

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

**NOTICE OF MOTION NO.744 OF 2015
IN
SUIT NO.992 OF 2014**

Firozali Ramzanali Dhrolia & Anr. ...Applicants

Versus

Ashraf Murad Gilani ...Defendant

.....

Ms Jayeshri L. Manjrekar for the Applicants/Plaintiff.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 1st APRIL, 2019.

P.C.:-

The Applicant herein has filed the notice of motion to appoint the receiver and to restrain the Defendant from selling, alienating, disposing of, encumbering and /or creating any third party rights in respect of the suit Flat No.D-22, admeasuring 450 sq. ft. or thereabout on the 2nd floor, "D" Wing, Yuwan Apartments (Bandra) Co-operative Housing Society Limited situated at Mount Mary Road, Bandra (West), Mumbai- 400 050 (hereinafter referred to as 'suit premises').

2. Ms Jayeshri L. Manjrekar, the learned counsel for the Applicants/Plaintiff at the outset states that she is not pressing for the

relief under prayer clause (b), which relates to the appointment of Court Receiver.

3. By agreement dated 7/11/2012 the Defendant had agreed to sell to the Plaintiff suit flat for total consideration of Rs.3,25,00,000/-. The Plaintiff had paid Rs.10,00,000/- on the date of the execution of the agreement and the balance consideration was to be paid within six months commencing from 1/5/2013 to 31/10/2013. the Defendant failed to execute the conveyance in favour of the Plaintiff in respect of the suit premises, which necessitated the Plaintiff to file the suit for specific performance.

4. The Defendant has not filed any affidavit-in-reply despite opportunity given. The Defendant has also not remained present and has not controverted the submissions advanced by the learned counsel for the Plaintiff.

5. The records prima facie indicate that the Plaintiff and the Defendant had entered into an agreement dated 7/11/2012 whereby the Defendant agreed to sell to the Plaintiff suit premises for total consideration of Rs. 3,25,00,000/-. Balance consideration was to be

paid within a period of six months commencing from 1/5/2013 to 31/10/2013. Under the said agreement the Defendant, who was the owner of the flat, was required to handover to the Plaintiff all the title documents in respect of the flat including original share certificate No.197, receipt of payment of society dues, electricity bills, telephone charges, all forms, documents and papers duly signed and endorsed as on the date of the execution of the said agreement. The Defendant was also required to apply for no objection certificate from the society in the name of the Plaintiff. The Defendant further agreed that upon receipt of full and final payment, he would sign all the necessary documents for registration of the conveyance and handover possession of the suit flat to the Plaintiff with all relevant documents.

6. The Plaintiff has averred that the Defendant had not complied with clause No.2(f) of the agreement, which required the Defendant to handover the title and other documents to the Plaintiff. It is also seen that the Defendant had also not obtained no objection certificate from the society. It was under these circumstances that the Plaintiff did not pay the balance consideration out of Rs.3,15,00,000/- to the Defendant. The Plaintiff has made out a prima facie case.

7. The learned counsel for the Plaintiff submits that the Plaintiff was always ready and willing to pay the balance consideration to the Defendant. She further states that Plaintiff is still ready to deposit the said amount before this Court within a period of four weeks. Statement is accepted.

8. Considering the above facts and circumstances, ad-interim relief is made absolute subject to deposit of balance consideration within a period of four weeks. The Defendant is restrained from selling, alienating, disposing of, encumbering and/or creating any third party rights and /or parting with possession of the suit premises till the disposal of the suit.

9. The notice of motion is disposed of in above terms. Suit may be listed after three weeks for tendering draft issues.

(SMT. ANUJA PRABHUDESSAI, J.)