

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

**NOTICE OF MOTION NO. 2566 OF 2012
IN
SUIT NO. 2531 OF 2012**

Tashvi Properties Pvt. Ltd.Plaintiff
V/s.
Dr. Vijay G. Tapase and ors.Defendants

Mr. Chirag Mody a/w. Mr. Chinmaya Acharya I/b. Omkar
Kulkarni for the plaintiff.
Mr. R.N. Sukhija for defendant nos.1 and 2.
None for defendant no.3.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 19th MARCH, 2019.**

P.C.:

. At the outset, the learned counsel for the plaintiff seeks leave to amend prayer clause (b) so as to change the area of the suit flat from 1065.75 sq.ft to 621 sq.ft. Leave is granted. Amendment to be carried out forthwith.

2. The learned counsel for the plaintiff states that he is restricting his relief only to prayer clause (b) of the Notice of Motion, whereby the plaintiff has sought to restrain the defendant from disposing of or creating any third party right title and interest in respect of Flat No.2, admeasuring 621 sq. ft situated on ground floor, Building no.71,

Jahangir Mansion, Huges Road, Mumbai – 400 007.

3. The defendant no.3 is the owner of the suit flat and the defendant nos.1 and 2 are tenants of the flat no.2 admeasuring 621 sq.ft. The case of the plaintiff is that in the year 2008, the defendant nos.1 and 2 had agreed to transfer the tenancy rights in respect of the suit flat in their favour for total consideration of Rs.50,00,000/-. The defendant no.3 had consented for such transfer. The plaintiff claims that he had paid Rs.20,00,000/- towards part consideration and the balance amount was to be paid on the date of the execution of the agreement.. The plaintiff claims that the defendant refused to encash the cheques issued towards the balance amount and further failed to vacate the suit premises. The plaintiff, therefore, filed a suit for specific performance.

4. The defendants have denied that they had agreed to transfer the tenancy rights in favour of the suit. They claim that they had taken Rs.20,00,000/- from the defendant no.3 and that they had executed agreement as collateral security. The defendants claims that the said agreement was executed in the year 2008. However, the plaintiff has replaced the first page after paying the stamp duty on 15/01/2010.

The defendants claim that they had tried to refund the amount of Rs.20,00,000/- which was taken from defendant no.3 by issuing banker's cheque No.634923 drawn on State Bank of India. However, the defendant no.3 refused to accept the same.

5. In the course of the arguments, the learned counsel for the defendants states that the defendant nos.1 and 2 shall not alienate, transfer or create any third party rights in respect of the suit premises without prior permission of the Court. The statement is accepted.

6 With consent, the Notice of Motion is disposed of in the light of the said statement.

7. Parties to explore the possibility of amicable settlement. Parties to report on 25/03/2019.

(SMT. ANUJA PRABHUDESSAI, J.)