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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2288 OF 2016

IN

NOTICE OF MOTION NO.3391 OF 2007

IN

SUIT NO.2511 OF 2007

Pantnagar Gangasagar Co-Op. Housing
Society Ltd.

...Defendant No.2
/Applicant

In the matter between

Manjula S. Chauhan

...Plaintiff

vs

G.A. Builders Pvt. Ltd. And Ors.

...Defendants

And

Chandan Kelekar

...Proposed Respondent

Architect M/s. Space Moulders

WITH

CHAMBER SUMMONS NO.1761 OF 2016

IN

NOTICE OF MOTION NO.2288 OF 2016

IN

NOTICE OF MOTION NO.3391 OF 2007

IN

SUIT NO.2511 OF 2007

WITH

NOTICE OF MOTION NO.3391 OF 2007

IN

SUIT NO.2511 OF 2007

Manjula S. Chauhan

...Plaintiff

vs

G.A. Builders Pvt. Ltd. And Ors.

...Defendants

And

Chandan Kelekar

...Proposed Respondent

Architect M/s. Space Moulders

.....

Mr. Cherin N. Lapashiya, i/b. M/s. Niranjan And Co., for the Plaintiff.

Mr. Mayur Khandeparkar, a/w. Mr. Pritvish Shetty and Ms. Chaitrika Patki, i/b. Vidhii Partners, for Defendant No.1.

Mr. Vishal Kanade, a/w. Mr. Ajit Tamhane, i/b. Tamhane & Co., for Defendant No.2/Applicant to the Notice of Motion.

Mr. D.S. Shingade, for Defendant No.3-MCGM.

Mr. P.G. Lad, a/w. Ms. Sayli Apte, for Defendant No.4-MHADA.

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CORAM : S.C. GUPTE, J.

DATED : 11 FEBRUARY, 2019

P.C. :

. Heard learned Counsel for the parties. This notice of motion is taken out by original Defendant No.2 for various reliefs. Learned Counsel for the Applicant/Defendant No.2, however, restricts his prayer to prayer clause (b). Learned Counsel submits that so far as the other prayers are concerned, he may seek his remedy elsewhere. Prayer clause (b) concerns recall of a direction passed in the order of this Court dated 12 January 2016 to Defendant No.2 regarding execution of supplementary lease deed. The order of 12 January 2016 was passed virtually by consent. The controversy at that stage arose out of communications of MHADA, by which MHADA had conveyed its requisitions for want of compliance with which its NOC was held up. One of the requisitions was about supplementary lease deed to be executed in respect of additional land of 102.60 sq. meters allotted by MHADA to Defendant No.2 Society. Learned Counsel for the parties agreed to comply with this requisition. The draft supplementary lease deed was to be finalised by MHADA and Defendant Nos. 2 and 4 had to see that it was executed in terms of the finalised draft. After the supplementary deed was

executed by Defendant No.2 Society, MHADA was directed to issue its requisite NOC in accordance with the order. The present notice of motion is taken out on the basis that Defendant No.2 Society learnt of the identity of this particular piece of land of 102.60 sq. meters only after this order of 12 January 2016 was passed. It is submitted that this land actually comprises of a nallah over which a flooring is constructed and where some water tanks of the society are situated. Learned Counsel submits that this portion cannot be termed as tit-bit land to be allotted by MHADA to Defendant No.2 Society.

2. If one has regard to the facts of the case, MCGM had already approved and sanctioned amended plans, which included this tit-bit land. After the plans were sanctioned and Defendant No.2 Society gave an undertaking to Defendant No.1 for constructing buildings as per the amended plans, there is now no merit in the submission that this particular portion of land cannot be allotted to the society. The society has not only made use of this land whilst calculating the FSI for its construction, but even consideration has changed hands for the additional construction based on the FSI relatable to this particular piece of land and on the basis that it is comprised in the leasehold in favour of the society. Defendant No.2 Society has, in its resolution of 3 November 2012, accepted the developer's proposal to construct in accordance with the amended plans, which included the FSI of this particular portion of land. The record, thus, indicates that it was the society's own case that they were entitled to this additional tit-bit area and which alone could make the construction legitimate.

3. Having regard to these circumstances, and considering that the original order of 12 January 2016 was passed in the backdrop of these facts

and by consent of parties, it is not possible to grant relief sought in prayer clause (a) of the notice of motion. Notice of motion is, accordingly, dismissed. It is, however, clarified that so far as prayer clauses (c) to (e) of the motion are concerned, Defendant No.2 Society shall be at liberty to seek appropriate remedy before such forum as it may be advised to go before. All rights and contentions of the parties on merits in that behalf are kept open.

(S.C. GUPTE, J.)