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

CHAMBER SUMMONS (LODGING) NO.99 OF 2019
IN
SUIT NO.995 OF 2016

WITH
NOTICE OF MOTION NO.821 OF 2017
IN
SUIT NO.995 OF 2016

WITH
NOTICE OF MOTION NO.386 OF 2018
IN
SUIT NO.995 OF 2016

Abhay Talati ...Applicant

IN THE MATTER BETWEEN :

Abhay Talati ...Plaintiff
V/s.
Siroya FM Construction Pvt. Ltd. & Ors. ...Defendants

WITH
NOTICE OF MOTION (LODGING) NO.95 OF 2019
IN
SUIT NO.995 OF 2016

Abhay Talati ...Applicant

IN THE MATTER BETWEEN :

Abhay Talati ...Plaintiff
V/s.
Siroya FM Construction Pvt. Ltd. & Ors. ...Defendants
And
Mansukh Karia & Anr. ...Respondents

Ms.Jatima Barodawalla I/b Raval Shah & Co. for the Applicant / Plaintiff in Notice of Motion (Ldg.) No. 95 of 2019, Notice of Motion No.821 of 2017, Notice of Motion No.386 of 2016.

Mr.M.M. Vashi, Senior Counsel with Ms.Prachi K. I/b M.P. Vashi & Associates for the Defendant No.3.

Mr.Nilesh Butekar for the Newly Added Defendants.

CORAM : R.D. DHANUKA, J.

DATE : 11TH FEBRUARY, 2019.

P.C. :-

1. By this chamber summons, the applicant (original plaintiff) seeks impleadment of two defendants viz. Mr.Mansukh Karia and Mr.Ravikiran Pradeep Pandya.

2. The suit is filed by the applicant inter-alia praying for specific performance of a development agreement between the society and the defendant nos.1 to 3. It is the case of the applicant that in breach of the development agreement, the defendant nos.1 to 3 have sold flat no.101 in "A" wing in the first building viz. Mahesh Apartment in favour of said Mr.Ravikiran Pradeep Pandya and has also mortgaged the said flat as office no.1 to Abhyudaya Co-operative Bank Limited without the consent of the applicant society which was required according to the applicant under clause 33 of the development agreement entered into between the applicant and the defendant nos.1 to 3.

3. Learned counsel appearing for Mr.Ravikiran Pradeep Pandya does not dispute that his client is claiming certain rights in the said flat no.101.

4. Insofar as the impleadment of Mr.Mansukh Karia is concerned, a perusal of the affidavit in support of the chamber summons and Schedule "A" to the chamber summons indicates that no reliefs are sought against the said Mr.Mansukh Karia nor he has alleged to have purchased any part of the suit property from the developers or otherwise. In my view, Mr.Mansukh Karia is thus neither necessary nor proper party to the suit for specific performance.

5. Insofar as impleadment of Mr.Ravikiran Pradeep Pandya is concerned, since he has purchased the flat no.101 from the defendant nos.1 to 3, he would be necessary party to the suit for specific performance.

6. I therefore, pass the following order :-

a). The applicant is permitted to implead Mr.Ravikiran Pradeep Pandya as the defendant no.5. The application for impleadment of Mr.Mansukh Karia is rejected. It is made clear that all the allegations made against Mr.Mansukh Karia in Schedule "A" to the chamber summons shall be deleted in view of this Court not having permitted impleadment of Mr.Mansukh Karia as a party defendant to the suit. The chamber summons is allowed only for impleadment of Mr.Ravikiran Pradeep Pandya and the averments made in respect of the said Mr.Ravikiran Pradeep Pandya in the

Schedule "A" to the chamber summons and the consequential amendment. The amendment to be carried out within one week from today. The amended copy of the plaint shall be served upon the contesting defendants including on the original defendants through their respective advocates and also on the newly added party through his advocate.

b). Leave to amend is granted to amend the pending notice of motion also in conformity with the order of impleadment allowed by this Court in this chamber summons. The notice of motion also shall be amended within one week from today. A copy of the amended notice of motion shall be served upon the defendant nos.1 to 4 through their respective advocates and also upon the newly added party through his advocate. Within one week from today.

c). Insofar as *ad-interim* relief in the Notice of Motion (Lodging) No.95 of 2019 sought to be pressed today is concerned, the applicant is directed to serve a copy of the plaint as well as additional affidavit filed in the notice of motion upon the newly added party within two days from today.

7. Place the the notice of motion on board under the caption of *ad-interim* relief on 15th February, 2019.

(R.D. DHANUKA, J.)