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

NOTICE OF MOTION NO.2537 OF 2019
IN
SUIT NO.1344 OF 2019

Robin Kumar

...Applicant /
Plaintiff

Versus

Anil Kumar & Ors

...Defendants

WITH
INTERIM APPLICATION (L) NO.3520 OF 2020
IN
SUIT (L) NO.331 OF 2020

Anil Kumar

...Applicant /
Plaintiff

Versus

Robin Kumar & Ors.

...Defendants

WITH
SUIT (L) NO.331 OF 2020

Anil Kumar

...Plaintiff

Versus

Robin Kumar & Ors.

...Defendants

WITH
SUIT (L) NO.331 OF 2020

Robin Kumar

...Plaintiff

Versus

Anil Kumar & Ors.

...Defendants

WITH
INTERIM APPLICATION (L) NO.3261 OF 2021
IN
SUIT (L) NO.331 OF 2020

Anil Kumar

...Applicant /
Plaintiff

Versus

Robin Kumar & Ors.

...Defendants

Mr. G.S. Hegde, with Ms. P.M. Bhansali for the Applicant /
Plaintiff in S.No.1344 of 2019 and Defendant No.1 in Suit (L)
No.331 of 2020.

Mr. Shyam Mehta, Senior Advocate with Phiroze Colabawalla,
Amit Jajoo and Nirav Parmar i/b. IndusLaw for Defendant
Nos.1 and 3 in S.No.1344 of 2019 and Plaintiff in Suit No.331 of
2020.

Ms. Aziza Khatri with Jay Gandhi i/b. AAK Legal for Defendant
No.2(a) to 2(d) in both Suits.

Sonal Sanap i/b. Apex Law Partners for Defendant No.2.

CORAM : R.I. CHAGLA J

DATE : 31ST MARCH, 2022

ORDER :

1. By an order dated 29th September, 2021, this Court
had considered the statement of the learned Advocate
appearing for the Plaintiff that there is an offer from
prospective purchasers of Flat No.91, Sherman along with its

assigned garage in the Bakhtawar CHSL, Narayan Dabholkar Road, Mumbai 400 006. The written offer was dated 18th September, 2021. This was taken on record and marked 'X' for identification. The purchaser agreed to pay consideration of Rs.16.75 Crores for the subject flat. The offer was subject to completion of certain formalities and compliance with certain conditions. This Court had considered that in Clause 6 of the written offer, it was mentioned that within 7 working days of acceptance of title the purchaser will pay sum of Rs.1 Crore. That payment was to be made by way of deposit with the Prothonotary and Senior Master of this Court. Pursuant to statement in clause 6 of the written offer, the purchasers have deposited the sum of Rs.1 Crores with the Prothonotary and Senior Master of this Court on 30th October, 2021. The purchasers had stated that they propose to complete the transaction no later than by 31st March, 2022. This was accepted by the Court.

2. It is made clear by this Court that neither this order, nor the taking of any of these steps or measures, nor the payment of Rs.1 Crores in Court will create such rights in favour of the purchasers over the flat itself so as to prevent the

Court or parties to this litigation from seeking further orders for the entire sale of the flat, should the present transaction not succeed. After all, the purchaser was fully secured because the deposit was being made in Court. The Prothonotary and Senior Master was directed to invest the amount deposited for a period of six months until further orders of the Court. Thereafter, the matter has come up today.

3. Mr. Shyam Mehta, learned Senior Counsel appearing for Defendant Nos.1 and 3 states that the purchasers are willing to make payment of the balance consideration in respect of the subject flat. He has submitted that in view of the prayer sought for in the Plaint filed in the above Suit which is for specific performance of the family arrangement annexed at Exhibit A to the Plaint, admittedly 50% of the sale consideration is to be paid to Defendant No.1. This apart from payments to be made by the Plaintiff to the Defendant No.1 which aggregates to a sum of Rs.3,98,27,583/- as on 20th April, 2017. He has submitted that these payments are to be made by through RTGS out of the 50% of the sale proceeds to be received by the Plaintiff as per Clause 12 and 13 of the Family Settlement. He has submitted that in view of the prayer sought

for in the above Suit for specific performance of the family settlement, these amounts be paid over to Defendant No.1 in accordance with family settlement.

4. Mr. Hegde, learned Advocate appearing for the Plaintiff has stated that under the Family Settlement 50% of the sale proceeds of the subject flat was to come to the Plaintiff and that under Clause 7 read with Clause 12 there would be 9 flats which would to be immediately transferred by the Defendant No.1 to the Plaintiff to settle the account. He has further submitted that the Plaintiff has created a private trust deed as contemplated under Clause 20 of the Family arrangement and that the trust deed has been executed to that effect. This has been disputed by Mr. Shyam Mehta for Defendant No.1.

5. Mr. Hegde has submitted that he has no objection if the sale proceeds in respect of the subject flats are paid in the manner contemplated by the family settlement as aforementioned. However, the 9 flats be simultaneously by Defendant No.1 to the Plaintiff to settle the account.

6. The learned Advocate for the Defendant No.2 has stated that under Clause 14 of the Family Settlement, out of the sale proceeds, the Plaintiff has agreed to gift original Defendant No.2 a sum of Rs.50,00,000/- out of natural love and affection supported by a gift deed duly executed in her favour. Further, original Defendant No.2 is entitled to have simultaneously transferred by Defendant No.1, 6 flats on settlement of accounts.

7. Considering that there are certain disputes with regard to the establishment of the Deed of Trust and that it is not in compliance with Clause 20 of the Family Settlement as well as flats are required to be transferred simultaneously on settlement of accounts by Defendant No.1 to the Plaintiff and Defendant No.2 respectively, it would be appropriate that the balance sale proceeds, after deducting the sum of Rs.1 Crores which has already been deposited with the Prothonotary and Senior Master, be deposited subject to the deduction of TDS with Prothonotary and Senior Master.

8. The purchasers Mr. Anuya Shah and Mrs. Amrita Shah shall deposit with the Prothonotary and Senior Master

the balance sale proceeds after deduction of TDS on or before 4th April, 2022.

9. It is made clear that the Plaintiff and Defendant Nos.1 and 2 shall cooperate with the purchasers in the registration of the sale deed with regard to the subject flat. It is only upon completion of registration of the sale deed, that the Plaintiff as well as Defendant Nos.1 to 3 are at liberty to take out application for withdrawal of their respective share of sale proceeds deposited by the purchasers with the Prothonotary and Senior Master of this Court.

10. At this stage Mr. Shyam Mehta makes a statement that in addition to the sum of Rs.3,98,27,583/- as per clauses 12 and 13 of the family settlement, there is interest payable thereon till date of receipt of the said sum. This has been disputed by Mr. Hegde for the Plaintiff.

11. The time for completion of the sale transaction of the subject flat is extended till 13th April, 2022 which as per order dated 29th September, 2021 was to be no later than 31st

March, 2022.

12. List the above Notice of Motion on 21st April, 2022 for compliance, high on board.

13. At this stage it is mentioned by the learned Advocate for the Defendant No.2 that the original Defendant No.2 has expired and the Plaintiff has not brought the legal heirs of the Original Defendant No.2 on record. Accordingly, the Applicant is directed to take appropriate steps for bringing the legal heirs of Defendant No.2 on record.

[R.I. CHAGLA J.]