

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

NOTICE OF MOTION NO. 2448 OF 2018
IN
COMMERCIAL SUTT NO. 1461 OF 2018

WITH
NOTICE OF MOTION NO. 2446 OF 2018
IN
COMMERCIAL SUTT NO. 1461 OF 2018

IDBI Trusteeship Services Limited ... Applicant/Plaintiff

Versus

Kamla Landmarc Property Leasing
& Finance Private Limited & Ors. ... Defendants

Mr. Rohan Kadam a/w Mr. Sunil Tilokchandani, Ms. Nipa Ghosh i/b
Manilal Kher Ambalal & Co. for the Applicant/Orig. Plaintiff.

Mr. Vedanshi Shah i/b Mr. Bipin Joshi for Defendant Nos.1 to 5.

Mr. Mayur Khandeparkar a/w Mr. Ativ Patel, Ms. Viloma Shah, Mr. Darshit
Dave and Mr. Harshad R. Vyas i/b AVP Partners for Defendant Nos.6 and
7.

Mr. Prem S. Gidwani, Gauri Deshpande for Defendant No.8.

Mr. E.B. Sivakumar, 1st Asstt. to C.R. present.

CORAM : R.I. CHAGLA, J.

DATED : 11th AUGUST, 2022.

ORDER :

1 Heard the learned Counsel for the parties. By the order
dated 01.08.2022 this Court had recorded that Defendant Nos.1 to 5 have

filed affidavit dated 28.06.2022 which was taken on record. The Deponent being authorized representative of Defendant No.1 had expressed irrevocable unconditional consent on their behalf that the sum deposited in this Court by Defendant Nos.6 and 7 be allowed to be withdrawn by the Plaintiff under orders of this Court. The Deponent of the said affidavit is also Director of Defendant No.1 Company and has accordingly, given his no objection to such withdrawal of such amount or any part thereof to the benefit and credit of the Applicant. The Applicant has valid, continuing and subsisting charge on the receivables of project No.1.

2 As per order dated 01.08.2018 this Court had directed Defendant Nos.6 and 7 within a period of seven days from the date of receipt of the amounts towards sale consideration to deposit the amount payable to the Plaintiff with the Prothonotary and Senior Master of this Court. There is a Notice of Motion No.1646 of 2018 taken out by Defendant Nos.6 and 7 seeking modification of the said order dated 01.08.2018 to the effect that there is no amount payable to the Plaintiff from Defendant Nos.6 and 7 as recorded in the said order but the receipt of amounts towards sale consideration are payable to Defendant No.1 after deductions made by the Plaintiff in respect of their contractual terms between Defendant No.1 and Defendant Nos.6 and 7.

3 The learned Counsel appearing for Defendant Nos.6 and 7 has taken instructions after receiving affidavit of Defendant No.1 dated 27.06.2022 and accordingly he has stated that Defendant Nos.6 and 7 have no objection to the Applicant/Plaintiff withdrawing the amounts deposited with the Prothonotary and Senior Master of this Court.

4 The learned Counsel appearing for the Applicant/Plaintiff states that Defendant Nos.6 and 7 should file an affidavit disclosing the amounts contractually withheld out of the amounts received from the sale consideration which were to be deposited with the Prothonotary and Senior Master of this Court as per order dated 01.08.2018.

5 In view of there being no objection to the Applicant/Plaintiff withdrawing the amount deposited with the Prothonotary and Senior Master of this Court as per order dated 01.08.2018, the Notice of Motion No.2448 of 2018 is required to be made absolute in terms of prayer clause (a) which reads thus :

“(a) The Applicant/Plaintiff be allowed to withdraw a sum of Rs.10,92,483/- (Rupees Ten Laac Ninety Two Thousand Four Hundred and Eighty Three Only) deposited till date by the Defendant Nos.6 & 7 and all the amounts which may accrue in future as and when the same are

deposited by Defendant No. 6 and 7 with the Prothonotary and Senior Master in the suit account as per order dated 1st August, 2018 passed in Notice of Motion (L) No. 1646 of 2018 or on such other terms as the Hon'ble Court may deem fit in the circumstances of the case."

6 The Prothonotary and Senior Master shall release the amounts deposited by Defendant Nos.6 and 7 in the suit account as per order dated 01.08.2018 passed in Notice of Motion (L) No.1646 of 2018 within a period of three weeks from the date of this order.

7 Defendant Nos.6 and 7 shall file an affidavit disclosing the amounts contractually withheld from receipt of sale consideration which was to be deposited with the Prothonotary and Senior Master pursuant to order dated 01.08.2018. The said affidavit shall be filed within a period of three weeks from the date of this order.

8 In view of this order, Defendant Nos.6 and 7 shall be deleted as the Defendants in the captioned Commercial Suit.

9 In view thereof the Applicant/Plaintiff shall delete Defendant Nos.6 and 7 as party Defendants in the captioned Commercial Suit by

amending the cause title of the captioned Commercial Suit within a period of three weeks from the date of this order.

10 The Notice of Motion No.2446 of 2018 no longer survives in view of this order and is accordingly disposed of.

11 Notice of Motion No.2448 of 2018 which has been disposed of shall be placed for compliance on 13.09.2022 on the Supplementary Board.

12 It is made clear that this order is without prejudice to the rights and contentions of all parties including Defendant Nos.6 and 7 in any proceedings which they may be advised to take out.

13 Parties shall act upon an authenticated copy of this order.

Digitally
signed by
WAISHALI
SUSHIL
WAGHMARE
Date:
2022.08.12
18:19:05
+0530

(R.I. CHAGLA, J.)