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

NOTICE OF MOTION No. 544 OF 2016
IN
SUIT No. 110 OF 2013

Abdul Razak Haji Ismail ...Applicant
In the matter between

Abdul Razak Haji Ismail ...Plaintiff
Vs.

Farid Husein Ahmed Solanki
& Ors. ...Defendants

Mr. R.B. Singhvi i/b. Lex Services for the Applicant/Plaintiff
Mr. Kundanlal Patil i/b. Vyas & Bhawal for Defendant No.1

CORAM : B.P. COLABAWALLA, J.

DATE : AUGUST 14, 2019

P.C.:

1. When this Notice of Motion had come up at the ad-interim stage, this Court passed the following order:

“P.C.:

On 19th January 2007, the Plaintiff, who is admittedly the owner of the suit property entered into an Agreement with the Defendant Nos.1 and 2 for development of the suit property. The Plaintiff thereafter, by his letter dated 6th January, 2011, terminated the said Development Agreement. According to the Plaintiff the Defendant Nos. 1 and 2 accepted the termination of the Development Agreement and by their Advocate's letter dated 21st

September, 2011, inter alia, recorded as under:

“4. My clients therefore would like to negotiate fresh terms of the contract for development in view of the changed circumstances. My clients state that though my client put their all efforts to develop the said property on account of the several reasons as aforesaid the property could not be developed. My clients state that the circumstances were beyond the control of my clients.

5. My clients state that the proposal is not viable and therefore in mutual interest my clients are ready to negotiate fresh terms with your client so that a solution can be worked out. My clients state that there are also problem created by the tenants upon the property which are being looked after by the said Insha Enterprises. My clients state that a fresh development Agreement and the fresh Power of Attorney with viable and feasible terms is the only solution. My clients state that your client will appreciate my clients' efforts and will cooperate arriving at fresh understanding. Please fix up the meeting.”

According to the Plaintiff, a public notice was also issued in the newspapers qua the termination of the Development Agreement by the Plaintiff to which no objections were received from the Defendant Nos.1 and 2.

2. It is submitted on behalf of the Plaintiff that the tenants who are in occupation of their respective tenants on the suit property

have now filed a Writ Petition being Writ Petition No. 2857 of 2012, inter alia, seeking directions against the Municipal Corporation to allow them (the tenants) to use the IOD and CC earlier issued to the Developers by the Corporation, to enable the tenants to complete the development project. In the said Writ Petition, the tenants have joined the Defendant No.1 as a party Respondent and the tenants as well as the Defendant No.1 are in the process of filing Consent Terms in the said Writ Petition. It is submitted that in view of the termination of the Development Agreement by the Plaintiff and acceptance of the same by the developers, the developers now have no rights under the Development Agreement. The Developers now have no locus to enter into any arrangement with any party including the tenants in respect of development of the suit property.

3. *The learned Advocate for the Defendant No.1 states that the Defendant No.1 has not accepted the purported termination. He had no instructed any Advocate to write any letter dated 21st September, 2011 suggesting fresh negotiations in the matter and this is a clear case of collusion between the Plaintiff and the Defendant No.2. The learned Advocate for the Defendant No.1 further states that the Defendant No.1 had also objected to the public notice issued by the Plaintiff.*

4. *I have perused the letter of termination dated 6th January, 2011 and the letter written by the Advocate for the developers dated 21st September, 2011 accepting the termination. In view thereof, prima face the developers cannot be allowed to act on the Development Agreement dated 19th January, 2007 until filing of their respective Affidavits and this Court considering the same. The Defendants are therefore directed to file their respective Affidavits-in-Reply on or before 18th February, 2013 and forthwith*

forward a copy of the same to the Advocate for the Plaintiff. Place the Notice of Motion for ad-interim reliefs on 20th February, 2013. In the meantime, Defendant Nos.1 and 2 shall not act on the Development Agreement dated 19th January, 2007 and the parties hereto shall maintain status-quo in respect of the suit property as of today.”

2. The Learned Advocates appearing on behalf of the Plaintiff as well as Defendant No.2 have stated, on instructions, that they have no objection if this ad-interim order is confirmed till the final hearing and disposal of the suit.

3. In view of the aforesaid consensus, it is accordingly so ordered. The Notice of Motion is disposed of in the aforesaid terms. However, there shall be no order as to costs.

[B.P. COLABAWALLA, J.]