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

NOTICE OF MOTION NO.259 OF 2019
IN
WRIT PETITION NO.2258 OF 2018

Shalini H. Babla

...Applicant
Ori.Respdt. 2

IN THE MATTER BETWEEN :

Bansari A. Khimji
V/s.

...Petitioner

Janki Vikram CHS & Ors.

...Respondents

Mr.Paritosh Jaiswal & Mr.Nikunj Mehta i/b Mr.S.H. Bohra for the
Applicant / Original Respondent No.2.

Mr.Joel Carlos with Mr.Aeknath Nair, Ms.Pratiksha M. and
Ms.Aishwarya i/b M/s.K. Ashar & Co. for the Petitioner.

Mr.Manish Upadhye, A.G.P. for the State – Respondent No.5.

CORAM : R.D. DHANUKA, J.
DATE : 8TH AUGUST, 2019.

P.C. :-

1. By this notice of motion, the applicant (original respondent no.2) seeks vacation of the interim order in terms of prayer clause (c) granted by this Court on 30th October, 2018 in Writ Petition No.2258 of 2018 pursuant to the liberty granted by the Supreme Court by an order dated 29th April, 2019 in Special Leave Petition No.10437 of 2019 filed by the applicant before the Supreme Court impugning the interim relief granted by this Court.

2. The applicant claims certain rights on the basis of a Gift

Deed executed by Himmat Babla, husband of the applicant in favour of the applicant, who was constituted attorney of Mr.Anil Khimji Babla, who was the husband of the petitioner. The respondent no.1 society had rejected the application for membership filed by the applicant. The authorities passed an order in favour of the applicant. The widow of Mrs.Anil Khimji, who was the owner of the said flat filed this writ petition. After hearing the concerned parties, including the applicant, this Court admitted Writ Petition No.2258 of 2018 on 30th October, 2018 and granted interim relief in terms of prayer clause (c). In prayer clause (c) of the writ petition, the original petitioner had prayed for an injunction against the respondent no.2 (applicant herein) from transferring, alienating or creating any third party rights with respect to the said flat and to direct the respondents to maintain *status-quo* with respect to the said flat.

3. Learned counsel appearing for the applicant submits that since the authorities could not have gone into the issue of title in respect of the suit flat, they are not justified in passing an order of membership in favour of the applicant. As a result of interim relief granted by this Court, the applicant is prevented from creating third party rights and at the same time the other respondents including the bank is directed to maintain *status-quo*. As a result of such *status-quo* order, the applicant is not able to implement the order passed by the authorities, though has succeeded before the authorities.

4. Mr.Carlos, learned counsel appearing for the original

petitioner tenders affidavit in reply to the notice of motion and invited my attention to the order dated 10th April, 2019 passed by Smt.Anuja Prabhudesai,J. in Notice of Motion No.1710 of 2015 with Notice of Motion No.411 of 2016 in Suit No.97 of 2014 filed by the petitioner herein against Mr.Himmat Babla and others. The applicant herein is a party defendant in the said suit. By the said order dated 10th April, 2019, this Court recorded the statement made by the applicant herein that the applicant and said Mr.Himmat Babla do not intend to transfer, assign, sell, alienate, encumber or create third party rights or hand over possession or induct third parties in the suit properties or any part thereof without prior permission of the Court.

5. The applicant herein along with her husband also made a statement that they shall not act further on the basis of the Gift Deed dated 8th July, 2007 and Power of Attorney dated 24th December, 1980 executed by Mr.Anil Babla in favour of the applicant and her husband.

6. In view of the statement already made by the applicant and her husband in Notice of Motion No.1710 of 2015 before this Court in the said suit filed by the applicant herein including the statement that they need not act on the power of attorney and also on the basis of the Gift Deed dated 8th July, 2007, in my view, no case is made out by the applicant for vacating the interim relief granted by this Court. The fact that this Court has admitted the writ petition after hearing all the parties including the applicant and in view of the fact that the suit filed

by the applicant herein impugning the Gift Deed on the basis of which the applicant claims title on the suit flat is pending and the interim relief granted by this Court in the said Notice of Motion, no case is made out for vacating the interim relief passed by this Court. The notice of motion is dismissed. There shall be no order as to costs.

7. Hearing of the writ petition is expedited.

(R.D. DHANUKA, J.)