

K.S. Jadhav

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

**INTERIM APPLICATION NO.420 OF 2023
IN
SUIT NO.85 OF 2022**

Dimple Realtors Pvt. Ltd.

...Applicant/Intervener

In the matter between

Rakesh Shantilal Jain & Anr.,

...Plaintiffs

Versus

Kamesh Rupa Gami

...Defendant

Ms. Priyanka Kothari i/b Ms. Vinali Bhaidkar, Advocate for Applicant/
Intervener in IA 420/2023.

Mr. Rashmin Khandekar i/b Mr. Amit Tungare and Mr. Deep Dighe,
Advocates for Respondent Nos.1 & 2 in IA 420/2023 and for Plaintiffs
in Suit No.85/2022.

Mr. Rashid Khan i/b Sheetal Bhusane, Advocate for Respondent No.3
in IA 420/2023 and for Defendant in Suit No.85/2022.

CORAM : R.I. CHAGLA J.

DATE : 15TH FEBRUARY, 2023.

ORDER :

1. By this Interim Application, the Applicant/Intervener-M/s
Dimple Realtors Private Limited has sought permission to deposit a
sum of Rs.2.39 Crores in this Court in terms of the order dated 30th
August, 2022 on behalf of Respondent No.3. Further relief is sought

giving the Applicant credit for the same as part payment under two Sales Agreements, both dated 22nd June, 2022 and two Supplementary Agreements for Sale both dated 4st August, 2022. A direction is also sought against Respondent Nos. 1 and 2 to withdraw the Notice of *Lis Pendence* registered for the said property and the said property be released from the dispute between the Respondents.

2. Ms. Kothari, learned Counsel for the Applicant has sought modification of the said order dated 30th August, 2022 wherein the statement made by the learned Counsel for the Defendant that the Defendant will deposit the sum of Rs.2.39 Crores in this Court within a period of six weeks from the date of the said order was recorded. Further, the statement was made by the learned Counsel for the Defendant that till the deposit of the aforementioned sum of Rs.2.39 Crores in this Court, the Defendant will not act upon the Sales Agreement dated 22nd June, 2022 and Supplementary Deed dated 4th August, 2022 and Indemnity-cum-Declaration Deed dated 4th August, 2022 with the Applicant/Intervener-M/s Dimple Realtors Private Limited and which statement has been accepted.

3. Ms. Kothari has then referred to order dated 10th October, 2022 by which this Court had noted that the present Interim Application

has been filed. It was mentioned on behalf of M/s Dimple Realtors Private Limited that a statement will be made on the next date that M/s Dimple Realtors Private Limited will deposit the sum of Rs.2.39 Crores on behalf of the Defendant in this Court. Accordingly, the period of six weeks for the Defendant to deposit the sum of Rs.2.39 Crores as per the undertaking given to this Court which expired on 11th October, 2022, was extended till 12th October, 2022.

4. Ms. Kothari has submitted that the Sales Agreement dated 22nd June, 2022 and Supplementary Agreements for Sale dated 4th August, 2022 and Indemnity-cum-Declaration Deed dated 4th August, 2022 which had been executed with the Respondent No.3 cannot be proceeded with in view of the aforementioned statement/undertaking given by the learned Counsel for the Defendant. The Applicant has agreed to pay a certain sum to the Defendant under the said Agreements and in view of which the Applicant is willing to deposit the amount of Rs.2.39 Crores in this Court on behalf of the Defendant. Accordingly, modification of the said order dated 30th August, 2022 has been sought.

5. Mr. Khandekar, the learned Counsel appearing for the Plaintiff/ Respondent Nos. 1 and 2 has vehemently opposed the Interim

Application. He has submitted that this Court had by virtue of the statement / undertaking given by the learned Counsel for the Defendant permitted the Defendant to deposit sum of Rs.2.39 Crores in this Court. The said sum of Rs.2.39 Crores is only a part of the claim of the Applicant which is for the sum of Rs.5.5 Crores for which the post dated cheques had been given by the Defendant to the Plaintiffs. The further statement on behalf of the Defendant that till the sum of Rs.2.39 Crores is deposited in this Court, the Defendant will not act upon the Sales Agreement dated 22nd June, 2022 and Supplemental Deed dated 4th August, 2022 and Indemnity-cum-Declaration Deed dated 4th August, 2022 with M/s Dimple Realtors Private Limited, was accepted by this Court in the said order. He has submitted that there is a clear acknowledgment of liability on the part of the Defendant by handing over the post-dated cheques for a sum of Rs.5.5 Crores pursuant to the writing of the Defendant dated 25th June, 2019 which is in Gujarathi language and translation provided in Exhibit-D1 to the Plaint. By the said writing, the Defendant had acknowledged that he had sold the plot at Kandivali which had some blunder occurring in the title and therefore, he was taking back the said plot against the payment of Rs.5.50 Crores. It is further mentioned in the writing (as translated) that “I am bound to

make the said payment by 15/07/2019. If small amount would be less in Rs.5.50 crores, Ostwal Builders would be bound to extend the time for such balance amount.”

6. Mr. Khandekar has relied upon the decision of the **Full Bench of Gujrat High Court in Hindustan Apparel Industries Vs. Fair Deal Corporation, New Delhi, 2000 SCC OnLine Guj 137,**¹ wherein the Gujrat High Court has held that issuance of a Cheque would prima facie amount to an admission of debt unless a contrary intention has been expressed by the person issuing the cheque. He has submitted that the decision in **Chintaman Dhundiraj Vs. Sadguru Narayan Maharaj Datta Sansthan and Ors., AIR 1956 Bom 553,**² was referred to in the above decision of the Full Bench and the view taken therein only was with regard to issue of limitation and as to when the period of limitation commences in the event the Cheque has been dishonoured was departed from. The Full Bench of the Gujarat High Court had held that the subsequent dishonour of the Cheque would not result in admission / acknowledgment of liability to cease. He has submitted that the decision of this Court in **Nova Flexipack (P) Ltd. Vs. Ketan Gor, First Appeal No.18 of 2016, Order dated 20th**

1 2000 SCC OnLine Guj 137

2 AIR 1956 Bom 553

December, 2018.³ has followed the view taken in **Chintaman's case (supra)** which has been held to be a binding precedent of this Court. This would be in the context of limitation. However, there is no departure from the view taken by the Gujrat High Court with regard to issuance of cheque prima facie amounting to an admission of debt. He has submitted that by issuance of Cheque of Rs.5.5 Crores, there is an admission of debt on the part of the Defendant and hence, in the event the Applicant/Intervener-M/s Dimple Realtors Private Limited requires any modification of the order dated 30th August, 2022 then the entire amount of Rs.5.5 Crores be deposited by the Applicant in Court rather than the deposit of the sum of Rs.2.39 Crores on behalf of the Defendant.

7. Mr. Khan, the learned Counsel appearing for the Defendant has submitted that the cause of action in the plaint is with regard to the writing of the Defendant in Gujrathi language which the Defendant has disputed having signed. He has submitted that the sum of Rs.5.5 Crores was given by way of post dated cheques in view of certain premises being allotted to the Defendant by the Plaintiffs and in order to show bonafides, the cheques have been issued. He has

³ First Appeal 18 of 2016, Order dated 20th December, 2018

submitted that though the purported writing in Gujrathi was on 25th June, 2019, the post dated cheques one of which was dated 20th June, 2021 and claimed by the Plaintiffs to have been handed over on 1st June, 2021 pursuant to Agreement entered into between the Defendant with Plaintiffs. He has submitted that in any event, a Suit has been filed by the Plaintiffs in the City Civil Court, at Dindoshi on 21st February, 2020, wherein the Plaintiffs have sought a declaration that they are in lawful possession of the suit property which is the very same property that the Plaintiffs in the present Suit have claimed that there was defect in title and admitted by the Defendant in writing in Gujrathi dated 25th June, 2019 given to the Plaintiffs. The Plaintiffs in the Suit filed in the City Civil Court have on the contrary stated that after taking all reasonable care and caution acquired the subject property from the Defendant by a duly registered Deed of Conveyance dated 31st March, 2018. He has submitted that in view of the sum of Rs.5.5 Crores being disputed, the deposit of such sum is not warranted and the sum of Rs.2.39 Crores in respect of which the statement had been made by the learned Counsel for the Defendant be deposited in this Court.

8. Having considered the submissions, it is clear from the order

dated 30th August, 2022 that the statement of the learned Counsel for the Defendant was with regard to the deposit of the sum of Rs.2.39 Crores which had been admittedly paid by the Applicants/Plaintiffs to the Defendant and which the Defendant was called upon to return in view of the Deed of Conveyance dated 31st March, 2018 being cancelled.

9. The statement on behalf of the Defendant not to act upon the Sales Agreement dated 22nd June, 2022 and Supplementary Deed dated 4th August, 2022 and Indemnity-cum-Declaration dated 4th August, 2022 with M/s Dimple Realtors Private Limited till the deposit of the aforementioned sum of Rs.2.39 Crores in this Court has resulted in these Agreements coming to a standstill.

10. Although the Defendant had not deposited the said sum of Rs.2.39 Crores in this Court within the period stipulated in the said order dated 30th August, 2022, the period was extended by subsequent order dated 10th October, 2022 in view of the statement made by the learned Counsel for M/s Dimple Realtors Private Limited that they will deposit the said sum of Rs.2.39 Crores and for which statement would be made on the next date i.e. 12th October, 2022. Thereafter, the matter had not come up. It is clear from the prior

orders that this Court had not considered the issue of whether the Plaintiffs are entitled to ad-interim relief in respect of the sum of Rs.5.5 Crores.

11. The submissions made by Mr. Khandekar regarding the post dated cheques of Rs.5.5 Crores handed over by the Defendant to the Plaintiffs amounting to an acknowledgment of liability and for which he has placed reliance upon the decision of Full Bench of the Gujarat High Court in **Hindustan Apparel (supra)** can be considered at the stage of hearing of Interim Application. This would also be required to be considered in light of the submission of the Defendant that the handing over of post dated cheques of Rs.5.5 crores was towards allotment of premises by the Plaintiffs to the Defendant as per agreement between them. Further, the Suit had been filed by the Plaintiffs in the City Civil Court, at Dindoshi, wherein the Plaintiffs have claimed a declaration that they were in lawful possession of the suit property and that due diligence had been done by the Plaintiffs prior to the purchase of suit property. This Suit has been filed after the said writing in Gujarathi language relied upon by the Plaintiffs in support of their case that there was defect in the title of the subject property which was being taken back by the Defendant upon making

payment of Rs.5.5 Crores.

12. In my considered view the present Application is for compliance with the order passed by this Court on 30th August, 2022 by the Applicant/Intervener–M/s Dimple Realtors Private Limited agreeing to deposit the sum of Rs.2.39 Crores on behalf of the Defendant. Further, there is a statement made by the Defendant not to act upon the Sales Agreement dated 22nd June, 2022 and Supplementary Deed dated 4th August, 2022 and Indemnity-cum-Declaration Deed dated 4th August, 2022 with the Applicant M/s Dimple Realtors Private Limited to which statement the Applicant was not a privy to. Accordingly, it would be appropriate to permit M/s Dimple Realtors Private Limited to deposit the said sum of Rs.2.39 crores in this Court by way of modification of the order dated 30th August, 2022. Hence, the following order is passed :

(i) The Applicant/Intervener–M/s Dimple Realtors Private Limited shall deposit the sum of Rs.2.39 crores in this Court within a period of one week from the date of uploading of this order.

(ii) The learned Counsel for the Defendant states that the Applicant may credit the sum of Rs.2.39 Crores which is being

deposited in this Court as part payment in the two Sales Agreements both dated 22nd June, 2022 and two Supplementary Agreements for Sale dated 4th August, 2022. The statement is accepted.

(iii) The Plaintiff Nos. 1 and 2 shall withdraw the Notice of *Lis Pendence* registered by them for the subject property described in Paragraph 1 of the present Interim Application and the subject property is released from the dispute in the suit considering that the claim in the present suit is for a monetary decree and is not pertaining to any claim to the subject property.

(iv) Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]