

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

**NOTICE OF MOTION NO.1121 OF 2014
IN
SUIT NO.68 OF 2014**

Brij Estate Agency ...Applicant

In the matter between:-

Brij Estate Agency ...Plaintiff

Versus

M/s. Prarthana Builders & Ors. ...Defendants

.....

Ms Sushma Singh for the Applicant/Plaintiff.

Mr. A.S. Khandeparkar with Mr. Prerak Sharma and Mr.Rajdeep Gude
for the Defendant Nos.1 to 3.

Mr. Akhilesh Roy I/b. M/s. ABG Associates for the Defendant Nos.4 to
11.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 16th APRIL, 2019.

P.C.:-

The Applicant herein has filed this notice of motion seeking to restrain the Defendants from alienating, disposing, encumbering, parting with possession of and/or creating third party rights of any nature in respect of the four flats viz. Flat Nos.601 to 604 admeasuring an aggregate of 3,280 sq.ft. on 6th floor, in Building on plot No.55, CTS No.279 and 279(1 to 21) admeasuring 800 sq.meters, situated at Jay Jawan Lane, Daftari Road, Malad (East), Mumbai- 400 097.

Hereinafter referred to as the 'suit premises'. The Applicant has also sought to appoint Court Receiver in respect of the suit premises.

2. Heard Ms Sushma Singh, the learned counsel for the Applicant, Mr. A.S. Khandeparkar, the learned counsel for the Defendant Nos.1 to 3 and Mr. Akhilesh Roy, the learned counsel for the Defendant Nos. 4 to 11. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The records prima facie reveal that the Plaintiff and the Defendant Nos.1 to 3 had entered into a Memorandum of Understanding dated 22/4/2006. By the said MoU the Defendant Nos.1 to 3 had agreed to sell to the Plaintiff four flats admeasuring 3280 sq.meter for total consideration of Rs.82,00,000/-. The records prima facie reveal that the Defendant Nos.1 to 3 had received total consideration of Rs.26,00,000/-. Said amount was paid by cheque by one K.K. Patel. The Defendants also issued to the Plaintiff letters of allotment on 22/4/2006, copies of which are annexed to the plaint at Exhibit-'C' collectively. The Plaintiff claimed that they had issued a notice to the Defendants on 7/10/2011 regarding progress of the

construction work and had not received reply to the said notice. On 21/10/2011 Plaintiff noticed that construction had reached advanced stage. Apprehending that the Defendant Nos.1 to 3 would not execute sale deed, the Plaintiff filed a suit for specific performance.

4. It is to be noted that the agreement with the Defendant Nos.1 to 3 was of the year 2006 and that the Suit is filed in the year 2008. The Plaintiff had not filed any application for interim relief at the time of filing of the suit. The records reveal that on 28/2/2012 the Suit was dismissed under Rule 986 of the Bombay High Court (Original Side) Rules. The Plaintiff filed Notice of Motion No.995 of 2013 for restoration of Suit on 22/7/2013. The Suit was restored subject to condition that the Plaintiff would remove the office objections within a period of one week. The Plaintiff did not remove the office objections within the stipulated time, resulted in dismissing the Suit. The Plaintiff filed Notice of Motion No.1336 of 2013 for restoration of the Suit. Said notice of motion once again dismissed on 18/6/2014. The Suit was finally restored on 10/11/2014. It is only after restoration of the Suit, the Plaintiff had filed present application for interim relief. The Plaintiff has approached this Court after considerable delay. This fact is itself sufficient not to exercise

discretion in favour of the Plaintiff.

5. It is also to be noted that the Defendant Nos.1 to 3 had already sold the suit premises to the Defendant Nos.4 and 5 by agreement dated 29/5/2012 and to the Defendant Nos.8 and 9 by agreement dated 27/7/2012. Both these sale deeds were executed during the period the suit was dismissed under Rule 986 of the Bombay High Court (Original Side) Rules. Considering the above facts, granting of interim relief as prayed by the Plaintiff, at this stage would affect the rights of these Defendants.

6. The Plaintiff has failed to make out prima facie case for grant of interim relief and for appointment of receiver. Under the circumstances, the Notice of Motion is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)