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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

NOTICE OF MOTION NO. 1348 OF 2014
IN
SUIT NO. 787 OF 2014

Superdoc Medicines Pvt. Ltd. & Anr.	...Applicants/Plaintiffs.
VS	
Dipen Jayant Shah & Anr.	...Defendants.

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Mr Vaibhav Bajpai a/w Mr Aamir Ali Sheikh I/b I.V.Merchant & Co. for
the Applicants/ Plaintiffs.
Mr Swanand Ganoo I/b Mr Rajesh Ravindran for the Defendants.

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Dhanappa
I. Koshti

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**CORAM : B. P. COLABAWALLA, J.
JUNE 03, 2019.**

P.C. :

This Notice of Motion is filed by the Applicants/ Plaintiffs
for appointment of the Court Receiver in respect of the inventory,
assets, receivables and the books of accounts of a partnership firm
known as M/s Shree Simba Chemists as well as for a Receiver in
respect of the immovable property being Flat No.7 Asha Bindu Co-op
Housing Society Ltd. admeasuring approximately 400 square feet and
more particularly described in Exh "D" to the plaint. Prayer clause
(b) of the Motion is seeking an injunction against the Defendants from
dealing with, disposing off or parting with possession or creating any
third party rights and or interest in relation to the said property

described in Exh “D” to the plaint.

2 When this Notice of Motion was initially filed, a detailed ad-interim order was passed on 9th October, 2014. This order reads thus;

“1 The Notice of Motion is taken out by the Plaintiffs for appointment of Court Receiver and injunction in respect of the suit property described in Exhibit-D to the plaint. Plaintiff No.1 and Defendant No.1 were partners in a partnership firm known as “M/s.Shree Simba Chemists”. The partnership firm was in existence since 21 January 2010. By a Deed of Retirement-cum-Admission of Shree Simba Chemists executed simultaneously with a Memorandum of Understanding dated 28 May 2013, the Plaintiff retired from the partnership firm and Defendant No.2 joined the firm as a partner. As and by way of a consideration and a precondition for executing the Deed of Retirement-cum-Admission of Shree Simba Chemists, the Defendants agreed to pay to the Plaintiff a sum of Rs.3.11 crores. Out of this sum, an amount of Rs.1 crore was paid on the date of the execution of the Deed of Admission and MOU. The balance amount of Rs.2.11 crores was payable in the manner stated in the MOU. It is the Plaintiff’s case that no amount has been paid from out of this balance sum of Rs.2.11 crores to the Plaintiffs. The MOU provides that in the event of post-dated cheques mentioned in the MOU bouncing, the contract terms would be enforced and the Deed of Retirement cum Admission would be nullified with immediate effect. It is the Plaintiffs’ case that a collateral charge against balance payment of Rs.2.11 crores has been created in respect of the property described in the Exhibit-D to the plaint and that such charge is valid till the final payment. In these premises, the Plaintiffs have applied for interim reliefs in respect of the suit property described in Exhibit-D.

2 Learned Counsel for the Defendants submits that the Plaintiffs cannot simultaneously claim cancellation of the Deed of Admission (thereby continuing to be a partner of the firm of M/s.Shree Simba Chemists) and also enforcement of a security for payment of the sum of Rs.2.11 crores. Learned Counsel submits that this payment is claimed as a precondition for the Deed of Retirement and in the event of non-fulfillment of the precondition, the Deed of Retirement stands cancelled and in which case, Plaintiff No.1 continues to be a partner of the partnership firm. It is submitted that in the premises, the Plaintiffs cannot simultaneously claim payment of the said sum of Rs.2.11 crores and apply for enforcement of any security in respect of such payment. Secondly, it is submitted that the MOU merely contains an agreement to create a charge over the suit property and that the MOU does not by

- itself create such charge.
- 3 Learned Counsel for the Defendants relies on a judgment of our Court in the case of **Kotak Mahindra Bank Ltd. vs. State Bank of Patiala**1.
 - 4 Prima facie, it appears that the Defendants are today in control of the partnership firm of M/s.Shree Simba Chemists. Admittedly, the amount of Rs.2.11 crores is not paid by the Defendants to the Plaintiffs. There is no defence as far as the non-payment of this amount is concerned. Admittedly, the cheques issued by the Defendants towards payment of this sum of Rs.2.11 crores have bounced. The MOU records that there will be a collateral charge in respect of the property described in Exhibit-D to the plaint and that such charge shall be valid till final payment.
 - 5 In these premises, there is a prima facie case made out by the Plaintiffs for protection of their rights pending the hearing of the Notice of Motion. The question as to whether the Plaintiffs can simultaneously claim cancellation of the Deed of Retirement and also payment of the balance amount and whether or not there is any charge already created in respect of the suit property are matters which can be considered at the hearing of the Notice of Motion after the parties are given an opportunity to state their respective cases on affidavits and the matter is heard at length. In the meantime, there is a case for protection of the Plaintiffs' rights.
 - 6 Accordingly, there will be an ad-interim injunction in terms of prayer clause (b).
 - 7 Reply to the Notice of Motion to be filed within a period of three weeks from today. Rejoinder, if any, within a period of two weeks thereafter.
 - 8 Place this Notice of Motion for hearing on 17 November 2014”.

3 As can be seen from this order, there was ad-interim injunction granted in terms of prayer clause (b) of the Notice of Motion. In paragraph 5 it was clarified that, the question as to whether the Plaintiffs can simultaneously claim cancellation of the Deed of Retirement and also claim the balance amount and whether or not there was any charge already created in respect of the property mentioned at Exh “D” to the plaint, are the matters which would be considered at the hearing of the Notice of Motion after the

parties are given an opportunity to state their respective cases on affidavits.

4 Today, the learned counsel appearing on behalf of the Defendants has canvassed the same arguments that were canvassed before this Court when the ad-interim order was passed. It is not in dispute that the Defendants are today in control of the partnership firm M/s Shree Simba Chemists. It is also not in dispute that till date the amount of Rs.2.11 Crores, as mentioned in the MOU dated 28th May, 2013, has not been paid by the Defendants. However, the learned counsel appearing for the Defendants submit that this amount of Rs.2.11 Crores has been paid in cash by the Defendants and the averments to that effect can be found in paragraph 3(f) of the Written Statement dated 8th August, 2015.

5 I find this argument to be wholly ludicrous. Apart from making this bald statement, the Written Statement is absolutely vague as to when these payments were made and in what manner. I find, at least prima-facie, that this defence is taken merely as an afterthought. It is therefore, at least prima-facie, clear that the Defendants have been in breach of paying the balance amount of Rs.2.11 Crores.

6 As far as the charge on the property described in Exh “D” to the petition is concerned, in the affidavit in rejoinder, the Plaintiffs have categorically averred that at the time of execution of the said MOU, the original share certificate of the said flat (described in Exh “D” to the petition) was handed over to the Plaintiffs for the purpose of creating a charge. The said share certificate has been annexed at Exh “A” to the affidavit-in-rejoinder. In the affidavit in sur - rejoinder filed by the Defendants, in paragraph 6 thereof, it is stated that the Defendants did not hand over the original share certificate to the Plaintiffs and the said flat is not owned by the Defendants. It is further stated that the original share certificate was in possession of Defendant No.1 and in March 2013, he had carried the same to the office premises of M/s Shree Simba Chemists, so that after taking permission from his mother, who is the owner of the said flat, he can use the said share certificate in order to raise funds against the said flat for business purposes. It is thereafter stated that during the month of April and May 2013, the work of audit of accounts started and lots of documents were taken from the cupboard in the office of the partnership firm (Shree Simba Chemists) by various employees handling accounting work for finalization of accounts. During said period probably the said share certificate would have fallen in the

hands of the power of attorney holder of Plaintiff No.2 as he was also regularly visiting the office premises of the firm at the address mentioned above. It is the case of Defendant No.1 that he realized about the loss of original share certificate only recently after reading the affidavit-in-rejoinder of the Plaintiff dated 9th October, 2015. According to me, this story concocted by Defendant No.1 does not inspire any confidence whatsoever. Any prudent person in possession of any important document such as share certificate of the co-operative housing society would not be so lackadaisical in ensuring the said document is kept in safe custody. Further, even after the alleged discovery, Defendant No.1 has taken no further steps to recover the said share certificate. In fact, no counterclaim has also been filed seeking such relief. In these circumstances, at least prima-facie, this story cannot be believed at this stage.

7 Considering the ad-interim order passed by this Court on 9th October, 2014, I clearly find that a prima-facie case has been made out for granting ad-interim injunction in terms of prayer clause (b) of the Notice of Motion.

8 In these circumstances, the Notice of Motion is allowed in terms of prayer clause (b) which reads thus;

“that pending the hearing and final disposal of the above suit, this Hon'ble Court be pleased to grant a temporary order of injunction restraining the Defendants by themselves, their servants and agents from in any manner dealing with, disposing off parting with possession or creating any third party rights or creating any liability in relation to the property more particularly described in **Exhibit “D”**”

9 As far as prayer clause (a) is concerned, I am not inclined to grant the relief of appointment of a Court Receiver at this stage considering the fact that the property described in Exh “D” is occupied by the mother of Defendant No.1. There is no question of appointing a Receiver of the inventory, assets, receivables and the books of accounts of the firm M/s Shree Simba Chemists, considering that the Plaintiffs are seeking a money claim against the Defendants especially in terms of prayer clause (b) of the plaint. The Notice of Motion is accordingly disposed of. There shall be no order as to costs.

10 It has been brought to my notice that the issues in the above suit have been framed by this Court vide its order dated 22nd September, 2015 and the Plaintiffs were to file their affidavit of evidence, affidavit of documents and compilation on or before 20th October, 2015. The Defendants were to file their affidavit of documents and compilation of documents on or before 20th October, 2015. It has been stated before me that the Plaintiffs have complied

with all their obligations under the said order. It has been stated before me that the affidavit of documents has been filed by the Defendants but the compilation of documents remained to be filed. In these circumstances, as a last chance, the Defendants are allowed to file their compilation of documents on or before 17th June, 2019 and serve a copy of the same on the advocates for the Plaintiffs.

11 Place the suit for directions on 24th June, 2019.

(B.P.COLABAWALLA, J.)