be at liberty to produce these before the society along with the copy of this order.

11. The 3rd Defendant, the society, will act on production of an authenticated copy of this order. It will effect the transfer of the Suit flat to the names of the Plaintiffs. Transfer fees up to the legally permissible amount of Rs.25,000/- and no more will be borne by the Plaintiffs. The 3rd Defendant-society will not ask for any contributions whether as donations, gifts, contributions to sinking fund etc. The society will make the necessary endorsements on the share certificate within three weeks of the submission of the documents to it in respect of both the flats and the car parking space.

12. It is clarified that the withdrawals of the amounts lying in Court will be subject to the execution by Defendants Nos. 1(a), 1(b), 1(c) and 2 of the necessary documents in favour of the Plaintiffs.

13. This order is passed in open Court in the presence of all these parties with their consent conveyed to me. I have understood the anxiety of Advocates on both sides over the past several days who have done their utmost to settle the matter. I will not permit any of these parties to resile from or attempt to change these terms.

14. Chamber Summons No. 524 of 2017 and Chamber Order (L) No. 408 of 2018 are disposed of accordingly with no order as to costs.

15. The Suit and the Notice of Motion are disposed of in these terms. There will be no order as to costs.

16. Refund of Court fees, if any, in accordance with Rules.
17. The Court Receiver has taken symbolic possession. The Court Receiver stands discharged without passing any accounts.

(G. S. PATEL, J)