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

**CHAMBER SUMMONS NO.1135 OF 2018
IN
SUIT NO.828 OF 2014**

Asif Vali Sayyed ...Plaintiff
vs
Millionaire Realtors And 2 Ors. ...Defendants

**WITH
CHAMBER SUMMONS NO.1134 OF 2018
IN
SUIT NO.820 OF 2014**

Vali Shariff Sayyed ...Plaintiff
vs
Millionaire Realtors And 2 Ors. ...Defendants

**WITH
CHAMBER SUMMONS NO.1139 OF 2018
IN
SUIT NO.817 OF 2014**

Samir Vali Sayyed ...Plaintiff
vs
Millionaire Realtors And 2 Ors. ...Defendants

....
Mr. A.Y. Sakhare, Senior Advocate, i/b. Mr. Asutosh O. Shukla, for the
Plaintiff/Applicant.

Mr. Jaydeep Deo, for the Defendants.

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

DATED : OCTOBER 19, 2018

P.C. :

. Heard learned Counsel for the parties. These three chamber summonses are taken out in three suits, which seek specific performance of agreements for sale in respect of three different flats in the same building. In notices of motion taken out in three suits, undertakings were given by the

Defendants to keep four flats admeasuring diverse areas on the 7th floor of the suit building vacant and free of all encumbrances along with four car parking spaces. It is the Plaintiff's case that in breach or disobedience of the undertakings given and accepted by the Court, the Defendants proceeded to create third party rights in respect of one of the four flats. The Plaintiff, in the premises, took out a notice of motion under Order 39 Rule 2-A of the Code of Civil Procedure seeking an appropriate action against the Defendants for willful breach or disobedience of the order passed by this Court in the earlier notice of motion. The notice of motion under Order 39 Rule 2-A was disposed of by this Court by recording *inter alia* a statement of the Defendants that the agreement for sale entered into by them with respect to the said flat was cancelled. The Plaintiff proposes to bring these facts on record and, based on these facts, seeks to add ad-interim prayer for appointment of a Court Receiver along with other consequential reliefs.

2. The application is opposed by the Defendants. Learned Counsel for the Defendants submits that in the earlier motion taken out by the Plaintiff under Order 39 Rule 2-A, a prayer was made for appointment of an interim Court Receiver and that prayer was not granted by this Court. Learned Counsel, relying on the decision of this Court in the case of **Anandrao vs. Heilmittel Pharma**¹, submits that an interlocutory relief cannot be re-applied for on the same basis after the application in that behalf has once been disposed of by the Court by rejecting the same. There is no quarrel with the proposition that an application made for any interlocutory relief on the same basis after the same has been once disposed of by the Court would not lie, though, strictly speaking, the principle of *res judicata* does not apply to findings of interlocutory matters. It is though debatable as to whether the prayer for interim relief of appointment of a

¹ 2005(4) Mh.L.J. 868

Court Receiver was, in fact, considered or rejected by the Court in the earlier notice of motion under Order 39 Rule 2-A, particularly, considering that the motion was essentially for committal of the Defendants on account of a breach or disobedience of the order of this Court. Be that as it may, we need not reflect finally on this question since the application is merely for amendment of the plaint for incorporating various averments concerning the purported breach of undertaking earlier made by the Defendants and adding an appropriate interim prayer in view thereof. The question whether or not such interlocutory relief ought to be granted, after the prayers are allowed to be incorporated in the plaint, is a matter of merits and will be considered as and when such application is moved. It is no ground for rejecting the amendment itself. Every amendment, which is necessary for introducing the real matter of controversy between the parties, and which does not take away any vested right in the opponent, can always be allowed. The merits of the material introduced by such amendment are always open to debate and contentions of parties on such merits may also be kept open.

3. In the premises, the chamber summonses are allowed in terms of prayer clauses (a) and (b). The Plaintiff is permitted to amend the schedule by correcting the paragraph numbers of the paragraphs proposed to be added in the plaint. Amendments to be carried out within two weeks. All rights and contentions on the merits of the controversy introduced by the amendment are kept open. The Defendants will be entitled to file an additional written statement dealing with the amended plaint. Let such written statement be filed within four weeks of the service of the amended plaint. The chamber summonses are disposed of.

(S.C. GUPTE, J.)