

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

**SUIT NO. 1280 OF 2007  
WITH  
NOTICE OF MOTION (L) NO. 1484 OF 2019  
IN  
SUIT NO. 1280 OF 2007**

Ramesh Vajabhai Rabari ... Plaintiff  
Versus  
Betram Peter D'Mello & Ors. ... Defendants

Mr. Pravin Parekh, Senior Advocate a/w Mr. Prafullah Behera, Mr. Ajinkya Udone, Ms. Gunjan Mangala for the Plaintiff.  
Mr. Karl Tamboly a/w Mr. R. Sheth, Ms. Sakshi Sharma i/b MS Bodhanwalla & Co. for Defendant Nos.1 to 4.  
Mr. Vishal Kanade i/b Divya Shah & Co. for Defendant Nos.6 to 8.  
Mr. Piyush Raheja a/w Mr. Atul Kshatriya, Mr. Ankur Kalal i/b Mr. Prashant Ghelani for Defendant No.9.  
Mr. Mayur Khandeparkar a/w Mr. Ralston Fernandes for Defendant No.11.  
Snehal Shah, Senior Advocate a/w Mr. Chetan Yadav i/b R.V. & Co. for Defendant No.12.

**CORAM : R.I. CHAGLA, J.**

**DATED : 11<sup>th</sup> OCTOBER, 2019.**

**P.C. :**

1 This Notice of Motion has been taken out in the above Suit for appointment of Court Receiver for the suit property as prayed in prayer clause (a) and temporary injunction restraining the Defendants from creating any third party interest in respect of the suit property. It is stated in the affidavit in support of the Notice of Motion that the Suit has been

filed for specific performance of a Development agreement of the suit property and that due to involvement of many powerful real estate Companies i.e. the Defendants and their connivance in the present Suit, the Applicants are frightful of the consequences of non-appointment of a Court Receiver by this Court and believe that if the Court Receiver is not appointed for the suit property, the purpose of filing the present Suit would become infructuous and the suit property would lose its original value by the time of final disposal of the present suit.

2           In paragraph 13 of the said affidavit in support of the Notice of Motion, the deponent has an apprehension that if a Court Receiver is not appointed for the suit property, the Defendants in furtherance of their malafide intentions, are going to dispose of the Suit property at their will during the pendency of the suit itself because the Defendants are in nexus with anti-social elements and have every likelihood of using muscle power to dispose the suit property to negate the decisions/orders of this Court.

3           It is further stated that in paragraph 15 that none of the parties are carrying out any work whatsoever on the suit property and therefore, the suit property can very well be said to be in an “in medio” situation wherein neither the Applicant nor the Defendants are using the suit property and the property is lying vacant and, therefore, no harm

would be caused to any of the parties by the appointment of a Court Receiver.

4           The learned Senior Counsel for the Applicant/Plaintiff in support of the ad-interim relief being sought at this stage, has referred to an order of this Court (Corum : G.S. Patel, J.) dated 11.01.2019 to state that the Plaintiff in the Suit had being granted liberty by this Court to file the separate Notice of Motion for the relief of injunction which had been sought in the Chamber Summons which was under consideration by this Court when the order dated 11.01.2019 was passed. He has stated that by virtue of the Chamber Summons which was for amendment of the plaint being granted, Defendant Nos.10, 11 and 12 have been joined in the Suit. He states that necessary orders would have to be passed as Defendant Nos.10, 11 and 12 who have been joined in the suit would be in a possession to deal with the suit property and hence this Court be pleased to grant appropriate ad-interim relief.

5           The learned Counsel for the Defendants has referred to the same order of Justice G.S. Patel dated 11.01.2019 which had referred to the order of the Supreme Court passed in the SLP preferred by the Plaintiff from an order of the Appellate Court which had set aside the order of the learned Single Judge which granted temporary injunction against the

Defendants restraining them from creating third party rights in respect of the suit property. In the order of the Supreme Court which had rejected the SLP, it was observed that the Plaintiff/Applicant herein had neither established prima facie title to the suit property as the agreement of sale stands cancelled and a decree of specific performance is yet to be passed in his favour, nor was he in possession of the suit property in spite of the development agreement in his favour and has not taken any steps to develop the suit property from 2005 to 2007 due to which the development agreement itself was terminated. The Supreme Court had considered it not fit to grant an order of injunction in favour of the Plaintiff as had been sought and the temporary injunction which have been granted by the learned Single Judge was accordingly set aside. He has submitted that the Notice of Motion has been taken out seeking the same relief which had been rejected by the Division Bench of this Court and the Supreme Court. He has therefore submitted that no ad-interim relief be granted at the present stage.

6           Having considered the submissions, it would be appropriate to note that the Plaintiff/Applicant herein had filed the Notice of Motion No.1673 of 2007 in this Court seeking the same relief which is now being sought in the present Notice of Motion. Although a temporary injunction had been granted against the Defendants restraining them from dealing

with the suit property, the temporary injunction was vacated by the Appellate Court and thereafter, the SLP which had been preferred by the Plaintiff was dismissed by the Supreme Court. The submission of the learned Senior Counsel for the Applicant that this Court by order dated 11.01.2019 had granted liberty to the Plaintiff to take out Notice of Motion for the same relief which had been taken out in the first Notice of Motion i.e. temporary injunction against the Defendants to deal with the suit property cannot be read to mean that the learned Single Judge had considered that such a relief can be granted by this Court at this stage considering that the relief sought for in the first Notice of Motion had not been granted. The said order had only granted liberty to the Plaintiff to take out Notice of Motion as the relief had been sought in the Chamber Summons which was for amendment of the plaint and the relief could not be sought for in Chamber Summons and hence it would be appropriate to take out the Notice of Motion for that relief. The fact that the said order dated 11.01.2019 had been appealed from and the Supreme Court had thereafter dismissed the SLP will not change this position. The merely adding of Defendant Nos.10, 11 and 12 at this stage cannot entitle the Plaintiff to be granted ad-interim relief as sought for in the Notice of Motion considering that no case has been made out in the affidavit in support of the Notice of Motion for granting of such ad-interim relief.

7 Further, it would be necessary to note that in paragraph 15 of the affidavit in support of the Notice of Motion, the deponent of the said affidavit has stated that none of the parties are carrying out any work whatsoever in the suit property and, therefore, the suit property can very well be said to be in an 'in-medio' situation wherein neither the Applicant nor the Defendants are using the suit property. This in fact, militates against the grant of any ad-interim relief at this stage particularly since admittedly no work is being carried out in the suit property. Thus, it would not be appropriate to grant any ad-interim relief in the facts and circumstances of the case.

8 Liberty is granted to the Respondents to file their replies if so required, to the Notice of Motion. The learned Senior Counsel appearing for the Applicants seeks permission to file an additional affidavit in support of the Notice of Motion. Permission is granted. The Plaintiff/Applicant herein shall file the additional affidavit in support of the Notice of Motion within a period of three weeks from the date of this order.

9 The Notice of Motion shall accordingly be placed for hearing on 22.11.2019 at 3.00 p.m.

**(R.I. CHAGLA, J.)**