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

NOTICE OF MOTION NO. 21 OF 2012
WITH
NOTICE OF MOTION NO. 1784 OF 2015
IN
SUIT NO. 15 OF 2012

M/s. Sharma Properties Pvt. Ltd. …Plaintiff
Versus
Ashish Rajinder Kapila ...Defendant

WITH
NOTICE OF MOTION NO. 604 OF 2017

Ashish Rajinder Kapila ….Applicant
<u>In the matter between :-</u>
M/s. Sharma Properties Pvt. Ltd. …Plaintiff
Versus
Ashish Rajinder Kapila ...Defendant

Mr. Anuuj N. Narula a/w. Ms. Meena Bhatia I/b. Jhangiani, Narula and Associates for the Plaintiff.
Mr. A.M. Saraogi for the Defendant.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 12th / 16th APRIL, 2019.

<u>P.C.:-</u>

. The Notice of Motion Nos.21 of 2012 and 1784 of 2015 are filed by the Plaintiff seeking the following reliefs:-

(i) Appointment of Court Receiver in respect of the Office bearing Unit No.8, situated at 8th Floor, admeasuring 1103.77 sq.ft. in building 'New Harileela House No.1' situated at 134 B, Mint Road, Near GPO, Mumbai ('the suit premises').

(ii) To restrain the Defendant from selling, transferring, alienating, and creating third party rights or encumbrances in respect of the suit premises.

(iii) To file a complaint under Section 195 of Cr.P.C. against the Defendant for committing perjury.

2. The Notice of Motion No.604 of 2017 is taken out by the Defendant for the following reliefs :-

(i) to dispose of the Suit by directing the Plaintiff to receive the money deposited in the Court pursuant to the order passed in Anticipatory Bail Application No.820 of 2011 with further direction to the Plaintiff either to withdraw the complaint MECR No.9 of 2011 and /or to direct the Plaintiff to consent for quashing the said complaint/MECR.

(ii) In the alternative to permit the Defendant to withdraw the amount deposited in the Court with a condition to put the Plaintiff in possession of the suit premises through the Court Receiver and to quash the FIR with consent of the Plaintiff, in appropriate proceedings.

3. The Defendant is the owner of the suit premises. The suit premises were mortgaged to the Citibank N.A., Andheri to secure the loan availed by Kapila Knit Fabrics Pvt. Ltd. The Defendant is the director of the said Company. It is alleged by the Plaintiff that the Defendant had approached him with a proposal of sale of the suit premises. The Defendant furnished to the Plaintiff a letter dated 25/9/2009 whereby the Citibank had informed the Defendant that the

loan account would be closed against full and final settlement of Rs.1,04,00,000/- which was secured against the suit premises. Pursuant to negotiations, the Plaintiff agreed to purchase the suit premises for total consideration of Rs.1,04,00,000/-. The Defendant as a Director of Kapila Knit Fabrics Pvt. Ltd. informed the CITI Bank that the loan of Rs.1,04,00,000/- would be cleared by the Plaintiff through RTGS. Accordingly, the Plaintiff made the payment of Rs.1,04,00,000/- to the CITI Bank. Pursuant to the payment made, the CITI Bank handed over the title documents in respect of the suit premises. The Defendant represented to the Plaintiff that he has a clear marketable title and full power and absolute authority to deal with the suit property. The Defendant and Plaintiff thereafter entered into an agreement for sale dated 03/10/2009 whereby the Defendant agreed to sell to the Plaintiff the suit premises for Rs.1,04,00,000/-. The Defendant agreed to vacate the suit premises and hand over actual possession of the suit premises by 31/12/2009 and further to register the sale deed on 20/01/2010. The grievance of the Plaintiff is that having induced him to pay the amount of Rs. 1,04,00,000/ to the Citibank, the Defendant avoided executing the sale deed and handing over of the vacant possession of the suit premises. The Plaintiff therefore lodged a criminal complaint and also instituted a suit for specific performance of the contract and other consequential reliefs.

4. The Defendant has denied having entered into an agreement with the Plaintiff for sale of the suit premises and having received any amount from the Plaintiff on account of any sale transaction. Main thrust of the defence is that the agreement dated 3/10/2009 is forged and fabricated. The Defendant claims that the plaintiff has played a fraud upon him and then filed a false and frivolous suit.

5. Mr. Anuuj Narula, the learned counsel for the Plaintiff submits that the agreement dated 03/10/2009 as well as the correspondence between the Defendant and the Citibank clearly indicates that the Defendant had agreed to sell the suit premises to the Plaintiff for total consideration of Rs.1,04,00,000/-. The suit premises were mortgaged with the Citibank and as per the instructions of the Defendant, the Plaintiff paid the said amount to the bank through RTGS and cleared the loan account. The Defendant has acknowledged that the Plaintiff has paid the sale consideration of Rs.1,04,00,000/- to clear the loan account of Kapila Knit Fabrics Pvt. Ltd . The Defendant also issued a letter of possession dated 30/09/2009 in respect of the

suit premises but later avoided to hand over physical possession of the suit premises and refused to execute the sale deed.

6. Mr. Narula, the learned counsel for the Plaintiff submits that on 11.01.2012, when the Notice of Motion No. 21 of 2012 came up for hearing, the Defendant made a statement before this Court that he would not transfer or alienate or create, encumber in the suit premises. This statement is recorded in the order dated 11/1/2012. In view of the undertaking given by the Defendant no ad interim relief was granted. Drawing my attention to the affidavit dated 6/3/2014 filed before this court, he contends that the Defendant has played fraud upon the court. He contends that the Defendant had suppressed the fact that the suit premises were already under attachment.

7. Mr. Narula, the learned counsel for the Plaintiff further contends that the Defendant has filed a false affidavit before the DRT, Mumbai stating that the property has been sold to M/s Gagan Yarn Pvt. Ltd. The learned counsel for the Plaintiff states that the Defendant and his family members are directors of M/S Gagan Yarn Pvt.Ltd. He submits that the Defendant has made a false statement that the said Company has paid Rs. 1,04,00,000/ to the Citibank. He has urged that

suppression of the material facts and filing of false affidavit before the DRT, amounts to interference with the administration of justice. Relying upon the decision of the Apex Court in ***Chandra Shashi vs. Anil Kumar Verma, (1995) 1 SCC 421*** and ***Dhananjay Sharma vs. State of Haryana and Ors.(1995) 3 SCC 757,*** he submits that this is a fit case for initiating Criminal Contempt against the Defendant.

8. Mr. Narula urges that this court (Coram : S.J.Kathawala, J.) by an ad-interim order dated 18.12.2015 has already appointed a court receiver. The Court Receiver has taken symbolic possession of the suit premises. The Defendant continues to be in possession of the suit premises though the Plaintiff has paid the entire sale consideration. He urges that in the facts and circumstances of the case and particularly the conduct of the Defendant this is a fit case to exercise discretion in favour of the Plaintiff and put him in possession of the suit premises as an agent of the receiver.

9. Per contra, Mr. Saraogi, the learned counsel for the Defendant claims that the agreement relied upon by the Plaintiff is forged and fabricated. He contends that page 40 of the agreement is in different font and this fact itself indicates that the agreement is sham

and forged. He contends that the money transferred by the Plaintiff to the Citibank is not towards the sale consideration in respect of the suit premises. He contends that the Plaintiff has approached the court with a false claim and is not entitled for any discretionary relief.

10. Mr. Saraogi, learned counsel contends that the Defendant has not transferred, alienated or created any encumbrances in respect of the suit premises after the order dated 11/01/2012 and or after furnishing an undertaking before this Court. Mr. Saraogi, states that the Defendant is not bound to disclose the correct facts and suppression of facts does not amounts to perjury much less criminal contempt. He submits that the Defendant has neither committed breach of the order/undertaking given to the Court nor has he filed a false affidavit. The learned counsel for the Defendant contends that the Defendant is not under any obligation to disclose all the true facts before the Court.

11. Mr. Saraogi contends that pursuant to the Criminal Complaint No.34/SW/2011 filed by the plaintiff, crime (MECR No.9/2011) has been registered against the Defendant for offences under section 406, 420, 467 r/w. 120-B of IPC. Apprehending his

arrest in the said crime, the Defendant had filed an application for Anticipatory Bail No.820/2011. This Court (Coram : J.H. Bhatia, J.) by order dated 03/10/2011 has granted pre-arrest bail subject to deposit of Rs.1.50,00,000/- before the Trial Court. Pursuant to the said order, the Defendant has deposited the amount of Rs.1,50,00,000/- before the Trial Court. committed breach of the agreement. He states that the Plaintiff can be permitted to receive the said amount with further direction to the Plaintiff to withdraw the complaint/FIR. He further submits that in the alternative the Plaintiff can be put in possession of the suit premises after allowing the Defendant to withdraw the amount deposited in the Court.

12. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. It is not in dispute that the suit premises was indebted to the Citibank to secure the loan availed by M/s Kapila Knit Pvt.Ltd Company of which the Defendant is a director. By letter dated 25th September,2009 the Citibank had informed the Defendant that the loan nos. 220462, 220463 and 220464 would be closed against full and final settlement of Rs.1,04,00,000/-, secured against the suit premises. The Plaintiff has placed on record letter dated 25.2.2009 addressed by the Defendant to

the Manager, Citibank, N.A. Andheri. By this letter the Defendant had intimated to the Manager of the Citibank N.A. Andheri that an amount of Rs.1,04,00,000/- was transferred by the Plaintiff through RTGS on their behalf to clear the outstanding loan. The Defendant had requested the Bank to adjust and appropriate the said amount against loan A/c. No. 220462, 220463 and 220464. The Plaintiff has also placed on record letter dated 30/9/2009 whereby the Citibank has confirmed that the loan facility was fully paid. The defendant was informed that there was no further outstanding loan with the Bank and that the suit premises were free from Citibanks' lien. By the said letter, the Citibank N.A. Andheri had returned all the original documents in respect of the suit premises to the Defendant.

13. The records thus indicate that the Plaintiff has paid Rs. 1,04,00,000/ to the Citibank towards full and final settlement of the loan account of M/s Kapila Knit Pvt.Ltd Company of which the Defendant is a director. In paragraph 12 of the written statement, which makes an interesting reading, the Defendant has tried to explain the repayment of loan by the Plaintiff. The Defendant claims that the Plaintiff had offered to dispose of some other properties of the Companies of the Defendant on account of which he had received huge

amount from the said Companies. The Defendant claims that when the Plaintiff realized that he had committed fraud and that he could be prosecuted, he agreed to refund the amount. The Defendant claims that at the relevant time, certain payments were required to be made to the bank and hence, the Plaintiff has paid the said amount to the bank.

14. The Defendant has not given details of any such transaction or business deal with the Plaintiff. There is nothing on record to prima facie suggest that the Plaintiff had received any money from the Companies of the Defendant or that the Plaintiff had defrauded the Defendant and was liable to pay any money to the Defendant. The Defendant has also not placed on record anything to suggest that he had lodged any complaint against the Plaintiff for cheating or defrauding him; compelling the Plaintiff to clear the outstanding loan of the Defendant. The defence raised by the Defendant prima facie appears to be false, frivolous, and concocted only to pre-empt consequences of breach of contract.

15. This is further fortified by the fact that upon making the payment, the Plaintiff and the Defendant entered into an agreement

dated 03/10/2009. A plain perusal of the agreement indicates that by the said agreement the Defendant had agreed to sell to the Plaintiff the suit premises for total consideration of Rs.1,04,00,000/-. The Defendant had represented to the Plaintiff that neither he nor any other person on his behalf had created any charge, lien, mortgage, and or any other encumbrances in respect of the suit premises. The Defendant had declared that there is no litigation, prohibitory orders or attachment or any other proceedings or notice for initiating any proceedings for acquisition or requisition by any Court, governmental, semi governmental or local bodies or authorities or Bank or institutions or by any other organization or person have been initiated or issued in respect of the said suit premises or any part thereof. The Defendant had agreed and undertaken that he would obtain no objection certificate from Citibank A.N. Andheri and that he would hand over the original documents to the Plaintiff immediately on its receipt. The Defendant had also undertaken to sign all these association's forms and other papers and that he would render assistance for the purpose of effecting transfer of said premises and shares in favour of the Plaintiff.

The agreement further records that at the request and on behalf of the vendor i.e. the Defendant, the purchaser i.e. the Plaintiff has paid an amount of Rs.1,04,00,000/- (Rupees One Crore four lakhs only) to the

Citibank, A.N. Andheri Suspense Account. The details of the payment are recorded in clause 2 of the said agreement. The Defendant has initialed each and every page of the agreement. The receipt annexed to the agreement and which is signed by the Defendant indicates that the total sale consideration of Rs.1,04,00,000/-had been paid by the Plaintiff by RTGS drawn on Citibank N.A. Andheri being full and final payment payable in terms of the agreement dated 3/10/2009 in respect of the suit premises.

16. Upon execution of the said agreement, the Defendant handed over his PAN Card and the original title deeds in respect of the suit premises to the Plaintiff to complete the formalities of sale. He had executed a special power of attorney dated 3/10/2009 before the Notary appointing Rakesh Sharma and Rajeev Sharma as his attorney to attend the office of the Sub Registrar to admit execution of the sale deed on his behalf.

17. The aforesaid facts and circumstances are sufficient to negate the contention of the Defendant that the agreement dated 3/10/2009 is forged and fabricated and prima facie cast a serious doubt on the genuineness of the defence. The records prima facie

indicate that the Defendant had agreed to sell the suit premises to the Plaintiff for total consideration of Rs.1,04,00,000/-. The Defendant had also represented that there was no impediment to transfer the suit premises. In view of such representation, the Plaintiff paid the entire sale consideration of Rs.1,04,00,000/- to the Citibank, N.A. Andheri. Once the Plaintiff cleared the loan amount and the Citibank returned the original documents, the Defendant failed to execute the sale deed. The above facts and circumstances prima facie indicate that the Defendant has committed breach of agreement.

18. The records indicate that the Notice of Motion No.21 of 2012 was taken up for hearing on 11/01/2012. The order dated 11/1/2012 passed by this Court (Coram: S.C. Dharmadhikari, J.) records thus :-

> *"2. Mr. Saraogi, learned counsel appearing for the Defendant/Vendor makes a statement that without prejudice to the rights and contentions of the Defendant/Vendor, the Defendant would not part with possession, dispose of, sale, transfer or alienate or encumber the immovable property in question in any manner until this Notice of Motion is heard and disposed of.*
>
> *3. The statement made by Mr. Saraogi is accepted as an undertaking to this court.*
>
> *4. Mr. Saraogi further states that the Defendant will file a written undertaking to this effect in this Court within a period of one week from today.*

> *5. In view of these statements and the undertaking which is accepted without prejudice to the rights and contentions of the Defendant, presently no ad-interim order. The Notice of Motion be made returnable in due course. The affidavit in reply and the rejoinder, if any, be filed within a period of three weeks from today."*

19. Pursuant to the said order, the Defendant gave an undertaking before this Court on 11/01/2012, which reads thus:-

> *" I say that accordingly, as directed by this Hon'ble Court, I am filing my present undertaking before this Hon'ble Court. I do hereby undertake before this Hon'ble Court that that I shall not create any third party rights in respect of the premises being office bearing Unit No.8, on 8th floor, at New Harileela House, 134, B, Mint Road, Near G.P.O., Mumbai-400 001 in any manner whatsoever without obtaining prior leave of this Hon'ble Court. "*

20. The undertaking given by the Defendant was not in terms of the statement made before the Court and recorded in the order dated 11/01/2012. This fact was recorded in the order dated 09/01/2014 and the Defendant was directed to file fresh undertaking in terms of the statement made before the Court and recorded in paragraph 2 of the order dated 11/01/2012. The said undertaking was to be filed within a period of two weeks from the date of the order. The Defendant filed fresh undertaking on 04/02/2014, which reads thus :-

" *I say that accordingly, as directed by this Hon'ble Court, I am filing my present undertaking before this Hon'ble Court. I do hereby undertake before this Hon'ble Court that the Defendant would not part with possession, dispose of, sale, transfer or alienate or encumber the immovable property in question in any manner until this Notice of Motion is heard and disposed of.* "

21. The Defendant filed his sur-rejoinder on 6/03/2014 wherein for the first time he disclosed that the suit premises were already under attachment. Paragraphs 9 and 10 of the affidavit read as under:

> *“ 9. I say that otherwise also I could not have sold the property to the present Plaintiffs and no specific performance could be permitted in view of the fact that the property is already under attachment of the Income Tax Authorities and accordingly hereto annexed and marked Exhibit-”B” is the copy of the attachment order alongwith the panchnama in respect thereof. ”*
>
> *10. I say that over and above the same, the property is also attached by the Hon'ble DRT as per the warrant of attachment dated 1st December, 2010 and accordingly hereto annexed and marked Exhibit- “C” is the copy of warrant of attachment dated 1st*

December, 2010.”

22. The Plaintiff thereafter made inquiry and learnt that the Defendant had filed an affidavit dated 10/1/2011 in R.P. No.38 of 2010 before the D.R.T. II, Mumbai. The Plaintiff obtained copy of the said affidavit filed before the DRT. In the said affidavit, the Defendant had stated that the suit premises were mortgaged to the Citibank N.A., Andheri. Since he was finding it difficult to pay the installments, he had decided to sell the suit premises and had accordingly entered into a MOU dated 15/10/2008 with M/s. Gagan Yarns Pvt. Ltd. for which he was paid advance of Rs.1,00,000/. The Defendant has further stated that since the Citibank was trying to take possession of the suit premises under the SARFAESI Act, he entered into an agreement for sale dated 30/9/2009 for total consideration of Rs.1,05,00,000/- The Defendant had further stated that the buyer had paid Rs.1,04,00,000/- to the Citibank through RTGS. The Defendant had stated that M/s. Gagan Yarns Pvt. Ltd is neither a borrower nor a guarantor and therefore the suit premises were not liable to be attached. The Defendant further claimed that the suit premises do not belong to him and therefore the attachment should be vacated.

23. The Defendant also filed an affidavit-in-rejoinder dated 30th May, 2013 before the DRT reiterating that the suit premises were already sold to M/s.Gagan Yarns Pvt. Ltd. by agreement for sale dated 30/11/2009. The Defendant had stated that right, title, and interest in respect of the suit premises is vested in M/s. Gagan Yarns. The Defendant claimed that M/s. Gagan Yarns is a bonafide purchaser of the suit premises for valuable consideration.

24. The records reveal that the Defendant was well aware of the attachment order passed by the Income Tax Authority and the DRT. The Defendant not only suppressed this fact from the court but on 11.01.2012 i.e a day after filing of the affidavit before DRT stating that the property was already sold to M/s. Gagan Yarns Pvt. Ltd., he made a statement and gave an undertaking before this court not to create third party right, interest, or encumbrances etc. in respect of the suit property. It was in view of the statement made by the Defendant that the court had not passed any ad-interim order. The Defendant has not offered any explanation as to why he suppressed the fact about attachment and creation of third party interest. He has not explained why he made a false statement and gave incorrect and false undertaking before the Court on 11/01/2012 and 04/02/2014 stating

that he shall not part with possession, dispose of, sell, transfer or alienate, encumber or create third party rights in respect of the suit premises.

25. The Defendant has neither tendered an apology nor expressed remorse. On the contrary Mr. Saraogi, the learned counsel representing the defendant has sought to condone and justify the lapse on the part of the Defendant by stating that the Defendant is not bound to disclose the true facts to the Court. This brazen contention needs outright rejection with equal disdain; for it is the duty of every party to the lis to disclose the true facts. It is also the duty of an Advocate, who is an officer of the Court, to apprise the court about true and correct facts and assist the court in administration of justice. The significance of truth in judicial system is highlighted by the Apex Court in Maria Margarda Sequeria Fernandes v/s Erasmo Jack de Sequeria (2012) 5 SCC 677 " *The Truth Should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth.*" Hence, every litigant is expected to state truth and not half truth. Intentional concealment/ distortion of facts or perversion of truth, misleading the court, raising false plea/defense, or suppressing

material facts with an intent of getting a favourable order or avoiding an adverse order is not only an interference with administration of justice but is tantamount to playing fraud on the court.

26. There is no merit in the contention of Mr. Saraogi that the defendant has not made a false statement. A perusal of the affidavit dated 10.01.2012 filed before the DRT, reveals that the Defendant had stated that the Company had sold the suit premises to M/s Gagan Yarn Pvt. Ltd. He stated that M/s. Gagan Yarn Pvt. Ltd. had paid an amount of Rs. 1,04,00,000/ to the Citibank and that M/s Gagan Yarn Pvt. Ltd was the absolute owner of the suit premises. Whereas in the written statement and affidavit filed before this court the defendant has not disputed the fact that he is the owner of the suit premises. In fact he has admitted that the plaintiff had paid an amount of Rs.1,04,00,000/ to the Citibank and cleared the loan amount. He had not disclosed that the suit premises were owned by the Company and sold by the Company to M/s Gagan Yarn Pvt. Ltd. It was only after the plaintiff placed on record the copy of the affidavit filed before the DRT that the defendant for the first time in the affidavit dated 18/12/2015 filed in the Notice of Motion No.1784 of 2015, declared that the Company is the owner of the suit property and that the company has created third

party rights in favour of M/s. Gagan Yarn Pvt. Ltd. He has stated that the said transaction was prior to the undertaking given to the Court and has been disclosed in the sur-rejoinder filed before this Court. This is yet another false statement as the sur-rejoinder filed by the Defendant in Notice of Motion No.21 of 2012 does not refer to any transaction or agreement between the Company and M/s. Gagan Yarn Pvt. Ltd. In the instant case, the defendant has filed a false affidavit. He has suppressed material facts and apparently made a false statements with an intention of avoiding any adverse order. Filing a false affidavit, concealing facts, and misrepresenting to the court amounts to interference with administration of justice. Prima facie, the tactics adopted by the defendant amount to playing fraud upon the court and constitute criminal contempt.

27. At this stage it would be advantageous to refer to the decision of the Apex Court in ***Vijay Syal and Anr. Vs. State of Punjab and Ors., 2002 5 AD Delhi 789,*** wherein it has been observed as under:-

> *"24. In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the*

> *hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice."*

28. In ***Chandra Shashi*** (supra) the Apex Court has reiterated that :-

> 1...*The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.*
>
> *2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."*

29. Similarly, in ***Dhananjay Sharma***(supra) the Apex Court has observed as under:-

> 38.......... *any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the concerned party in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act.*

30. This Court (Coram : S.J. Kathawalla, J.) vide order dated 18.12.2015 took note of the conduct of the Defendant; particularly suppression of material facts, making false statement and filing incorrect undertaking before the Court and observed that the Defendant cannot be trusted and that the property needs to be protected. Accordingly, the Court Receiver, High Court, Bombay came to be appointed as a Receiver in respect of the suit premises. The Receiver was directed to take only symbolic possession of the suit

property and to submit the report after ascertaining, who was in possession of the suit premises. Pursuant to the said order, the Court Receiver has submitted his report that he has taken symbolic possession of the suit premises from the Defendant, who was found to be in possession of the suit premises. The report further indicates that the Defendant is using the suit premises for commercial /office purpose.

31. There does not seem to be any change in the conduct of the defendant. This is evident from the fact that on 20/03/2019, Mr. Saraogi, the learned counsel for the Defendant made a statement that the Defendant would hand over possession of the suit premises to the Plaintiff after clearing of the encumbrances. He had sought one week's time to take necessary steps. This assurance has also proved to be a mere lip service as Mr. Saraogi concedes that the Defendant has not cleared the encumbrances. He states that the Defendant is not in a position to clear the encumbrances and handover possession of the suit property to the Plaintiff free of encumbrances.

32. Mr. Saraogi presses for the reliefs in the Notice of Motion No.604 of 2017, wherein the Defendant has prayed for disposal of the

suit by directing the plaintiff to receive the amount deposited by him before the Trial Court pursuant to the order in anticipatory bail with further direction to consent for quashing of FIR. In the alternative, the Defendant has offered to put the Plaintiff in possession of the suit premises subject to quashing of the criminal proceedings and allowing him to withdraw the amount deposited before the Trial Court.

33. The offer made by the defendant not only lacks bonafide but in fact smacks of malafides. Undisputedly, the suit premises are under attachment for nonpayment of income tax and bank dues. The defendant has expressed his inability to clear the dues. He has offered to pay to the plaintiff the amount deposited in the court or in the alternative to hand over the premises along with the encumbrances with a rider that he be allowed to withdraw the amount deposited in the court and plaintiff withdraws the suit and the complaint. Suffice it to say that the relief by its very nature is misconceived, malafide and untenable. The Notice of Motion filed by the defendant therefore, deserves, outright dismissal.

34. To sum up the facts of the present case prima facie indicate that the defendant had agreed to sell the suit premises to the plaintiff. The defendant had induced the plaintiff in paying the entire sale

consideration to the Citibank by suppressing the orders of attachment. The defendant avoided executing the sale and further knowingly and intentionally avoided an adverse order by giving a false undertaking before the court, without disclosing orders of attachment by the Income Tax Authority and the DRT. The defendant tried to avoid fulfilling his obligation and discharging his liability by falsely representing to the DRT and to this Court vide his reply to motion that the property is already sold to M/s Gagan Yarn Pvt. Ltd. The plaintiff has brought on record that the defendant and his family members are the directors of M/s Gagan Yarn Pvt. Ltd. It is also an admitted fact that the dues of the Citibank were not paid by M/s Gagan Yarn Pvt. Ltd. or any of its directors but have been paid by the plaintiff, despite which the defendant has filed a false affidavit stating that M/s M/s Gagan Yarn Pvt. Ltd. had cleared the loan amount of the Citibank. Thus the records prima facie indicate that the defendant has not only committed breach of an agreement but has interfered with administration of justice.

35. The plaintiff has paid the entire sale consideration. The plaintiff having made out prima facie case, the suit premises need to be protected till final adjudication. Considering the aforesaid

circumstances, particularly the conduct of the Defendant, it would not be prudent to allow the defendant to continue to be in possession of the suit premises. Under the circumstances, in my considered view this is a fit case to put the Plaintiff in possession of the suit premises as an agent of the Court Receiver. Suffice it to say that the possession of the Plaintiff would be subject to the order, if any, of the Income Tax Authorities or the DRT.

36. In the light of above facts and circumstances, I pass following interim order:-

(a) The defendant is directed to vacate the premises within two weeks from the date the order is uploaded.

(b) Pending hearing and final disposal of the suit, the Court Receiver is directed to put the Plaintiff in possession of the suit premises.

(c) If required, the Court Receiver may take assistance of local police to take physical possession of the suit premises and to handover possession of the suit premises to the Plaintiff.

(d) The Plaintiff shall execute agency agreement with the Court Receiver in respect of the suit premises.

(e) Possession of the Plaintiff will be subject to any order passed by the Income Tax Authorities or the DRT.

(f) The Defendant, his agents, servants etc are restrained from interfering with the possession of the suit premises in any manner.

(g) The Notice of Motion No.21/2012 and 1784/2015 stand disposed of in the above terms. Notice of Motion No.604/2017 filed by the Defendant stands dismissed.

(h) Registrar Judicial is directed to issue a notice to the defendant to show cause within six weeks why proceedings should not be initiated against him for criminal contempt under the Contempt of Courts Act 1971. The hearing of the notice be placed before the appropriate Division Bench in accordance with the assignment.

37. At this stage the learned counsel for the Defendant requests that the operation of the order be stayed for a period of two weeks. Request is granted. The order is stayed for a period of two weeks.

38. Stand over to **30.04.2019.**

(SMT. ANUJA PRABHUDESSAI, J.)