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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O. O. C. J.**

**NOTICE OF MOTION NO. 1340 OF 2019  
IN  
SUIT NO. 128 OF 2017**

|                      |                        |
|----------------------|------------------------|
| Mrs Deepika S. Menon | ...Applicant/Plaintiff |
| vs                   |                        |
| Mrs Rekha S. Dewan   | ...Defendant           |

.....  
Mr Pradeep Thorat & Ms Aditi Naikare for the Applicant/ Plaintiff  
No.1  
Mr Asif Menon i/b Mr K.S.Mishra for the Defendant  
.....

**CORAM : B. P. COLABAWALLA, J.  
SEPTEMBER 26, 2019.**

**P.C.:**

This Notice of Motion has been filed seeking a direction to the Commissioner for taking accounts to submit a report for effecting the partition of the suit flat No.23/34, 5<sup>th</sup> floor, Building No.23, Ashish Co-operative Housing Society Ltd. Four Bungalows, Varsova, Mumbai 400 053 on the basis of the Valuation Report dated 23<sup>rd</sup> August, 2018 submitted by M/s H. G. Samant & Associates. The aforesaid report can be found at page 9 of the affidavit in support. This report values the aforesaid property at Rs.1,74,00,000/-. Though the prayer is for effecting partition, considering that it is a residential premises admeasuring approximately 624 sq. feet (carpet area), the partition

by metes and bounds would not be possible. It was, in these circumstances, that the advocates for the applicant/plaintiff No.1 submitted that either the plaintiffs are willing to sell their share (2/3rd share) to the defendant as per the Valuation Report of M/s H. G. Samant & Associates or in the alternative purchase 1/3rd share of the defendant.

2           The learned advocate appearing on behalf of the defendant, on instructions of the defendant, who is present in the Court, has stated that she is not in a position to purchase the share of the plaintiffs. He, therefore, stated that the defendant is willing to sell her 1/3rd share to the plaintiffs. 1/3rd share of the defendant, as per the valuation, comes to Rs.58 Lacs.

3           Mr Thorat, the learned advocate appearing on behalf of the plaintiffs has stated that plaintiff No.1 shall be purchasing 1/3rd share of the defendant. The said statement is accepted.

4           In view of the fact that now the defendant has agreed to sell her 1/3rd share in the residential premises to plaintiff No.1, the following order is passed.

- (i) Plaintiff No.1 shall pay the amount of Rs.58 Lacs to the defendant on or before 31<sup>st</sup> December, 2019;

- (ii) The defendant undertakes to this Court that she shall vacate the suit premises and hand over the same to the plaintiffs by 31<sup>st</sup> December, 2019;
- (iii) To effect the transfer of 1/3rd share of the defendant in favour of plaintiff No.1, the defendant shall execute all necessary documents on receiving the payment of Rs.58 Lacs ;
- (iv) All expenses, charges and duties with reference to the aforesaid documents shall be borne by plaintiff No.1 ;
- (v) The Commissioner of Accounts is directed to take all further steps in terms of this order.

5           The Notice of Motion is disposed of in the aforesaid terms.  
No order as to costs.

**(B. P. COLABAWALLA, J.)**