

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

**SUIT NO.2700 OF 2011
WITH
NOTICE OF MOTION NO.1952 OF 2019**

Rajesh Saichand. Sharma	...	Plaintiff
Versus		
Sudarshan Gangaram Rajula	...	Defendant

.....

Mr. Chandrakant N. Chavan for the Applicant/Plaintiff.

Ms. Sukeshi Bhandari a/w Mr. Akshay Chauhan for the Defendant.

.....

CORAM : S.C. GUPTE, J.

DATE : 7 MAY 2021

P.C. :

. The present suit seeks specific performance of an agreement for sale dated 30 November 2009 for sale of an ownership flat of about 1000 sq.ft. carpet area described in prayer clause (a) of the plaint. In the alternative, it seeks damages in lieu of specific performance. It has been the Defendant's case that the amount paid by the Plaintiff to the Defendant was simply by way of a loan transaction, when the Defendant was raising funds for a particular project. When earlier Notice of Motion was argued before this court, learned Counsel for the Defendant offered to deposit Rs.61 lacs in the court, so as to

include the principal amount of loan of Rs.26 lacs and interest calculated thereon at the rate of 18 per cent per annum from the date of payment. In view of the Defendant's offer to deposit this amount in court, the Plaintiff did not press the earlier motion (Notice of Motion No3464 of 2011). The Notice of Motion was disposed of by an order dated 23 July 2014. The Defendant has since deposited the entire amount of Rs.61 lacs and the same lies invested in fixed deposit/s of Nationalized Bank/s.

2 The present Notice of Motion (Notice of Motion No.1952 of 2019) has been taken out by the original Plaintiff for withdrawal of this money.

3 Learned Counsel for the Plaintiff is agreeable to have the suit decreed for the amount deposited by the Defendant in court, together with accrued interest thereon till date. Learned Counsel for the Defendant has no objection to the suit being decreed in terms of the statement made by her client in his affidavit-in-reply to the Notice of Motion read with the order dated 23 July 2014.

4 Accordingly, the suit is decreed in the sum of Rs.61 lacs deposited by the Defendant in this court together with accrued interest thereon towards repayment of the loan advanced by the Plaintiff to the Defendant. There will be no order as to costs. Refund of court fees in accordance with applicable Rules.

5 Drawing up a decree is dispensed with. Prothonotary and Senior Master to allow the Plaintiff to withdraw the amount deposited in court, which is presently lying in fixed deposit/s of Nationalized Bank/s, together with accrued interest thereon till the date of withdrawal of such deposit.

6 This order has been passed in the presence of the Plaintiff, who has joined the VC link.

7 In view of the disposal of the Suit, Notice of Motion No.1952 of 2019 does not survive and is disposed of.

(S.C. GUPTE, J.)