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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 93 OF 2017
IN
SUIT NO. 1266 OF 2009**

Asha Shrichand Raheja & Ors	...Applicants
<i>In the matter between</i>	
Asha Shrichand Raheja & Ors	...Plaintiffs
<i>Versus</i>	
Purshottam Vishandas Raheja & Ors	...Defendants

**WITH
NOTICE OF MOTION NO. 22 OF 2017
IN
SUIT NO. 2509 of 2011**

Asha Shrichand Raheja & Ors	...Applicants
<i>In the matter between</i>	
Purshottam Vishandas Raheja & Ors	...Plaintiff
<i>Versus</i>	
Asha S Raheja & Ors	...Defendants

**WITH
NOTICE OF MOTION NO. 1091 OF 2015
IN
SUIT NO. 2509 OF 2011**

Purshottam Vishandas Raheja & Ors	...Applicants
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In the matter between
Purshottam Vishandas Raheja & Ors ...Plaintiff
Versus
Asha S Raheja & Ors ...Defendants

Mr Z Behramkamdin, with Mr Sharan Jagtiani & Mr Shanay Shah, Mr Jonathan Solomon, Ms Soniya Putta, Ms Kinjal Shah, i/b Solomon & Co, for the Applicants in NMS/93/17, 22/17 & for the Respondents in NMS/1091/15, the Plaintiffs in Suit No. 1266 of 2009

Ms Sangeeta Vaswani, & Laxmi Raheja, Plaintiff Nos. 1B and 1C in Suit No. 1266 of 2009, present in person.

Mr Ravi Kadam, Senior Advocate, with Mr DD Madon, Senior Advocate, and Mr Vishal Kanade, i/b M/s. Ranjit & Co., for Defendants No. 1 in Suit No. 1266 of 2009.

Mr Arif Bookwala, Senior Advocate, i/b M/s. Ranjit & Co., for Defendant No. 2 in Suit No. 1266 of 2009.

Mr RM Kadam, Mr DD Madon and Mr AY Bookwala, Senior Advocates, with Mr Vishal Kanade, i/b M/s. Ranjit & Co., for the Plaintiffs in Suit No. 2509 of 2011.

Mr Sanjiv Sawant, with Mr HS Kadam, for Respondents Nos. 7 to 12, 20 & 21 in NMS/1091/15.

CORAM: G.S. PATEL, J
DATED: 15th January 2018

PC:-

1. The following order will dispose of Notice of Motion No. 93 of 2017 and Notice of Motion No. 22 of 2017. The frame of this order is agreed on by all sides after an extended hearing today.
2. The reliefs in Notice of Motion No. 93 of 2017 are these:

“(a) that pending the hearing and final disposal of the Suit, Defendant Nos. 1 and 2 and their servants and agents be restrained by an order and injunction of this Hon’ble Court from in any manner, directly or indirectly, objecting to or obstructing the Respondents to the Notice of Motion from taking possession of and/or remaining in possession of the respective Flats shown opposite their names in Column 2 of Exhibit “D” to the Affidavit in Support of this Notice of Motion and car parking spaces in “Sidhgiri” building on the property described in Exhibit “A-3” to the plaint agreed to be purchased by them and from objecting to or obstructing or interfering with supply of electricity, water access and other amenities thereto;

(b) In the alternative to prayer (a), pending the hearing and final disposal of the Suit, the Court Receiver, High Court, Bombay be appointed Receiver of Flats bearing Flat Nos. 1301, 1201, 1202, 1203, 501, 1501, 1601, 1701, 201, 1602, 1603, 1702 and 1703 in Sidhgiri building along with 11 car parking spaces in Sidhgiri building on the property described in Exhibit “A-3” to the plaint with all powers under Order 40 Rule 1 of the Code of Civil Procedure with directions to the Court Receiver to appoint the Respondents as agents of the Court Receiver without security and without royalty of Flats shown opposite their respective names in Column 2 of Exhibit “D” to the Affidavit in Support of this Notice of Motion on the Respondents depositing with the Court Receiver balance consideration, deposits and other deposits/amounts and service tax, VAT and interest remaining payable by them as shown opposite their respective names in Column 14 of Exhibit “D” to the Affidavit in Support of this Notice of Motion;

(c) that pending the hearing and final disposal of the Suit, Defendant Nos. 1 and 2 be ordered and directed to render true and faithful accounts of monies deposited and

withdrawn from HSBC A/c No. 002-236586-006 during the pendency of this Suit and Commissioner for Taking Accounts of this Hon'ble Court or any other person be appointed Commissioner for Taking Accounts from Defendant Nos. 1 and 2 of monies deposited and withdrawn from Account No. 002-236586-006 with HSBC Bank during the pendency of this Suit and/or Reports to this Hon'ble Court thereon;

(d) that pending the hearing and final disposal of the Suit, Defendant No. 1 be ordered and directed to deposit with this Hon'ble Court Rs. 1,74,10,346/- received from the 24 flat purchasers as shown in column 6 of Exhibit "X-25" to the Affidavit in Support of this notice of motion and from examining whether operation of HSBC Account No. 002-236586-006 by Defendant No. 1 have been in accordance with the Order dated 9th September 2009 in this suit and submit amounts aggregating to Rs. 1,57,34,345/- payable on account of VAT, service tax, interest, deposits and other amounts by purchasers of 23 Flats agreed to be sold prior to the institution of this Suit and by purchaser under Agreement for Sale dated 28th March 2014 as shown in Exhibit "X-24" to the Affidavit in Support of this Notice of Motion along with further interest on the amount of VAT and service tax from 15th November 2016 till payment and liberty be granted to the Plaintiffs to withdraw amounts thereout required for payment of VAT and service tax and interest on sale of 24 Flats mentioned in Exhibit "X-25" hereto."

3. The reliefs in Notice of Motion No. 22 of 2017 are as follows:

"(a) that pending the hearing and final disposal of the Suit, Plaintiff Nos. 1 and their servants and agents be restrained by an order and injunction of this Hon'ble Court

from in any manner, directly or indirectly, objecting to or obstructing Defendant Nos. 7 to 27 from taking possession of and/or remaining in possession of the respective Flats shown opposite their names in Column 2 of Exhibit "D" to the Affidavit in Support of this Notice of Motion and car parking spaces in "Sidhgiri" building on the property described in Exhibit "A-3" to the plaint agreed to be purchased by them and from objecting to or obstructing or interfering with supply of electricity, water access and other amenities thereto;

(b) In the alternative to prayer (a), pending the hearing and final disposal of the Suit, the Court Receiver, High Court, Bombay be appointed Receiver of Flats bearing Flat Nos. 1301, 1201, 1202, 1203, 501, 1501, 1601, 1701, 201, 1602, 1603, 1702 and 1703 in Sidhgiri building along with 11 car parking spaces in Sidhgiri building on the property described in Exhibit "B" to the plaint with all powers under Order 40 Rule 1 of the Code of Civil Procedure with directions to the Court Receiver to appoint Defendant Nos. 7 to 25 as agents of the Court Receiver without security and without royalty of Flats shown opposite their respective names in Column 2 of Exhibit "D" to the Affidavit in Support of this Notice of Motion on the Defendant Nos. 7 to 25 depositing with the Court Receiver balance consideration, deposits and other deposits/amounts and service tax, VAT and interest remaining payable by them as shown opposite their respective names in Column 14 of Exhibit "D" to the Affidavit in Support of this Notice of Motion;"

4. The reliefs in Notice of Motion No. 1091 of 2015 are thus:

"a) that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass the following injunction orders:

i. prohibiting, restraining and/or injuncting Defendant Nos. 1 to 3, their respective servants, agents and/or indirectly disturbing, disrupting and/or interfering with Plaintiff No. 1's peaceful ownership, use, enjoyment and / or occupation of the Byculla property bearing Cadastral Survey No. 764 of Mazgaon Division, situated at 119, Chichpokli Cross Lane, Byculla, Mumbai 400 027, (more particularly described in Exhibit "B" to the Plaint) and/or any premises thereon and/or any construction thereon and/or any part thereof including remaining unsold flats as per list annexed at Exhibit "KK-17" to the Plaint or any part thereof and/or the Sukh Sagar Property i.e. office No. 202, Sukh Sagar, Hughes Road, Mumbai 400 007 (more particularly described at Exhibit "K" to the Plant) and/or any part thereof;

ii. prohibiting, restraining and/or injuncting Defendant Nos. 7 to 27 from in any manner claiming, exercising and/or dealing with and/or otherwise alienating, transferring, conveying and/or creating any third party rights in respect of the constructed premises/flats in the Byculla property enlisted at Exhibit KK-16 to the Plaint, and/or acting in furtherance of and/or pursuant to and/or under the impugned agreements nos. 1 to 15 (being Exhibits KK-1 to KK-15 to the Plaint); and

iii. Ordering and directing Defendant Nos. 7, 8, 9, 10, 11, 12 and 20 and 21 to forthwith remove themselves along with their family members from their respective Flat Nos. 1301, 1202, 1203, 1201 and 50 in the Sidhgiri Building constructed on the property bearing Cadastral Survey No. 764 of Mazgaon Division situated at 119, Chichpokli Cross Lane, Byculla, Mumbai 400 027, (more particularly described in Exhibit "B" to the Complaint), and hand over possession of the said Flats to the Plaintiffs and restraining and prohibiting said Defendant Nos. 7, 8, 9, 10, 11, 12 and 20 and 21 from entering upon and/or remaining in the said Flat Nos. 1301, 1202, 1203, 1201 and 501 in the Sidhgiri Building or any part thereof."

5. Taking first the reliefs in Notice of Motion No. 93 of 2017, it is to be noted that Respondents Nos. 1 to 19 to this Notice of Motion are purchasers from the Plaintiffs in Suit No. 1266 of 2009 ("the Shrichand Raheja Group", whose members are his widow Asha and daughters Sangeeta and Laxmi) of 13 flats in the building known as Sidhgiri, and the allottees of two further flats, 15 flats in all. Prayers (a) and (b) of Notice of Motion No. 93 of 2017 correspond almost exactly to the prayers in Notice of Motion No. 22 of 2017 also filed by the Shrichand Raheja Group but, however, in the suit filed by Purshottam Raheja and others. There is, therefore, an overlap of prayers and issues in these two Notices of Motion.

6. Prayers (a) and (b) in Notice of Motion No. 93 of 2017 are in respect of Respondent-flat purchasers. Some of them are

represented by Mr Sawant in Court today. The others are personally present during the hearing. None of these flat purchasers have filed any suit of their own in respect of flat purchase agreements or their acquisition of title to their respective flats. I may only note that there are previous orders including one of Mrs Justice Dalvi of 20th October 2012 that not only allowed some of these flat purchasers to withdraw the Notice of Motion then taken out by them in the 2009 suit filed by Shrichand Raheja Group but also reserved liberty to file proceedings of their own.

7. It will be open, therefore, to the flat purchasers, the Respondents to the Notice of Motion No. 93 of 2017, to file an appropriate civil proceedings and initiate such proceedings or steps for interim protection as they are advised, but this must be done within a period of ten weeks from today. This is necessarily subject to all rights and contentions including as to limitation being kept open. The time limit is only provided with this view: that if the flat purchasers do not take steps on their own then they will not be entitled to seek protective interim relief in a suit filed by either the Shrichand Raheja Group or Purshottam Raheja Group. Since the flat purchasers are already arrayed as Defendants to Suit No. 2509 of 2011 filed by the Purshottam Raheja Group, these flat-purchaser-Defendants will, of course, and necessarily, have the right to file a counter-claim as well, if so advised.

8. Notice of Motion No. 1091 of 2015 filed by Purshottam Raheja Group is adjourned for a period of 12 weeks from today since that notice of motion *inter alia* seeks ejectment or taking over of possession from some of these very flat purchasers – Respondents.

9. As regards prayer (c) in Notice of Motion No. 93 of 2017, Mr Madon on behalf of Defendant No. 1 states that the necessary particulars of all deposits made into the HSBC A/c No. 002-236586-006 by the Purshottam Raheja Group from time to time in respect of sales of flats in Sidhgiri building will be furnished on affidavit with the necessary break ups and details within a period of three weeks from today.

10. Mr Madon states that the HSBC gives has since been closed the balance has been transferred to the Indian Bank Account. It is clarified that what is required are the transactional details and break-ups of all the transactions made by Purshottam Group in respect of the sale of flats in the Sidhgiri building.

11. As regards prayer clause (d) in Notice of Motion No. 93 of 2017, Mr Behramkamdin points out that the necessary break-ups of the flat purchase transactions of the 24 flat sales effected by the Purshottam Raheja Group are not fully available. Mr Madon and Mr Bookwala point out that some details have been given at page 332 and 334 and no other details are available. I find from these two pages that even on their own showing the Purshottam Raheja Group seems not to have collected service tax in 23 of the 24 sale cases although it has collected VAT and interest for all 24. It remains unknown whether the VAT amounts have been paid.

12. Mr Behramkamdin expresses an apprehension, not entirely without basis, that since the property stands in the Shrichand Raheja Group's name there is every likelihood the revenue

authorities will look to that Group for recovery of these amounts. As yet there are no particularized demands from either the service tax authorities or the sales tax authorities under either head. It is only necessary, therefore, to clarify that neither the service tax nor the sales tax authorities will be entitled to proceed exclusively against the Plaintiffs in Suit No. 1266 of 2009, i.e., the estate of Shrichand Raheja, his widow Asha, their daughters Sangeeta and Laxmi, or Purshottam Raheja Group, Plaintiffs in Suit No. 2509 of 2011, i.e., Purshottam Raheja, Mahesh Raheja, Jitendra Raheja, Shakuntala Raheja and Priti Raheja. No coercive steps will be taken by either the sales tax authorities or the service tax authorities exclusively against one or the other of these two groups.

13. This order will dispose of Notice of Motion No. 93 of 2017, Notice of Motion No. 22 of 2017. No costs.

14. List Notice of Motion No. 1091 of 2015 for directions on 26th March 2016.

15. The previous order of *status quo* in Notice of Motion No. 1091 of 2015 will continue to operate until further orders.

(G. S. PATEL, J)