Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO. 1353 OF 2019

IN

SUIT NO. 1266 OF 2009

Asha Shrichand Raheja & Ors	…Applicants
In the matter between	
Asha Shrichand Raheja & Ors	…Plaintiffs
Versus	
Purshottam V Raheja & Ors	…Defendants
And	
Kamlesh B Jain & Ors	…Respondents to the Notice of Motion

WITH

NOTICE OF MOTION NO. 1108 OF 2018

IN

SUIT NO. 577 OF 2018

Mahesh P Dedhi & Anr	…Plaintiffs
Versus	
Asha Shrichand Raheja & Ors	…Defendants

WITH

NOTICE OF MOTION NO. 920 OF 2013

IN

SUIT NO. 1266 OF 2009

WITH

NOTICE OF MOTION NO. 1091 OF 2015

IN

SUIT NO. 2509 OF 2011

WITH

NOTICE OF MOTION NO. 838 OF 2018

IN

SUIT NO. 2509 OF 2011

WITH

NOTICE OF MOTION NO. 1091 OF 2018

IN

SUIT NO. 529 OF 2018

WITH

NOTICE OF MOTION NO. 1092 OF 2018

IN

SUIT NO. 527 OF 2018

WITH

NOTICE OF MOTION NO. 1096 OF 2018

IN

SUIT NO. 623 OF 2018

WITH

NOTICE OF MOTION NO. 1097 OF 2018

IN

SUIT NO. 525 OF 2018

WITH

NOTICE OF MOTION NO. 1098 OF 2018

IN

SUIT 634 OF 2018

WITH

NOTICE OF MOTION NO. 1103 OF 2018

IN

SUIT NO. 631 OF 2018

WITH

NOTICE OF MOTION NO. 1104 OF 2018

IN

SUIT NO. 632 OF 2018

WITH

NOTICE OF MOTION NO. 1106 OF 2018

IN

SUIT NO. 633 OF 2018

WITH

NOTICE OF MOTION NO. 1107 OF 2018

IN

SUIT NO. 439 OF 2018

Mr Gaurav Joshi, Senior Advocate, *with Mr Shanay Shah, Mr J Solomon, Ms Soniya Putta & Mr Atharva Sawant, i/b M/s Solomon & Co, for the Plaintiffs/Applicants in Notice of Motion (L) No. 1353 of 2019 and Notice of Motion No. 920 of 2013 in Suit No. 1266 of 2009.*

Mr Ram Goenka, *with Mr Narendra Devvansh, i/b Goenka Law Associates, for Defendant No.5 in Notice of Motion (L) No. 1353 of 2019.*

Mr Karl Tamboly, *with Mr Darshan R Mehta & Ms Sonali Aggarwal, i/b Dhruve Liladhar & Co, for the Plaintiff in Notice of Motion No. 1108 of 2018 in Suit No.577 of 2018.*
Mr Rajesh Shah, *i/b Kanga & Co, for Defendants Nos. 1 & 2 in Notice of Motion No. 920 of 2013 in Suit No. 1266 of 2009 with Notice of Motion No. 1092 of 2015 in Suit No. 527 of 2018 with Notice of Motion No. 1108 of 2018 in Suit No. 577 of 2018.*
Mr Simil Purohit, *with Mrs Pooja Patil-Khandeparkar, i/b Kanga & Company, for Defendants Nos. 4 and 5 in Notice of Motion No. 1091 of 2018 in Suit No. 529 of 2018 with Notice of Motion No.1098 of 2018 in Suit No. 634 of 2018, Notice of Motion No.1097 of 2018 in Suit No. 525 of 2018, Notice of Motion No. 1106 of 2018 in Suit No 633 of 2018, Notice of Motion No. 1096 of 2018 in Suit No. 623 of 2018, Notice of Motion No. 1107 of 2018 in Suit No. 439 of 2018, Notice of Motion No. 1104 of 2018 in Suit No 632 of 2018, Notice of Motion No. 1092 of 2018 in Suit No. 527 of 2018, Notice of Motion No. 1103 of 2018 in Suit No. 631 of 2018 and for Defendants Nos. 1 and 2 in Notice of Motion (L) No. 1353 of 2019 in Suit No. 1266 of 2009 and for the Plaintiffs in Suit No. 2509 of 2011.*

CORAM: G.S. PATEL, J
DATED: 6th June 2019

PC:-

NOTICE OF MOTION (L) NO. 1353 OF 2019:

1. This is a fresh Motion by the Plaintiffs. The reliefs sought are these:

> (a) that 1st Defendant be ordered and directed to sign and deliver to the Plaintiffs on or before 20th June 2019 cheque on Indian Bank Account No. 4174627508 for Rs. 48,61,499/- in favour of the Estate of Late Shrichand V

Raheja for payment of VAT, interest and penalty payable under the Amnesty Scheme on the sale of 24 flats as mentioned in Exhibit "N-1" to the Affidavit in Support of Notice of Motion;

(b) that the Plaintiffs be permitted to receive from the 13 flat purchasers mentioned in Exhibit "N-2" to the Affidavit in Support of Notice of Motion amounts aggregating to Rs. 28,28,162/- by cheques drawn in favour of the Estate of Late Shrichand V Raheja in payment of VAT, interest and penalty payable under the Amnesty Scheme.

2. Mr Joshi for the Plaintiffs makes reference to a Trade Circular No. 9T of 2019 dated 8th March 2019 issued by the Office of the State Tax, GST Maharashtra State, GST Bhavan, Mazgaon, Mumbai 400010. This introduces an amnesty scheme open until the end of this month for the settlement of arrears of tax, interest, penalty or late fee under various acts administered by the Maharashtra GST Department. The circular references the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance 2019 (Maharashtra Ordinance No. V of 2019 dated 6th March 2019).

3. So far as prayer clause (a) above is concerned, Mr Purohit for the contesting Defendants has no objection in principle in regard to the payment of all tax dues for the 24 flats mentioned in prayer clause (a). The Indian Bank account mentioned in that prayer clause (a) stands in the joint names of Purshottam V Raheja, the 1st Defendant, and the deceased original Plaintiff, Shrichand V Raheja. It is being operated by Purshottam V Raheja. To avoid all controversy it is agreed that the amount of Rs. 48,61,499/- will be transferred by Purshottam V Raheja from the Indian Bank account mentioned in prayer clause (a) to a bank account designated by Sangeeta Ravi Vaswani, Plaintiff No. 1B, one of the heirs of Shrichand V Raheja, to enable her to make payment to the Maharashtra GST Department of this amount of Rs. 48,61,499/- in regard to the 24 flats mentioned in Exhibit "N-1" of the Affidavit in Support.

4. As regards required supporting documents, the two sides agree to cooperate with each other. Should there be any difficulty, the Plaintiffs will be at liberty to submit to the department an authenticated copy of this order for the purposes of that payment. The payment into revenue is being allowed in a disputed case specifically by the this Court's present order passed today. The remittance from the joint account with Indian Bank (in terms of prayer clause (a) of the Notice of Motion (L) No. 1353 of 2019) is not to be construed to be a payment to the estate of Shrichand Raheja. It is permitted for the limited purpose of availing the benefit of the VAT Amnesty scheme.

5. Prayer clause (b) stands on a different footing. It pertains to 13 flats. These are disputed transactions. The purchasers are represented by Mr Tamboly. They claim to have purchased the flats from Shrichand Raheja. Purshottam Raheja disputes Shrichand Raheja's entitlement to enter into these transactions at all. There is, therefore, no question of the Defendants accepting the validity of these flat transactions or that there is from these 13 flat purchasers any amount due to Shrichand Raheja, his estate, or his heirs whether by way of arrears of tax or otherwise. It is, therefore, in my view only open to the Plaintiffs to make the payment mentioned in prayer clause (b) i.e. Rs. 28,28,162/- into revenue but entirely without prejudice to the present disputes in this suit as also in all pending applications. The making of that payment will give neither the Plaintiffs nor the flat purchasers any right or equitable claim on that account. Further, this order is not to be construed to mean that the Court has on merits accepted the validity of those flat purchase agreements between Shrichand Raheja and the 13 flat purchasers mentioned in Exhibit "N-2" to the Affidavit in Support. In other words any payments that the Plaintiffs make in regard to the amount mentioned in prayer clause (b) is entirely at their risk. It will have no bearing whatsoever on any assessment of the validity of these 13 flat transactions.

6. To facilitate the order in terms of prayer clause (a) Mr Joshi's attorneys will provide the necessary bank details to Mr Purohit's attorneys at the earliest possible.

7. It goes without saying that the Plaintiffs will keep the Defendants informed of all such payment made into revenue.

8. Notice of Motion (L) No. 1353 of 2019 is to be got finally numbered for statistical purpose and is disposed by this order.

NOTICE OF MOTION NO. 1108 OF 2018:

9. As regards this Motion filed by the 13 flat purchasers mentioned in Exhibit "N-2" to the Affidavit in Support of the Notice of Motion (L) No. 1353 of 2019 and which is notified on board today, all Affidavits in Reply will be filed and served on or before 26th June 2019. No Affidavits in Rejoinder without further orders of the Court.

10. Presently, list this Motion along with the other Motions on 4th July 2019 for directions.

(G. S. PATEL, J)