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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1062 OF 2015

IN

SUIT NO.208 OF 2015

M/s. Kukreja Construction Company ...Plaintiff

vs

Shyamsunder Peswani And 10 Ors. ...Defendants

....

Mr. Mahesh Menon, i/b. Mahesh Menon & Co., for the Plaintiff.

Mr. Mayur Khandeparkar, a/w. Mr. Abhijeet Mahadeokar, for Defendant No.1.

Mr. Nishant Sasidharan, a/w. Mr. Darshan Mehta, Naresh Chheda and Ms. Juhi Dave, i/b. Dhruve Liladhar & Co., for Defendant Nos. 6 to 8.

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CORAM : S.C. GUPTE, J.

DATED : OCTOBER 15, 2018

P.C. :

. Heard learned Counsel for the parties. This notice of motion has been taken out in a suit for specific performance, which prays for appointment of a Court Receiver and a temporary injunction restraining the Defendants from creating any third party right in the suit property. There has been no ad-interim relief in favour of the Plaintiff. It is not disputed that during the pendency of the suit, the suit property has been acquired by Defendant Nos. 10 and 11. Since the land can no longer be the subject matter of specific performance, by reason of its having been acquired by the State under the Land Acquisition Act, the prayers for receiver and injunction do not survive. Learned Counsel for the Plaintiff, however, submits that his

third prayer, namely, prayer clause (c), which seeks an order of injunction against Defendant Nos. 9 to 11 from releasing the compensation for acquisition of the suit property in favour of Defendant Nos. 1 to 8, may still be considered by this Court. Learned Counsel submits that had the Defendants not breached the suit agreement for sale, the Plaintiff would have got title to the suit property and could have, in that case, claimed compensation from the State. That is no ground to consider prayer clause (c). Since the suit property cannot be the subject matter of specific performance, the only claim of the Plaintiff, as its prospective purchaser alleging breach of contract on the part of his vendor, can be a money claim. There is no particular reason in the present case why such money claim ought to be secured by directing Defendant Nos. 9 to 11, who represent the State, to deposit the compensation for acquisition of the suit property in this Court. There is no case under Order 38 Rule 5 of the Code of Civil Procedure requiring Defendant Nos. 1 to 8 to deposit any amount they receive as a result of an acquisition into the Court.

2. The notice of motion is dismissed. No order as to costs. At the request of learned Counsel for the Plaintiff, the hearing of the suit is expedited. Place the suit for issues on 1 November 2018. Parties to keep their draft issues ready by that date.

(S.C. GUPTE, J.)