

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL NOTICE OF MOTION NO. 805 OF 2019
WITH
COMMERCIAL NOTICE OF MOTION NO. 2001 OF 2018
IN
COMMERCIAL SUIT NO. 1402 OF 2018**

Mr. Saidammadath Narukkindakath Abdul Kareem ...Plaintiff

Vs.

Mr. Pradeep S. Dixit & Others ...Defendants

Ms. Archana Khan I/b Rehan S. Chhapra for plaintiff

Mr. Akshay Patil a/w Mr. Vinod Kothari I/b Apex Law Partners for Defendant Nos. 1 and 2.

Mr. Ashutosh R. Gole for Defendant No. 3.

Mr. Gopal Singh constituted attorney of defendant no. 1 present.

Mr. Rishikesh Dixit defendant no. 2 present.

CORAM : K.R.SHRIRAM, J.

DATE : 9th APRIL 2019

P.C.:

1 Mr. Patil appearing for defendant Nos. 1 and 2 states that defendant nos. 1 and 2 admit the amount as claimed in the plaint and there has been a settlement agreement as alleged in the plaint. Mr. Patil states that defendant no. 1 is having lot of health issues and defendant no. 2 who is the son of defendant no. 1 is present in court and identifies defendant no. 2. Mr. Patil states that defendant nos. 1 and 2 have all intentions to discharge the liability of plaintiff and the entire amount will be paid within 6 months from today and according to them, a sum of Rs. 2,10,00,000/- is due and payable. Mr. Patil also states that this amount of Rs. 2,10,00,000/- will be paid to plaintiff without deduction and / or set off. Mr. Patil, on

instructions from defendant no. 2 states that if this amount of Rs. 2,10,00,000/- is not paid within 6 months, defendant nos. 1 and 2 shall pay the entire amount as claimed in the plaint without any deduction and / or any set off.

2 Ms. Archana Khan states that the amount of Rs. 2,10,00,000/- was agreed in January 2018 and the cancellation deed also provided for interest at 2% p.a, i.e., 24% p.a. Ms. Archana Khan states that defendant nos. 1 and 2 will have to pay Rs. 2,10,00,000/- with 24% p.a. till payment / realization within 6 months, if defendant no. 1 and defendant no. 2 want to settle. In my view that is not an unreasonable demand.

3 While dictating the order, I paused for a moment since Mr. Patil wanted to check with defendant no. 2 and constituted attorney of defendant no. 1, who are present in court, that the order as recorded above will be strictly complied with and abided by them and both these gentlemen informed the court not just by nodding their head but vocally that they will abide by what is recorded above. I accept this as an undertaking to this court by defendant no. 1, defendant no. 2 and the constituted attorney of defendant no. 1.

4 Mr. Patil also states that there is an apartment being Flat No. 1101, B wing, Rajgir Court, Swami GyanjivanDas Road, Dadar (East),

Mumbai – 400 014. The said flat is in the name of defendant no. 2 and jointly with wife of defendant no. 1, who is also mother of defendant no. 2. Mr.Patil states that defendant nos.1 and 2 owed a sum of approximately Rs. 3,50,00,000/- to one Rajnikant Parekh together with interest thereon at 12% p.a. and the share certificates of the said flat are with Rajnikant Parekh. Mr. Patil states that the arrangement with Rajnikant Parekh is to sell the said flat, pay of his debt and the entire balance amount of sale proceeds shall be utilized solely to discharge the liability of plaintiff. This statement is accepted as an undertaking by defendant nos. 1, 2 and constituted attorney of defendant no. 1. At the same time, it is clarified that the sale will not be effected without leave of this court. Mr. Patil states that defendant nos. 1 and 2 shall make all efforts to dispose of the said flat within 2 months from today.

5 As regards Hotel Shantidoot, Mr. Patil states that the debt of defendant no. 3 has been assigned to one Malvika Herbo Farma Pvt. Ltd as recorded in the consent terms dated 13.03.2019 filed in Writ Petition (L) No. 110/2019. Mr.Patil tenders a photocopy of the said consent terms to which is annexed a copy of the assignment agreement.

Plaintiff is also permitted to apply for certified copy of the consent terms from the registry and the Prothonotary and Senior Master, High Court, Bombay shall provide the same to plaintiff.

6 Ms. Archana Khan states that if defendant nos. 1 and 2 pay all the amounts as noted above, certainly plaintiff will positively consider discontinuing all proceedings against defendant nos. 1 and 2.

7 In view of the above notice of motion accordingly stands disposed.

8 Defendant nos. 1 and 2 shall file a copy of the MOU that they have entered into with Mr. Rajnikant Parekh along with an affidavit before end of this week and also serve a copy upon plaintiff.

9 Any breach by defendant no. 1 and defendant no. 2 will be viewed seriously and considered as breach of undertaking and possible contempt. In addition plaintiff can execute this order atleast to the extent of Rs. 2,10,00,000/- as a decree of this court without having to draw up any decree.

(K.R. SHRIRAM, J.)