

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No. 1580 of 2014.

IN

SUIT No.199 of 2014.

M/s Omkar Realtors & Developers Pvt. Ltd. ..Applicant.

In the matter between:-

M/s Omkar Realtors & Developers Pvt. Ltd. ..Plaintiff.

Vs

Ramesh Gunshi Dedhia & Anr ..Defendants.

Mr. Shakeeb Shaikh a/with Ms. Ketaki Mishra I/by Diamondwala & Co. for the Applicant/Plaintiff.

Mr. Nimay Dave, Mr. Prakash R. Shah a/with Mr. Hiren G. Shah I/by Prakash & Co. for Defendants.

CORAM : B. P. COLABAWALLA, J.

DATED :- 27th June, 2019.

P.C. :-

1. This Notice of Motion has been filed seeking an injunction against the defendants from disposing of, transferring and/or creating any third party rights or interests in respect of the suit property, more particularly described in Exhibit-A to the plaint. The

appointment of a Court Receiver is also sought with reference to the said property. The other prayer that is sought is that the defendants be directed to deposit in this Court an amount of Rs.5 Crores along with interest @ 18% per annum from the date of payment till the date of filing of the suit. This amount of Rs.5 Crores was the amount that was initially paid by the plaintiff to the father of defendant No.1.

2. The suit is filed for specific performance of an oral agreement, which, according to the plaintiff was arrived at on 1st August, 2008 with the father of defendant No.1, namely, Mr. Gunshi K. Dedhia.

3. It is not in dispute that this amount of Rs. 5 Crores which was paid by the plaintiff to the father of defendant No.1 was returned back in two instalments without any protest. The first instalment of Rs. 1.5 Crores was returned on 28th August, 2012 and the second instalment of Rs. 3.5 Crores was returned on 14th October, 2016. What is important to note is that this payment of the second instalment was accepted by the plaintiff without any protest after the filing of the present suit as well as the present Notice of Motion. This being the position, I find at least, prima facie, having taken the monies back without any protest, the plaintiff has itself

abandoned the so called oral agreement entered into by it with the father of defendant No.2. This being the case, there is no question of either passing any order of injunction or appointment of a Court Receiver.

4. As far as the prayer regarding depositing the sum of Rs. 5 Crores is concerned, as the same has already been returned to the plaintiff, this prayer will not survive. As far as the claim for interest on the amount of Rs.5 Crores is concerned, this is something that the Court shall decide at the trial of the suit and in any event cannot be the subject matter of the Notice of Motion.

5. In view of the foregoing discussion, I find no merit in the Notice of Motion. It is accordingly dismissed. No order as to costs.

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by Radhakrishnan
S. Ladda
Date:
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(B.P. COLABAWALLA, J.)