

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

NOTICE OF MOTION NO. 572 OF 2017
IN
WRIT PETITION NO. 2861 OF 2017

M/s.Lalani Constructions Pvt.Ltd. ... Applicant.
In the matter between
M/s.Lalani Constructions Pvt.Ltd. ... Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

R.V.Pai with Mr.Vivek Kantawala, Ms.Smruti Anurag, Mr.Akshay Pai,
Mr.Amay Patil i/b. M.M.Legal Associate for the petitioner.
Ms.Pallavi Thakar for the respondent- MMC.
Ms.Savita Ganoo i/b. Ashok Purohit & Co. for respondent Nos.4 to 14.
Mr.S.P.Chavan for respondent Nos.15 to 19.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 24th July 2018.

P.C.:

The learned counsel appearing for the petitioner (applicant in the notice of motion) tendered across the bar a letter dated 24th July 2018 addressed by the petitioner to the respondent Nos.4 to 7. The said letter is taken on record and marked "L-1" for identification. He states that the statements made in the said letter be treated as the statements and assurances of the petitioner. Along with the said letter, a draft of the tenancy agreement is tendered across the bar which is taken on record and marked as "D-1" for identification. The learned counsel appearing for

the petitioner states that the petitioner shall execute an agreement with the respondent Nos.4 to 7 in terms of the said draft. The learned counsel appearing for the respondent Nos.4 to 7 states that a copy of the tenancy agreement marked as "D-1" has been initialed on each page by the respondent Nos.4 and 7 who are personally present in the Court. She further states that the respondent Nos.4 to 7 have accepted the terms and conditions mentioned in the aforesaid letter dated 24th July 2018 ("L-1") and that they will hand over the vacant possession of the shop premises in their possession to the petitioner within a period of three weeks from today. The learned counsel appearing for the petitioner states that at the time of receiving possession, a possession receipt will be executed by the petitioner and handed over to the respondent Nos.4 to 7.

The learned counsel appearing for the respondent Nos.4 to 7 states that the said respondents will withdraw suit being Stamp No.4240/2018 filed by them in the City Civil Court at Bombay, Dindoshi Branch. We accept the said statement.

The learned counsel appearing for the petitioner tendered across the bar another letter dated 24th July 2018 addressed to the respondent Nos.15 to 19. He states that the word "podium" used in paragraph-2 of the said letter shall also include stilt parking or any other sort of parking on the first floor. He states that the said statement as well as other statements made in the said letter may be treated as the statements of the petitioner. The said letter is taken on record and marked as "L-2" for identification. Along with the said letter, he has tendered across the bar a draft of tenancy agreement which is taken on

record and marked as “D-2” for identification. The learned counsel appearing for the respondent Nos.15 to 19, on instruction, states that the said respondents are accepting the terms and conditions mentioned in the said letter dated 24th July 2018 marked as “L-2” and the draft tenancy agreement marked as “D-2”. He states that the respondent No.18 has initialed the said draft on each page and that the said respondent as well as respondent Nos.15 to 17 and 19 are accepting the terms and conditions of the said tenancy agreement. He states that within a period of four weeks from today, the said respondents shall hand over the possession of the flat No.11 to the petitioner. The learned counsel appearing for the petitioner states that the petitioner will sign and execute possession receipt at the time of receiving possession and hand over the same to the said respondents.

Hence, we dispose of this notice of motion by passing the following order:

- (i) We accept the statements made in the letters dated 24th July 2018 which are taken on record and marked as “L-1” and “L-2” as the statements of the petitioner. We also accept the statement made by the petitioner that the word “podium” used in paragraph-2 of the letter marked as “L-2” includes stilt as well as other categories of parking on the first floor;
- (ii) We accept the statements made by the respondent Nos.4 to 7 and the respondent Nos.15 to 19 which are recorded above;

- (iii) As the petitioner as well as the aforesaid respondents are bound by the aforesaid statements which are recorded earlier as made across the bar as well as in the letters and draft tenancy agreements taken on record, it is not necessary to issue any specific direction in this notice of motion;
- (iv) The learned counsel appearing for the respondent Nos.15 to 19 states that Appeal No.15/2016 which is pending in Small Causes Court shall be withdrawn by them within a period of one week from today. The learned counsel for the petitioner states that the petitioner will record no objection for withdrawal of the appeal;
- (v) The learned counsel for the petitioner states that the petitioner has no objection if the respondent Nos.15 to 19 withdraw entire amount deposited by them in the Court of Small Causes towards mesne profits immediately after they deliver possession of Flat No.11 to the petitioner as agreed above. We accept the said statement. Needless to add that if the amount of mesne profits has been invested, the respondent Nos.15 to 19 shall be also entitled to withdraw the amount of interest accrued thereon;
- (vi) Accordingly, notice of motion is disposed of in terms of the aforesaid statements.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)