

Sharayu Khot.

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

NOTICE OF MOTION NO. 1920 OF 2019

IN

NOTICE OF MOTION NO. 1302 OF 2019

IN

SUIT NO. 762 OF 2019

Nikita Vinod Marlecha & Anr.

...Applicants/
Plaintiffs

Versus

M/s. D.G. Realty & Ors.

...Defendants

Mr. Amogh Singh a/w Mr. Nikhil More a/w Mr. Moksha Doshi i/
by Bhavin Bhatia for the Applicants/Plaintiffs.

Mr. Vikhil Dhoka iby Mr. Siddhant Sharma for the Defendant
Nos. 1 to 2.

Mr. Sagar Patil for the Defendant No. 6.

CORAM : R.I. CHAGLA J

DATE : 29 November 2021

ORDER :

1. Heard learned Counsel for the parties.
2. By this Notice of Motion, the Applicants are seeking withdrawal of the amount of Rs. 15,00,000/- deposited by the

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Defendants with the Prothonotary & Senior Master as per order dated 30th April 2019 passed by this Court.

3. It is the case of the Applicants that the Defendants have not paid the rent for the temporary alternate accommodation from the year 2014 onwards. The Defendants have also failed to handover to the Plaintiffs due possession of the Flat No. 4 as agreed. The Plaintiffs were currently paying rent for their accommodation out of their own pockets. The Plaintiffs were in use, occupation and possession of Room No. 8, situated on the Ground Floor of the Joshi Bhavan (*"said old room"*) as per the agreement for permanent alternate accommodation entered into between the Plaintiffs and the Defendants and it was under that agreement that the Plaintiffs vacated their premises. However, the Defendants have failed to perform the said agreement including the payment of rent and transferring legitimate possession of the new premises viz. Flat No.4.

4. Learned Counsel for the Applicants has referred to the statement annexed to the Affidavit in Reply filed by the Defendants dated 21st November 2019. The statement at Exh.B

clearly reveals that the rent is payable to the Plaintiffs at Rs. 65/- per sq.ft. x 259 sq.ft. (per month) and to be increased 10% every 11 months. As per the statement which is till the end of 31st July 2020, there is an amount of Rs. 12,22,714/- payable to the Plaintiffs, after taking into consideration the rent already paid being an amount of Rs. 5,31,167/-. Further, till December 2021, there is an amount of Rs. 18,00,000/- which is due and payable by the Defendants to the Plaintiffs.

5. It is the case of the Defendants that they are entitled to recover a sum of Rs. 11,85,000/- towards extra area admeasuring 59 sq.ft. which is due and payable by the Plaintiffs to the Defendants (59 sq.ft. x Rs. 20,000/- per sq.ft. as per the Plaintiffs valuation).

6. Learned Counsel for the Defendants has stated that the Defendant No. 1 has handed over the possession of the suit flat for fit out to the Plaintiffs which comprises of an area of 383 sq.ft. This has been handed over to the Defendant No. 1 without obtaining the occupation certificate. Learned Counsel for the Defendants states that insofar as the sum of Rs. 11,85,000/- towards extra area admeasuring 59 sq.ft. is concerned, the

Defendants require to be granted some protection in the event of this Court allowing the Applicants to withdraw the amount deposited.

7. Having considered the submissions, it is clear from the statement of the Defendants which is annexed at Exh.B to the Affidavit in Reply dated 21st November 2019 that upto 31st July 2020 the rent payable to the Plaintiff is a sum of Rs. 12,22,714/- after taking into account the rent already paid. This is as per the computation of the Defendants in their statement i.e. Rs. 65/- per sq.ft. x 259 sq.ft. (per month). The area of 259 Sq.ft. is disputed by the Plaintiffs as a larger area of 306 square feet is mentioned as the area of the old premises in the second schedule of the agreement for providing permanent alternate accommodation dated 11th December, 2013. Considering this computation, the total amount of rent payable comes to approximately Rs.18,00,000/- as on December 2021. The sum of Rs.15,00,000/- had been deposited pursuant to the order dated 30th April 2019 and pertaining to the rent which has been pending since over four years and which is currently lying deposited with the Prothonotary & Senior Master.

8. It is noted that according to the Defendants, the total area to be allotted as per re-development terms is 323.75 Sq.ft. The total area allotted as per the Registered Agreement is 383 sq.ft. The Defendants are claiming a sum of Rs.11,85,000/- towards the extra area admeasuring 59 sq.ft. as due and payable by the Plaintiffs (59 Sq.ft. x Rs.20,000/- per Sq.ft. as per Plaintiff's valuation).

9. In view thereof, the Plaintiffs are permitted to withdraw the amount of Rs. 15,00,000/- (Rs. Fifteen lakhs only) deposited by the Defendants with the Prothonotary & Senior Master as per the order dated 30th April 2019 of this Court subject to the Plaintiffs giving a written undertaking that they shall pay a sum of Rs. 11,85,000/- towards the extra area admeasuring 59 sq.ft. with interest as due and payable by the Plaintiffs to the Defendants as per the Plaintiffs valuation (59 Sq.ft. x Rs. 20,000/- per sq.ft.) on disposal of this Suit. This undertaking shall be filed by the plaintiffs within a period of one week from the date of this order.

10. The Prothonotary & Senior Master is directed to pay to the Plaintiffs the said amount of Rs. 15,00,000/-

deposited by the Defendants as per order dated 30th April 2019 of this Court within a period of three weeks from the date of this order and upon the undertaking being filed by the Plaintiffs as directed.

11. Notice of Motion is disposed of in the above terms.

12. Learned Counsel for the Defendants has applied for stay of this order.

13. The order permitting withdrawal by the Plaintiffs of the sum of Rs.15,00,000/- deposited by the Defendant as per order dated 30th April, 2019 of this Court is for the rent admittedly payable to the Plaintiffs based on the computation of the Defendants themselves in Exhibit B of this Affidavit in Reply. This is further subject to the undertaking given by the Plaintiffs which have been recorded above. Hence, there is no question of granting any stay to this order.

[R.I. CHAGLA J.]