

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O.O.C.J.

SUIT NO. 2539 OF 2009  
WITH  
NOTICE OF MOTION NO. 2342 OF 2018  
WITH  
NOTICE OF MOTION NO. 2340 OF 2018  
IN  
SUIT NO. 2539 OF 2009

Nadeem M. Oomerbhoy .. Plaintiff  
**Versus**  
Rashid Sattar Oomerbhoy and Ors. .. Defendants

WITH  
INTERIM APPLICATION NO. 1286 OF 2023  
WITH  
INTERIM APPLICATION NO. 1115 OF 2020  
WITH  
CRR NO. 62 OF 2022  
WITH  
NOTICE OF MOTION NO. 2341 OF 2018  
IN  
SUIT NO. 4913 OF 2000

WITH  
INTERIM APPLICATION (L) NO. 4791 OF 2023

- .....
- Mr. Kirti Munshi a/w. Z.A. Jariwala, Mr. Ganesh Ambekar i/by MDP and Partners for Plaintiff in Suit No.2539 of 2009.
  - Mr. Kalpesh Joshi a/w. Ms. Nisha Shah i/by Kalpesh Joshi Associates for Defendant Nos.1(a) and 1(b).
  - Mr. Rahul Singh a/w. Ms. Varsha Sawant, Advocates for Defendant Nos.2 to 4 and 6.
  - Mr. Nikhil Apte i/by Wadia Ghandy and Co. for Defendant No.4(b) (i) to (iv).
  - Ms. Rujuta Patil a/w. Ms. Yohaam Shah, Hasan Mushabber i/by Negandhi Shah and Himayatullah, Advocates for Defendant Nos.11 and 12.
  - Mr. S.B. Gore, AGP for the State – Org. Defendant Nos.13 to 17.
- .....

**CORAM : MILIND N. JADHAV, J.**

**DATE : AUGUST 10, 2023.**

**P.C.:**

**1.** Heard Mr. Munshi, learned Advocate for Plaintiff in Suit No.2539 of 2009; Mr. Joshi, learned Advocate for Defendant Nos.1(a) and 1(b); Mr. Singh, learned Advocate for Defendant Nos.2 to 4 and 6; Mr. Apte, learned Advocate for Defendant No.4(b) (i) to (iv); Ms. Patil, learned Advocate for Defendant Nos.11 and 12 and Mr. Gore, AGP for the State – Org. Defendant Nos.13 to 17.

**2.** At the request of Mr. Apte, since he is unwell and he also needs to take appropriate instructions from his client hearing is deferred. It is seen that the two flats in Andromeda Building as recorded in my previous order, are in the custody and possession of Defendant No.4(b) (i) to (iv) at present. The share of the said Defendants is 3.2%. Court Receiver stands appointed for flat No.2A.

**3.** Be that as it may, what is relevant is that one of the said flat is with them without paying any royalty. I am informed that in so far as the flat No.2A is concerned, royalty of approximately Rs.53,000/- was fixed in the year 2001, which has been paid upto date by the said Defendants. However, in so far as the flat No.2B is concerned, which is conjoint with flat No.2A, till date, Court Receiver has not been appointed till date and no royalty has been fixed by the Court. There is also an Application pending for enhancement of the royalty amount of flat No.2A.

**4.** Today, there is a ready buyer brought by the parties who is ready and willing to buy both the flats for consideration of Rs.27.50 crores exclusive of the statutory charges. At the request of the parties, I have opened the sealed Valuation Report in respect of flat No.2A submitted by the Valuer pursuant to directions of this Court. On perusal of the said Report, it is seen that the ready reckoner market value of flat No.2A is approximately Rs.9 crores whereas the final valuation and market value enumerated in the Valuation Report by Shetgiri and Associates is Rs.10,19,99,000/-.

**5.** I am informed that flat No.2B is infact smaller in size as compared to flat No.2A. If this is the scenario and if both flats are sold together the market valuation of Rs.27.50 crores would be a worthwhile proposition for acceptance / consideration and it will enure to the benefit of all parties.

**6.** Mr. Apte is directed and requested by this Court to take appropriate instructions. If Mr. Apte's client does not wish to sell the flats, then this Court will have to pass further directions in respect of flat No.2B and also enhance the royalty fixed by the Court in respect of flat No.2A since an Application is pending to that effect and the flats are in occupation of the said Defendants.

**7.** Needless to state that the Court Receiver therefore will have to be appointed for flat No.2B also.

**8.** Stand over to **28<sup>th</sup> August, 2023.**

[ MILIND N. JADHAV, J. ]

Ajay