

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

**NOTICE OF MOTION NO.1136 OF 2019
IN
SUIT NO.632 OF 2019
ALONG WITH
APPEAL FROM ORDER (ST.) NO.7814 OF 2019
(TAGGED, BUT NOT ON BOARD)
WITH
CIVIL APPLICATION (ST.) NO.7815 OF 2019
(TAGGED, BUT NOT ON BOARD)**

Shiv Siddhi Enterprises

... Applicant/Plaintiff

Versus

Digambar Bhaskar Subhedar

And Another

... Respondents/Defendants

.....

Mr. Piyush Shah a/w Mr. Harsh Gala for the Applicant in Notice of Motion No.1136 of 2019 and the Plaintiff in Suit No.632 of 2019 and for Respondent No.1 in Appeal from Order (St.) No.7814 of 2019.

Ms. Swati Sawant i/b Mr. Harshad Sathe for Defendant No.1 in Suit No.632 of 2019 and for the Appellant in Appeal from Order (St.) No.7814 of 2019.

Mr. Dishang Shah i/b Mr. Devendra Udani for Defendant No.2 in Suit No.632 of 2019 and for Respondent No.2 in Appeal from Order (St.) No.7814 of 2019.

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CORAM : S.C. GUPTE, J.

DATE : 15 OCTOBER 2019

P. C. :

. This Notice of Motion has been taken out by the original plaintiff in its suit seeking a declaration of validity, and specific

performance, of an agreement for development and related documents. The plaintiff has prayed for a mandatory order and injunction directing defendant no.1 to comply with the agreement, and vacate and hand over the suit flat for the purpose of demolition and redevelopment of the suit property. It is the case of the plaintiff that in pursuance of the development agreement between the plaintiff-developer and defendant no.2 society, twenty four out of the total number of twenty five members of the society have handed over their respective flats for demolition of the original building and reconstruction in pursuance of the development agreement. It is submitted that defendant no.1 is the lone member, who has been resisting the redevelopment proposal. The notice of motion seeks appointment of court receiver with direction to take over physical possession of suit flat from defendant no.1.

2 Learned Counsel appearing for defendant no.1 submits that her client is not against redevelopment, but has certain apprehensions, as a result of which, he has not so far handed over possession of the suit flat. It is submitted in his affidavit in reply by defendant no.1 that he would be ready to hand over possession of the suit flat, if the plaintiffs were to give an undertaking for payment of compensation to defendant no.1 towards transit accommodation pending redevelopment of the suit building as well as for payment of corpus and furnishing of a suitable bank guarantee in terms of the registered development agreement.

3 Learned Counsel appearing for the Appellant-plaintiff undertakes to the court, after taking instructions from Ritesh Harish Thakkar, a partner of the plaintiff firm, who is personally present in court, that all terms and conditions of the development agreement including furnishing of a bank guarantee, payment of corpus as well as payment of interim compensation towards transit rent to members of defendant no.2 society, including defendant no.1 herein, shall be duly complied with. The undertaking is accepted. Learned Counsel for defendant no.1 states that her client shall hand over possession of the suit flat to the Applicant-plaintiff within a period of five weeks from today. Learned Counsel also states that her client shall also execute within two weeks from today an agreement for alternative accommodation in the new building to be constructed by the Applicant-plaintiff. Against execution of this agreement and its registration, the plaintiff shall pay such compensation as may be due to defendant no.1 without fail, against the latter vacating the suit flat. The respective statements in this behalf are accepted. It is made clear that no further extension will be granted under any circumstances to defendant no.1 for vacating and delivering possession of the suit flat to the plaintiff. The Notice of Motion is disposed of in the above terms.

3 In view of the disposal of the motion, the Appeal from Order, which challenges refusal of the trial court to grant any ad-interim relief to defendant no.1 herein, tagged along with the Civil

Application, does not survive. Both the motion and the civil application are accordingly disposed of.

(S.C. GUPTE, J.)