

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
SUIT NO.357 OF 2017
WITH
NOTICE OF MOTION NO.1239 OF 2017
IN
SUIT NO.357 OF 2017**

Gautam R Patel ..Plaintiff
Vs.
Mukesh G Desai & Ors ..Defendants

Ms Vidya Nair a/w Ms Ruchi Khajanchi I/b Mr. Dhiren Shah for Plaintiff
Ms S. P. Trivedi I/b A Bharat and Co. for Defendants

**CORAM : K.R.SHRIRAM, J.
DATE : 20th MARCH, 2019**

P.C.:

1 Heard the counsel and the following issues are framed:-

- (1) Whether defendants prove the suit filed is within limitation ?
- (2) Whether defendants prove that the suit discloses no cause of action against all defendants ?
- (3) Whether defendants prove that on account of non-joinder and misjoinder of necessary parties, the suit is bad in law and is liable to be dismissed ?
- (4) Whether defendants prove that the claim of plaintiff is an independent and distinct financial transaction between plaintiff and defendant no.4 and has nothing to do with defendant nos.1 to 3 ?
- (5) Whether plaintiff proves that he is always ready and willing to perform his obligation under the writing / agreement dated 17th December 2012 ?

(6) Whether plaintiff proves that the writing / agreement dated 17th December 2012 (Exhibit H to the plaint) is a legal document capable of being specifically enforced ?

(7) Whether plaintiff proves that he is entitled to a specific performance of the writing/agreement dated 17th December 2012 ?

(8) Whether plaintiff proves that he is entitled to an order of mandatory injunction directing defendants to hand over quite, vacant and peaceful possession of Flat No.5, 5th floor, Abhijit (more particularly described in Exhibit A to the plaint) ?

(9) Whether plaintiff proves that he has paid defendants Rs.4,33,68,146/- ?

(10) If answer to issue no.9 is in the affirmative, then whether plaintiff is entitled to a decree against defendants for return of the said sum of Rs.4,33,68,146/-, together with interest thereon @ 21% p.a. and for what period ?

(11) Whether plaintiff proves that price of the suit flat at the prevalent market rate on the date of filing the suit was Rs.10 crores and plaintiff suffered loss in the sum of Rs.9,08,68,146/-, which plaintiff is entitled to recover from defendants together with interest thereon 18% p.a. and for what period ?

(12) What decree ? What order ?

2 On or before 20.04.2019 parties shall file their respective affidavit of documents and serve a copy thereof upon the other side, failing which parties will not be permitted to rely on any document, copy whereof is not annexed to the plaint and/or written statement and mentioned in the list of documents annexed to the plaint and/or written statement. This will

not, however, prevent a party from confronting a witness of another party with any document.

3 On or before 26.04.2019 inspection to be completed. If inspection is not given, such party will not be permitted to rely upon such document. On or before 03.05.2019 statement of admission and denial with reasons for denial to be exchanged. If the statement of admission and denial is not given, parties shall be deemed to have admitted the existence of all the documents of the other side.

4 On or before 15.06.2019 plaintiff to file their list of witnesses, affidavit in lieu of examination in chief of the first witness together with compilation of documents and serve a copy thereof upon defendant.

5 Stand over to 26.06.2019 for marking of documents/ recording of evidence on which date plaintiff's first witness shall remain present in Court.

(K.R. SHRIRAM, J.)