

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No.1540 of 2017

IN

SUIT No.138 of 2014

Prabhavati Kanjibhai Dawada ..Applicant/Plaintiff.

Vs

M/s Rachna Developers & Marketing & Ors ..Defendants.

WITH

NOTICE OF MOTION No.130 of 2016

IN

SUIT No.138 of 2014

Prabhavati Kanjibhai Dawada ..Applicant/Plaintiff.

Vs

M/s Rachna Developers & Marketing & Ors ..Defendants.

Ms. Prachi Khandake I/by M.P. Vashi & Associate for the
Applicant/Plaintiff.

Mr. Rohan Cama a/with Mr. Pavan Patil for Defendant Nos.
1 and 2.

Mr. Amar Singh I/by Anil D. Yadav for Defendant No.3.

Mr. R.B. Ghadi, Associate Officer (Court Receiver) present.

Mr. D.S.Shingade for MCGM for Defendant Nos. 5 and 6.

Mr. Vinay Mandal for Defendant No.2 present in Court.

CORAM : B. P. COLABAWALLA, J.

DATED :- 28th February, 2019.

P.C. :

1. Notice of Motion No. 1540 of 2017 has been filed seeking a prayer for appointing a Court Receiver in respect of Flat Nos. A-101, A-601 and A-701 situated at Jaya Niwas Building, S.V. Road, Malad (West), Mumbai 400 064 as well as for an order of injunction restraining the defendants from creating any third party rights and/or interest in relation to the aforesaid three Flats.

2. In Notice of Motion No. 130 of 2016 a relief is sought for an order directing defendant Nos. 1 to 3 to identify and allot a Flat admeasuring 440 square feet (carpet area) in the new building to the plaintiff or in the alternative to appoint a receiver.

3. As far as Notice of Motion No. 130 of 2016 is concerned, no ad-interim relief was granted and the motion was placed for hearing and final disposal. As far as Notice of Motion No. 1540 of 2017 is concerned, this Court had passed a detailed ad-interim order on 11th January, 2017 that until further orders of the Court, the 1st defendant shall not to register any of the agreements in respect of Flat Nos. A-101, A-601 and A-701 nor to execute or purport to register any confirmation deed or document in respect

of the aforesaid Flats. It was further clarified that no further transactions were to be carried out in respect of the aforesaid Flats by the 1st defendant or defendant Nos. 7,8 and 9 till further orders of the Court.

4. I must mention that this order also directed the Court Receiver to visit the premises and make a report. Accordingly, the Court Receiver visited the premises on 20th January, 2017 and made a report to this Court. This report was perused by the Court and this Court passed an order on 23rd January, 2017 inter alia regarding what is stated in the report and thereafter held that all the aforesaid three Flats were occupied and there was no vacant Flat that could be subjected to an order, as claimed by the plaintiff.

5. In fact, in Paragraph 3 of this order (dated 23rd January, 2017) a statement was recorded on behalf of the plaintiff that there cannot be any kind of eviction order in respect of these three Flats. This being the case, I do not think that any prayer for Receiver can be granted pending the hearing and final disposal of the suit. In these circumstances, the ad-interim order passed by this Court on 11th January, 2017 is confirmed. The 1st defendant, till further orders of the Court, if not already done, shall not

register any of the agreements in respect of Flat Nos. A-101, A-601 and A-701 nor to execute or purport to register any confirmation deed or document in respect thereof and no further transactions be carried out in respect of the aforesaid Flats by the 1st defendant or defendant Nos. 7, 8 and 9.

6. Both the notice of motions are disposed of in the aforesaid terms. No order as to costs.

(B.P. COLABAWALLA, J.)