

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL NOTICE OF MOTION NO.61 OF 2019
WITH
COMMERCIAL NOTICE OF MOTION NO.1583 OF 2018
WITH
COMMERCIAL NOTICE OF MOTION (L) NO.3261 OF 2018
WITH
COMMERCIAL NOTICE OF MOTION NO.282 OF 2019
WITH
COMMERCIAL NOTICE OF MOTION NO.289 OF 2019
IN
COMMERCIAL SUIT NO.978 OF 2018**

Prozone Developers and Realtors Pvt. Ltd.Plaintiff

Vs.

Shreepati Group and Ors.Defendants

Mr. Zal Andhyarujina a/w. Mr. Sandeep Laddha and Mr. Naser Ali Rizvi i/b. Dua Associates AOR for applicant/plaintiff.

Mr. Dinyar Madon, senior advocate i/b. Mr. Abhijet A. Joshi for defendant nos.1 to 8, 10, 11 and 13.

Mr. Rajendra R. Chaturvedi, defendant no.5 present.

Ms. Aditi Bhat i/b. Markand Ghandi and Company for defendant no.9.

Mr. Nigel Quraishy for defendant nos.14 to 18.

Mr. Tushar Dahibawkar i/b. Dahibawkar and Company for defendant no.19.

Mr. Ashish Kamat a/w. Ms. Kausar Banatwala i/b. Mr. Tushar A. Goradia for defendant no.20.

CORAM : K.R.SHRIRAM, J.

DATE : 11th JUNE 2019

P.C.:

COMMERCIAL NOTICE OF MOTION NO.61 OF 2019

1 Plaintiff has taken out this notice of motion for various reliefs including for a direction to initiate contempt proceedings against defendant nos.1 to 13 and 20 and for necessary action under Order 39 Rule 2A of the Code of Civil Procedure, 1908.

2 It is plaintiff's case that when this Court passed an ad-interim order on 17th July 2018 in notice of motion (lodging) no.1412 of 2018, defendant nos.1 to 8, 10, 11 and 13 (the said defendants) informed the Court that four flats out of the twelve flats have remained unsold and the said defendants shall maintain status quo as on that date and not create any third party rights in respect of the same. As regards the remaining eight flats, it was clarified that all steps taken by the said defendants shall be subject to further orders passed by this Court.

3 Applicant has approached this Court on the grounds that they have come to know that out of the four flats one flat had already been encumbered, viz., flat no.601. According to applicant, though the said defendants were aware that flat no.601 was already transferred, still made a statement as recorded in the order dated 17th July 2018 and therefore, the relief as prayed for in the notice of motion should be granted.

4 Mr. Madon, on instructions from defendant no.5 – Mr. Rajendra Chaturvedi, who is the main person in-charge of defendant nos.1, 2, 3 and 4, states that it was a genuine mistake on their part in stating that four flats were still unencumbered whereas only three flats were unencumbered. Naturally Mr. Andhyarujina has lot to say on this genuine mistake.

5 To put an end to this notice of motion, Mr. Madon, without prejudice to the rights and contentions of the said defendants and without

admitting that there was any breach or fraudulent statement made by the said defendants as alleged, undertakes to give a bank guarantee in the sum of Rs.2,50,00,000/- in favour of the Prothonotary and Senior Master, High Court, Bombay in the format prescribed by the Prothonotary and Senior Master, High Court, Bombay, in addition to the three unencumbered flats. I am inclined to accept this and Mr. Andhyarujina, on instructions, without prejudice to plaintiff's rights and contentions, also accepted. The said defendants shall give a bank guarantee in favour of the Prothonotary and Senior Master, High Court, Bombay in the usual format. The bank guarantee shall be of a nationalised bank and will be initially for a period of one year and to be renewed from year to year, subject to further orders in the notice of motion (lodging) no.1412 of 2018.

6 Mr. Andhyarujina states that though it would take care of prayer clauses – (a) and (b) of the notice of motion, there are other prayers in the notice of motion which has to be kept open. Mr. Madon is certainly opposing to it. So also Mr. Kamat.

7 In my view, since prayer clauses – (a) and (b) have been worked out, the question of keeping the notice of motion pending for other prayers does not arise. It will be open for applicant to take out such notice of motion or similar notice of motion as advised for any another breach by any of the defendants or other parties at the appropriate stage, including for the reliefs already prayed in this notice of motion so long as that notice of

motion is not for any alleged breach of order dated 17th July 2018 in notice of motion (lodging) no.1412 of 2018.

8 Defendant no.5, who is present in Court and is identified by Mr. Madon's instructing advocate, personally undertakes to see that the bank guarantee will be given by defendant no.4 within six weeks from today. Until the bank guarantee is given, defendant no.5 shall keep his passport deposited with the Prothonotary and Senior Master of this Court. The passport shall be deposited with the Prothonotary and Senior Master by tomorrow, i.e., 12th June 2019 and Prothonotary and Senior Master shall return the passport upon receiving the bank guarantee from defendant no.4.

9 Mr. Kamat wishes to file affidavit in reply for completion of records. Mr. Andhyarujina has no objection but states that it should not be taken that any allegations made in the reply are not controverted.

10 Notice of motion accordingly stands disposed.

11 Other notices of motion to be listed for hearing in due course.

12 Mr. Madon and Mr. Andhyarujina state that plaintiff and the said defendants will try to explore the possibilities of settlement and today itself the instructing advocates and the authorised signatories of the parties will meet.

(K.R. SHRIRAM, J.)