

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1964 OF 2010
IN
SUIT NO.1965 OF 2010

Jasmine Sanjay Shah .. Plaintiff
Versus
Mallika Madhukant Jhaveri & Ors. .. Defendants

Mr.D.H.Mehta with Ms.Preeti Gada for plaintiff
Mr.R.A.Shaikh for defendant No.1
Mr.Sanskar Marathe i/b. Siganporia & Dalvi for defendant Nos. 2 & 7
Mr.C.M.Lokesh i/b. Lex Forum for defendant No.4

CORAM : S.C.DHARMADHIKARI, J.

DATE : 23rd December 2010.

P.C.:

1] The matter was placed today because a serious grievance was made that the order dated 26th October 2010 has not been complied with till date. Further, the directions in para 5 of the order dated 7th December 2010 have also not been complied with.

2] The matter was placed in my chambers and, thereafter, yesterday and today.

3] After the Counsel appearing for plaintiff and the contesting defendant No.1 are heard at some length, both state that the following order may be passed by consent and that would meet the ends of justice.

a) The fixed deposit receipts which are referred to in para 5 of the order dated 7th December 2010 would be permitted to be encashed by the Indian Bank and the amounts from such encashments with the accrued interest thereon shall be utilised for purchase of an immovable property/ flat. This flat will be purchased by the first defendant but the sale deed will contain the joint names of the first defendant and the grand daughter of the first defendant Ms.Manasi Sanjay Shah. However, it is clarified by both sides that this flat can be used and occupied by the plaintiff and her husband so also the grand daughter and the rights of both sides in the same will not be in

any manner prejudiced or affected by the arrangement that is agreed today.

b) As far as the amount of Rs.3 Crores which is to be brought into court and the interest accrued on the said deposit to be made available to the plaintiff every month is concerned, Mr.Dhond learned Counsel appearing for first defendant places a letter dated 22nd December 2010 addressed by Mr. R.A.Shaikh, Advocate on record for defendant No.1 to the Chief Manager, Indian Bank, Napean Sea Road Branch, Mumbai. A copy of this letter is taken on record and marked as "X" for identification. A copy of the same has also been given to Mr.Mehta learned Counsel appearing for plaintiff. Both sides agree that the F.D.receipts that are mentioned in this letter will be permitted to be encashed by Indian Bank so as to enable the first defendant to comply with the order dated 26th October 2010 and 7th December 2010.

c) Thus, the total sum of Rs.6 Crores will be brought in the court

which the Prothonotary and Senior Master/ Registrar (OS) shall invest the same in distinct accounts/ deposits with a Nationalised Bank. As far as the amount of Rs.3 Crores which is to be utilised for purchase of an immovable property is concerned, the said amount will not be permitted to be withdrawn by the first defendant unless and until the Prothonotary & Senior Master/ Registrar (OS) of this Court is approached with a draft of the conveyance deed/ sale deed and with copies thereof to the plaintiff's Advocate. Upon perusal of this sale deed and after appropriate undertakings of the first defendant, the Prothonotary & Senior Master/ Registrar (OS) shall permit withdrawal of the said sum of Rs.3 Crores with accrued interest to enable first defendant to acquire and purchase the immovable property/ flat in the name of first defendant and the grand daughter as stated above. From the amount of Rs.3 Crores which are brought in pursuant to the encashment of the F.Ds.mentioned in the letter dated 22nd December 2010, the Prothonotary & Senior Master/ Registrar (OS) to permit the plaintiff to withdraw the sum of accrued interest thereon from month to month on her request being made in that behalf

in writing. However, considering the disability of the plaintiff any request in writing by her Advocate may also be entertained by the Registry.

d) Both sides agree with the amounts will be brought in as stated above on or before 7th January 2011.

e) The Chief Manager, Indian Bank Napean Sea Road, Branch is directed to act upon the order and permit encashment of the FDs. which are mentioned in the orders of this Court dated 26th October 2010 and 7th December 2010 so also in the letter of Mr.R.A.Shaikh dated 22nd December 2010, which is marked "X" for identification. Both sides agree that any communications earlier forwarded to the said bank may be ignored so as to enable the bank to comply with this order and facilitate withdrawals from this FDs.

f) Since the order passed today records that the encashment of FDs mentioned in para 5 of the order dated 7th December 2010 is towards

acquisition of immovable property/ flat and the amount is to be invested only for such purpose, the Indian Bank to permit encashment of the said deposit without insisting on a certificate from Chartered Accountant.

4] At this stage Mr.Dhond learned Counsel for defendant No.1 made two requests to Court by submitting that since the first defendant has shown her bonafides, she should be permitted to stop payment of the licence fees that she is paying for occupation and possession of the plaintiff and her husband so also grand daughter, of the licenced premises. The licence fees for twelve months was directed to be paid under the earlier orders and Mr.Dhond submits that since first defendant has given an undertaking to this Court that she will acquire a flat in the name of herself and her grand daughter on or before 28th Februrary 2011, she may be released from the undertaking and the directions to pay licence fee for twelve months be modified and restricted till 1st March 2011.

5] These statements are made by Mr.Dhond on instructions from the first defendant who is present in the Court. The first defendant has understood all implications and consequences flowing from giving an undertaking of this nature to the Court and she willingly makes a statement recorded above. In these circumstances on the undertaking of the first defendant that she will acquire a flat as agreed above on or before 28th February 2011 which flat will be suitable to the status of plaintiff and her husband so also the grand daughter, the earlier directions to pay licence fees stands modified and the first defendant shall deposit/ pay licence fees only till 1st March 2011. Any breach and violation of the undertaking will visit her with serious consequences including contempt proceedings and directions to pay licence fees and such other directions as permissible in law.

6] Second request of Mr.Dhond is that since the first defendant is ready and willing to purchase flat and also bring in monies and directions to that effect have been issued, the first defendant's personal account which stands frozen so also the accounts of

M/s. Virgin Metallic may be allowed to be operated so as to enable the first defendant to pay bonus, wages and for raw materials. Mr. Dhond submits that she will have to carry on business and also make some payments which are due and payable to the statutory authorities and even to the plaintiff.

7] Mr. Mehta appearing for plaintiff submits that no concession or sympathy be shown to the first defendant as her adamancy throughout has been noted by this Court. Further, she has other personal accounts wherein there are funds available for managing the business so also the personal affairs.

8] After both sides are heard on this aspect at some length, interest of justice would be served if the following accounts with the HDFC bank Worli branch (Virgini Metallics Chemicals Pvt Ltd, Account No. 02400430000188 and F.D. Account No. 855922024) at Indian Bank, Napean Sea Road branch (Virgin Metallics Chemicals Pvt Ltd, Account No. 417511300 (2) Mallika M. Jhaveri, Account No.

862678134 and 417440451) are allowed to be operated by the first defendant but the concerned banks shall allow such operations only after 10th January 2011 and on production of an undertaking/ statement by the first defendant that she has complied with the Court's orders for deposit of Rs.6 Crores passed today i.e. 23rd December 2010. However, all such operations are permitted without prejudice to the rights and contentions of the plaintiff and it is clarified that if any orders and directions are issued by this Court at the hearing of this notice of motion or otherwise, the first defendant will have to comply with the said orders and all contentions of both sides in that behalf are kept open. The order passed is without prejudice to the rights and contentions of both sides. List the motion for hearing and final disposal as per its turn. All defendants appearing through advocates waives service.

(S.C.DHARMADHIKARI, J)