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

INTERIM APPLICATION NO.2214 OF 2021
IN
SUIT NO.24 OF 2018

Veena Shamsunder Jaisingh ...Applicant/Defendant No.2

In the matter of :-

Sakshi Anand Jaisingh & Ors. ...Plaintiffs
V/S
Anand Shamsunder Jaisingh & Ors. …Defendants

Adv. Virali Sanklecha i/by M/s. Markand Gandhi & Co. for Plaintiffs.
Adv. Ruju Thakkar, Ms. Vrinda Daga, Ms. Ujwala Shetty i/by M/s. V. R. Law for Applicant/Defendant No.2.
Mr. Sammudhi Warany a/w Vikas Kumbhar i/by Ms. Geetika Rajpal for Defendant No.3.

CORAM : R. I. CHAGLA, J.
DATED : 17th NOVEMBER, 2021.

P.C.

Heard learned counsel for the Parties.

2. By this Interim Application, the Applicant is seeking permission to withdraw the total interest accrued on the balance consideration of Rs.40,34,000/- which was lying with the Prothonotary and Senior Master of this Court and which had been

invested in fixed deposit with the Union Bank of India, V. N. Road Branch, Mumbai.

3. The learned counsel appearing for the Applicant has submitted that as per the Consent Terms dated 21st October 2020 and in particular clause 28 thereof, it was agreed between the Plaintiffs and Defendant Nos.1 and 2 that after payment of stamp duty and registration charges, the balance sum pertaining to the sale of the flat in Konark Park CHSL, pursuant to execution of sale deed dated 26th June 2018 would be deposited with the Prothonotary and Senior Master of this Court. It was agreed between the Plaintiffs & Defendant Nos.1 and 2 that the said monies belongs to Defendant No.2. Under clause 12 of the said Consent Terms, an amount of Rs.10,00,000/- out of the sale consideration of the Pune property is to be paid to Defendant No.3. This amount has in fact been paid to Defendant No.3.

4. An Application had been made by Defendant No.2 to this Court to permit Defendant No.2 to withdraw the sum of Rs.41,00,000/- and based on the Application made on 22nd December

2020, the Applicant received a sum of Rs.40,34,000/- which was paid by the Prothonotary and Senior Master of this Court. However, due to inadvertence as stated by the Applicant, the parties had not recorded that interest which accrued on the balance sale consideration of Rs.40,34,000/- in the said Consent Terms and/or applied for withdrawal of the said interest which had accrued on the balance sale consideration which was invested by the Prothonotary and Senior Master of this Court with the Union Bank of India.

5. By an order dated 22nd February 2021, this Court had directed the Prothonotary and Senior Master of this Court to file a report of the interest accrued on the principle amount. The report has been filed by the Prothonotary and Senior Master of this Court on 17th November 2021. It is stated in the report that the interest accruing on the balance sale consideration of the subject property comes to an amount of Rs.5,95,460/- which has been re-invested in fixed deposit receipt for a period of one month in the Union Bank of India, V. N. Road Branch, Mumbai.

6. The Plaintiffs as well as Defendant Nos.1 and 2 are agreeable for Defendant No.2 to withdraw the interest amount which is currently lying in the fixed deposit receipt for a period of one month in the Union Bank of India, V. N. Road, Branch, and which is due on 18th November 2021 upon its maturity. The consent of the Plaintiffs and Defendant Nos.1 and 2 is recorded.

7. The Defendant No.3 has objected to the withdrawal of the interest of the balance sale consideration of the subject property on the ground that, interest has not been paid to Defendant No.3 under the Consent Terms. It is clear from clause 12 of the Consent Terms that, an amount of Rs.10,00,000/- out of the sale consideration of the Pune property was to be paid to Defendant No.3 and which payment has been duly made. Further, under clause 28 of the Consent Terms, the agreement was recorded between the Plaintiffs and Defendant Nos.1 and 2 that the balance sale consideration deposited with the Prothonotary and Senior Master of this Court would belong to Defendant No.2. Accordingly, an Application has been made for withdrawal of the balance sale consideration which had been

withdrawn pursuant to orders of this Court. The present Application is for the withdrawal interest which had accrued on the balance sale consideration invested by the Prothonotary and Senior Master of this Court with Union Bank of India.

8. The Defendant No.3 has no right to oppose the Application for withdrawal of the interest accrued on the balance sale considering that in the Defendant No.3 had agreed to receive a sum of Rs.10,00,000/- in respect of the Pune property and has in fact received the said sum.

9. The Interim Application is allowed by consent of the Plaintiffs and Defendant Nos.1 and 2. The Plaintiffs are entitled to withdraw the total interest accrued on the balance sale consideration of Rs.40,34,000/- upon the maturity of the fixed deposit with Union Bank of India, V. N. Road, Branch, Mumbai which is due to mature on 18th November, 2021. The Prothonotary and Senior Master of this Court is directed to permit the Plaintiffs to withdraw the interest accruing on the balance sale consideration of Rs.40,34,000/- upon maturity of the fixed deposit on 18th November, 2021 within a period

of two weeks from the date of maturity.

10. The learned counsel for Defendant No.3 has sought a stay of this order. Considering that Defendant No.3 has received the sum of Rs.10,000/- out of the sale consideration of the Pune property as agreed in the Consent Terms and that the Defendant No.3 is not concerned with clause 28 of the Consent Terms which is an agreement between the Plaintiffs and Defendant Nos.1 and 2 that the balance sale consideration deposited with the Prothonotary and Senior Master of this Court shall belong to Defendant No.3, the Application for stay is rejected.

(R. I. CHAGLA, J.)