

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

NOTICE OF MOTION NO.1647 OF 2013

IN

SUIT NO. 15 OF 2013

Mr. Rammurti L. Goyal and Ors. ...Applicants

In the matter between

1. Jayesh Narain Bajaj and Anr. ...Plaintiffs

Versus

1 Rammurti Lalchand Goyal and Ors. ...Defendants

.....

Mr. Ashok Saraogi for the Defendant Nos.1 and 2 and for the Applicants in NMS/1537/2013 and NMS/1647/2013.

Mr. Ashok Singh with Mr. Pravin Singh for the Defendant No.3 and for the Applicant in NMS/852/2017.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 1st APRIL, 2019.

P.C.:-

This is a notice of motion, where the Applicant/ Defendant Nos.1 and 2 are seeking interim mandatory relief against the Plaintiffs to deposit an amount of Rs.90,000/- per month w.e.f. March-2012 towards compensation payable to the Defendant Nos.1 and 2.

2. Heard Mr. Ashok Saraogi, the learned counsel for the Applicant/Defendant Nos.1 and 2 and Mr. Ashok Singh for the Respondent-Defendant No.3. Perused the records and considered the

submissions advanced by the learned counsel for the respective parties.

3. The dispute in Suit is in respect of office premises Nos.70 and 70A, 2nd floor, Juhu Supreme Shopping Centre Co-operative Society Limited, Gulmohar Cross Road No.9, JVPD Scheme, Juhu, Mumbai-400 049. The said office premises shall be hereinafter referred to as 'suit premises'.

4. The Plaintiffs are in possession of the suit premises under a leave and license agreement dated 07/03/2011. It is not in dispute that the Defendant Nos.1 and 2 had availed financial facilities of Rs.80,95,000/-from the Defendant No.3. The Defendant Nos.1 and 2 had created an equitable mortgage in favour of the defendant no.3 in respect of the suit premises. The Defendant Nos.1 and 2 defaulted in paying the monthly installments. By letter dated 31/01/2012, the defendant no.3 intimated to the Defendant No.2 that the outstanding loan was in the amount of Rs.86.02 lakhs.

5. The Defendant Nos.1 and 2 entered into an MoU dated 27/02/2012 whereby they agreed to sell and transfer the right, title and interest of the Defendant Nos.1 and 2 in respect of the suit

premises and shares more particularly described in Exhibit A to the plaint, for total consideration of Rs.1.43 crores. The Plaintiffs had paid to the Defendant Nos.1 and 2 sum of Rs.15,00,000/- as earnest money. An amount of Rs.5 lakhs, which was deposited as security deposit under the Leave and License Agreement was to be adjusted towards the sale consideration. From the balance sale consideration the Plaintiffs were required to pay Rs.86.02 lakhs to the Defendant No.3 towards outstanding loan against the mortgage and Rs.7.26 lakhs to the society towards arrears of the outstanding dues. The balance amount of Rs.29.72 lakhs was to be paid to the Defendant Nos.1 and 2 at the time of handing over of the possession of the suit premises.

6. The agreement indicates that the amount of Rs.1.28 crores was to be paid on or before 31/3/2012. It is not in dispute that the said period was extended by the Defendant No.2 till 18.9.2012. The records indicate that the Plaintiffs had called upon the Defendants to process the transaction. The failure on the part of the Defendant Nos.1 and 2 to complete the transaction resulted in filing the suit for specific performance of MoU dated 27/2/2012.

7. The relief sought by the Defendant Nos.1 and 2 in the

present notice of motion does not relate to the MoU, which is the subject matter of the suit. By this notice of motion the Defendant Nos.1 and 2 are seeking directions against the Plaintiffs to deposit the license fee of Rs.90,000/- per month w.e.f. March-2012. Mr. Saraogi, the learned counsel for the Defendant Nos.1 and 2 contends that the Plaintiffs, who are in possession of the suit premises as licensee are required to pay license fee under the agreement.

8. It is to be noted that the Suit is filed for specific performance of MoU dated 27/2/2012. The cause of action as stated in the plaint is that the Defendant Nos. 1 and 2 had failed to complete the transaction and/or perform their part of agreement. Whereas by the present notice of motion the Defendant Nos.1 and 2 are seeking recovery of license fee of Rs.90,000/- per month as payable under leave and license agreement dated 7/3/2011. The relief sought by the Defendants is not covered by clause (a) of Rule 1 of Order XXXIX of CPC. The Defendants have not filed any counter claim and the relief sought by the Defendants does not arise out of the Plaintiffs' cause of action and is not incidental to the Plaintiffs' cause of action. In short, the relief sought by the Defendant Nos.1 and 2 has absolutely no nexus with the cause of action as disclosed in the plaint. Such relief cannot

be granted either under Order XXXIX or under Section 151 of the CPC.

9. The learned counsel for the Plaintiffs has also brought to my notice that in terms of the agreement/MoU, the Plaintiffs were required to pay Rs.86.02 lakhs to the Defendant No.3. He has stated that till date the Plaintiffs have paid to the Defendant No.3 sum of Rs.83,26,160/- and that the Plaintiffs have been paying to the Defendant No.3 monthly installment of Rs.1,48,502/-. He submits that in view of the payment made to the Defendant No.3, the Plaintiffs are not liable to pay any license fee to the Defendant Nos.1 and 2. Considering the above facts and circumstances the question whether the Defendant Nos.1 and 2 are in fact entitled to recover the license fee, is a matter, which needs adjudication on merits in appropriate proceedings and such relief cannot be granted by way of an interim relief that too in a suit filed by the Plaintiffs.

10. Under the circumstances, and in view of discussion supra, the notice of motion is devoid of any merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)