

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

**INTERIM APPLICATION NO. 1660 OF 2021
IN
COMMERCIAL SUIT NO. 122 OF 2021**

Nemchand Mulji Shah ... Applicant/Orig. Plaintiff

Versus

Talakshi Lakhamshi Nandu & Ors. ... Defendants

**WITH
INTERIM APPLICATION (L) NO. 29251 OF 2021
IN
COMMERCIAL SUIT NO. 122 OF 2021**

**WITH
INTERIM APPLICATION (L) NO. 13727 OF 2021
IN
COMMERCIAL SUIT NO. 152 OF 2021**

**WITH
INTERIM APPLICATION (L) NO. 29288 OF 2021
IN
COMMERCIAL SUIT NO. 152 OF 2021**

Mr. Rohaan Cama a/w Mr. Sidharth Samantaray, Mr. T.N. Tripathi, Ms. Kalyani Wagle and Ms. Soniya Tripathi i/b T.N. Tripathi & Co. for the Plaintiff.

Mr. Charles De Souza a/w Mr. Nikhil Rajani, Mr. Rupak Sawangikar i/b M/s. V. Deshpande & Co. for Defendant No.3 in COMS/152/2021 and Defendant No.11 in COMS/122/2021.

Mr. Aarya More i/b Ethos Legal Alliance for Defendant No.2- S.B.I. COMS/152/2021 and Defendant No.10-S.B.I. in COMS/122/2021.

CORAM : R.I. CHAGLA, J.

DATED : 3rd OCTOBER, 2022.

ORDER :

1 Matter has been circulated today in view of the urgency expressed by Mr. Rohaan Cama, the learned Counsel appearing for the Plaintiff in both the Suits that the consortium Banks led by State Bank of India with the Cosmos Co-operative Bank Limited have issued notice to the Plaintiff that they will take possession of the subject property on 04.10.2022. In the present Suits, the deed of mortgage has been challenged pursuant to which the aforementioned Banks have issued the notice of taking possession of the subject property.

2 The learned Counsel appearing for Defendant No.11-Cosmos Co-operative Bank Limited has referred to an order dated 30.09.2022 passed by the Gujarat High Court by which that Court has in R/Special Civil Application No.4166 of 2020 by order dated 30.09.2022 restrained the State Bank of India who is the Defendant therein, from taking coercive steps with regard to the subject property till the next date of hearing i.e. 19.10.2022. He has submitted that in that view of the matter the urgency which had been expressed and pursuant to which the matter has been circulated, no longer arises in view of the restraint imposed by the Gujarat High Court on State Bank of India of which the Defendant No.11- Cosmos Co-operative Bank Limited is a member of consortium to take possession of the subject property. He has further submitted that

Interim Application (L) No.29251 of 2021 and 29288 of 2021 have been filed in the respective Suits i.e. by Cosmos Co-operative Bank Limited who is Defendant No.11 in Suit No.122 of 2021 and Defendant No.3 in Suit No.152 of 2021 wherein they have raised the issue of non-maintainability of the Suit and for rejection of Plaint under Order VII Rule 11(d) of Code of Civil Procedure, 1908 on the ground of jurisdiction for want of compliance of issuance of statutory notice required under Section 115 of the Multi State Co-operative Societies Act, 2002. He has submitted that these Interim Applications would necessary have to be considered prior to considering the relief sought for in the Interim Applications filed by the Plaintiff. Mr. Rohaan Cama has sought for the above Interim Applications taken out by the Plaintiff to be placed prior to 19.10.2022. He has sought time to file affidavit in reply to Interim Application (L) Nos.29251 of 2021 and 29288 of 2021.

3 The Plaintiff shall file affidavit in reply to the Interim Applications filed by Cosmos Co-operative Bank Limited within a period of one week from today i.e. on or before 10.10.2022.

4 Place the matter on 17.10.2022 at 2.30 p.m. for ad-interim relief.

(R.I. CHAGLA, J.)