VIDEOCON PROPERTIES LTD. A

v.

DR. BHALCHANDRA LABORATORIES AND ORS.

DECEMBER 19, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.] B

Transfer of Property Act, 1882—Section 55(6)(b)—Charge over property—Applicability in cases of earnest money—Earnest money—Meaning of—Charge under Scope of—'A' paid earnest money to purchase land of 'R'—Agreement stipulated payment of consideration at various C *stages—'R' unable to perform his part—'A' seeking charge over the land—Held, earnest money paid was in fact a part payment of purchase price—Charge held justified.*

The appellant entered into an agreement for purchase of a land D **from the respondents. The appellant paid Rs. 38 lakhs to the respondents as "deposit or earnest money". Clause 1 of the agreement specified more than one categories of payment to be made by the purchaser at different stages as consideration for the sale of the property. Clause 2.3 of the agreement provided that if the sellers failed to fulfill their obligation, the purchaser may either fulfill such obligations at the cost** E **or expense of the sellers or terminate the agreement. In the event of termination, the sellers were to return to the purchaser the earnest money with interest at 21% per annum.**

As the respondents failed to perform their part of the agreement, F **the appellant issued notice to the respondents calling upon them to fulfill their obligation. In reply, respondents requested the appellant to fulfill the obligations by itself in accordance with Clause 2.3 of the agreement. However, the appellant chose to terminate the contract under Clause 2.3 and required the respondents to return Rs. 38 lakhs along with interest at 21% per annum. The respondents sent a cheque** G **of Rs. 38 lakhs to the appellant without any interest.**

Being aggrieved, the appellant filed a suit against the respondents claiming Rs. 80,15,903 with interest. In the said suit the appellant prayed that its claim should be secured by creating a statutory charge H

A on the suit land. An application for interim relief was also filed by the appellant praying that the respondents should be restrained from selling or disposing of the suit land.

Single Judge of the High Court granted a temporary injunction in favour of the appellant restraining the respondents from disposing B of the suit land during the pendency of the suit holding that the appellant was entitled to a charge over the suit land in view of provisions of Section 55(6)(b) of the Transfer of Property Act. On appeal, Division Bench, setting aside the order of the Single Judge, held that as the money given by the appellant was only earnest money, and C not purchase money, the provisions of Section 55(6)(b) of the Transfer of Property Act would not apply. Hence the appeal.

Allowing the appeal, the Court

D HELD : 1. Earnest money is a part of the purchase price of a property when the transaction goes forward and is forfeited when the transaction falls through, by reasons of the fault or failure of the purchaser. It is not the description by words used in the agreement only that would be determinative of the character of the sum but really the intention of parties and surrounding circumstances as well, that have E to be looked into and what may be called an advance may really be a deposit or earnest money and what is termed as a deposit or earnest money may ultimately turn out to be really an advance or part of purchase price. Earnest money or deposit also, thus, serves two purposes of being part payment of the purchase money and security F for the performances of the contract by the party concerned, who paid it. [1209-C-E]

(Kunwar) Chiranjit Singh v. *Har Swarup,* AIR (1926) PC 1 and *Maula Bux* v. *Union of India,* AIR (1970) SC 1955, referred to.

G 2. The principle underlying Section 55(6)(b) of the Transfer of Property Act, 1882 is a trite principle of justice, equity and good conscience. The charge created under Section 55(6)(b) of the Transfer of Property Act, 1882 would last until the conveyance is executed by the seller and possession is also given to the purchaser and ceases only H thereafter. The charge will not be lost by merely accepting delivery of

possession alone. This charge is statutory charge in favour of a buyer and is different from contractual charge which the buyer may become entitled to under the terms of the contract, and in substance a converse to the charge created in favour of the seller under Section 54(4)(b). Consequently, the buyer is entitled to enforce the said charge against the property and for that purpose trace the property even in the hands of third parties and even when the property is converted into another form by proceeding against the substituted security, since none claiming under the seller including a third-party purchaser can take advantage of any plea based even on want of notice of the charge. The said statutory charge gets attracted and attaches to the property for the benefit of the buyer the moment he pays any part of the purchase money and is only lost in case of purchaser's own default or his improper refusal to accept delivery. [1208-E-H]

3. So far as payment of interest under Section 55(6)(b) of the Transfer of Property Act, 1882 is concerned, the section specifically envisages payment of interest upon the purchase money/price prepaid, though not specifically on the earnest money deposit, apparently for the reason that an amount paid as earnest money simplicitor, as mere security for due performance does not become repayable till the contract or agreement got terminated and it is shown that the purchaser has not failed to carry out his part of the contract, and the termination was brought about not due to his fault, the claim of the purchaser for refund of earnest money deposit will not arise for being asserted. [1208-H; 1209-A, B]

4. Clause 1 of the agreement entered into between parties specifies more than one enumerated categories of payment to be made by the purchaser in the manner and at stages indicated therein, as consideration for the ultimate sale to be made and completed. The further fact that the sum of Rs. 38 lakhs had to be paid on the date of execution of the agreement itself, with the other remaining categories of sums being stipulated for payment at different and subsequent stages as well as execution of the sale deed by the vendors taken together with the content of the stipulation made in Clause 2.3, providing for the return of it, if for any reason the vendors failed to fulfil their obligations under Clause 2, strongly supports and strengthens the claim of the appellants

that the intention of the parties in the case on hand is in effect to treat the sum of Rs. 38 lakhs to be part of pre-paid purchase money and not pure and simple earnest money deposit of the restricted sense and tenor, wholly unrelated to the purchase price as such in any manner. The mention made in the agreement or description of the same otherwise as "deposit or earnest money" and not merely as earnest money, inevitably leads to the inescapable conclusion that the same has to and was really meant to serve both purposes. In substance, it is, therefore, really a deposit or payment of advance as well and for that matter actually part payment of purchase price only. The sum of Rs. 38 lskhs to be refunded would attract the first limb or part of Section 55(6)(b) of the Transfer of Property Act itself and therefore necessarily the defendants *prima facie* become liable to refund the same with interest due thereupon, in terms of Clause 2.3 of the agreement. Therefore, the statutory charge envisaged therein would get attracted to and encompass the whole of the sum of Rs. 38 lakhs and the interest due there on. [1209-F-H; 1210-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10135 of 2003.

From the Judgment and Order dated 12.8.2002 of the Bombay High Court in A. No. 112 of 2002 in Notice of Motion No. 1952 of 2000 in Suit No. 2145 of 2000.

C.A. Sundaram, Ms. Dipti Razda and Jatin Zaveri for the Appellant.

Santosh Paul, Ranjan Kumar, Rajeev Sharma and M.J. Paul for the Respondents.

The Judgment of the Court was delivered by

D. RAJU, J. : Leave granted.

The appellants are the plaintiffs in suit No. 2145 of 2000, on the original side of the High Court of Bombay and the respondents-defendants are registered firm of partnership and its partners, respectively. The plaintiffs are builders and developers and they have entered into an agreement with the defendants on 13.5.1994 to sell the landed property

owned by the respondents and a sum of Rs. 38 lakhs was said to have been paid by the appellants as deposit or earnest money on the execution of the agreement, which the respondents received under the agreement. Clause 2.3 of the agreement, insofar as it is relevant for the purpose, reads as hereunder:

> "If for any reason the vendors fail to fulfill their obligation under Clause 2, the purchasers shall have an option either to fulfill the said obligation themselves at the cost and expenses of the vendors or to terminate the agreement, in which event the vendors shall return to the purchasers the earnest with interest at 21% per annum..."

Clauses 17 and 18 also read as under:

> "17. If the vendors fail to make out a marketable title to this said land agreed to be sold, as herein agreed, the purchasers shall be entitled to cancel this agreement. In the event of cancellation of this agreement under this clause, the said earnest money or deposit shall be forthwith returned to the purchasers by the vendors without any interest, cost or compensation.
>
> 18. If the sale be not completed due to any willful default on the part of the vendors, the purchasers shall be entitled (a) to require specific performance by the vendors of this agreement or (b) to payment by the vendors of the interest at the rate of 21% per annum on the said earnest money or deposit and all costs, charges and expenses incurred and all loss and damages sustained by the purchasers in addition to the return by the vendors of the said earnest money or deposit."

It is the stand of the appellants that for nearly five years the respondents did not perform their part of the contract or fulfill their obligations under Clause 2 of the agreement, in spite of repeated requests and reminders and this necessitated their issuing a Notice dated 3.3.1999 calling upon the respondents to fulfill their obligations within 15 days of receipt. On 15.3.1999, the respondents appear to have, for the first time, expressed their inability to fulfill the terms within time and informed the

A appellants in writing to invoke their right under Clause 2.3, in the following words:

> "Under these circumstances, we sincerely and earnestly request you to please exercise your other option of getting all the necessary permissions yourselves to complete the said transaction at your earliest. We hope that you will consider this proposal sympathetically and take the necessary action as stated above, looking to our present situation explained above."

B

Thereupon, the appellants seem to have opted to terminate the C agreement as envisaged under Clause 2.3 and by their Notice dated 27.9.1999, while so terminating, called upon the respondents to return the sum of Rs. 38 lakhs along with interest at the rate of 21% from 13.5.1994 till payment. In response thereto, while disputing the claims of the appellants, the respondents along with their letter dated 8.1.2000 sent a D cheque for Rs. 38 lakhs by way of "refund of deposit or earnest money in full satisfaction of your claim under the agreement or otherwise. Your claim for interest is both false and untenable and is denied by us." The appellants seem to have been not satisfied since they, according to their stand, should have been repaid a sum of Rs. 74,34,203 instead of merely returning the deposit or earnest money and filed the suit No. 2145 of 2000, E as noticed above, seeking for several reliefs - one among which is as hereunder:

Relief and Prayer: (c) in the plaint:

> F "That it be declared by this Hon'ble Court that the amount and interest mentioned in prayer (a) above and the cost of the suit are validly secured by a statutory charge on the said land more particularly described in Exhibit B to the plaint. "

As per prayer (a), the plaintiffs claimed for a judgment and decree G for Rs. 80,15,903 with further interest at 21% p.a. from the date of suit till payment or realization and the costs. In prayer clause (d) of the plaint, the appellants seem to have also prayed for a declaration that the amount and interest claimed in prayer (b) towards damages and the costs of the suit are validly secured by a statutory charge on the said land described H in Exhibit B to the plaint. The appellants have also chosen to appropriate

the sum repaid in a different manner as per their choice and at their discretion as explained in the plaint. A

The appellants seem to have also filed an application for interim reliefs by way of Notice of Motion No. 1952 of 2000 praying among other things for – B

> "(d) that pending the hearing and final disposal of the suit, the defendants by themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court, from selling, disposing of, alienating, encumbering or creating any third party rights of any nature whatsoever or from carrying out any construction or any other work in any manner whatsoever, in respect of the suit properties more particularly described in Exhibit 'B' to the plaint." C

After hearing both parties, the learned Single Judge passed the following order: D

> "2. Admitted position is that there was an agreement to sell between the parties, and that an amount of Rs. 38 lakh has been paid as an earnest money. It is also admitted position that the agreement was terminated by the plaintiff. It is also admitted E position that in the agreement there is a provision made for payment of interest at the rate of 21% p.a. on the amount of earnest money, in case that amount is required to be refunded in terms of the agreement. The defendants has refunded the amount of earnest money, i.e., Rs.38 lakh, but has not paid the amount F of interest. The controversy involved in the suit is whether the plaintiff is entitled to claim an amount of interest on the amount of earnest money that was refunded by the defendant.
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> 3. Perusal of the agreement shows that there is a clear duty casts G on the defendant to pay interest on the amount of earnest money, unless it is required to be refunded. Therefore, it appears that the plaintiff has a *prime facie* case in its favour.
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> 4. So far as prayer for temporary injunction is concerned, perusal of the provisions of Section 55 of the Transfer of Property Act H

A shows that buyer is entitled to a charge on the property as against the seller to the extent of the seller's interest in the property, for the amount of any purchase money paid and for interest on such amount.

B Therefore, even if it is assumed that the plaintiff was not justified in appropriating the amount paid by the defendants towards the interest treating the earnest money still remaining unpaid, then also as per the agreement the plaintiff is definitely entitled to interest on the amount. In terms of the provisions of Section 55 of the Transfer of Property Act, even for the unpaid C amount of interest, there is charge on the property.

In view of the matter, therefore, in any opinion, the plaintiff would be entitled to a temporary injunction restraining the defendants from disposing of the land during the pendency of the D suit."

Thereupon, the respondents have pursued the matter on appeal before a Division Bench, challenging the order of the learned Single Judge. The learned Judges of the Division Bench by their order under challenge in this E appeal, after adverting to certain factual details, on the scope of Section 55 (6) of the Transfer of Property Act, expressed its views as hereunder, with particular reference to the case on hand, by allowing the appeal of respondents herein:

"Now when one looks at the wording of Section 55(6)(b), a clear F distinction is made by the statute between the purchase money on one hand and earnest money on the other when it comes to creating a charge. As far as purchase money is concerned, a charge is created for the purchase money as well as the interest amount thereon, whereas when it comes to earnest money, in the G latter part of Section 55(6)(b), there is no such specific mention of interest on the earnest money. We are concerned with the question as to whether this section creates a statutory charge on the property to protect the claim of interest on the earnest money and a plain reading of the section shows that it does not make any H such provision.

This being the position, in our view, the learned Single Judge was in error in holding that a charge was available to the respondents under Section 55(6)(b) for claiming interest on the earnest money and, therefore, was in error in granting the injunction. The authorities and propositions cited by Mr. Doctor do not help us in interpreting section 55(6)(b). Once the basis of this claim of charge is disclosed, one cannot claim injunction to secure the alleged claim for interest on the earnest money. We have, therefore, to interfere with the order passed by the learned Single Judge and accordingly we set aside the same. Therefore, there will not be any injunction as prayed by the respondents.

The claim of the respondents is principally for money and they will get the amount due to them if they establish their case in trial. However, we are also conscious of the fact that the amount of Rs. 38 lakhs was lying with the appellants from 13.4.1994 till 8.1.2000. We, therefore, tried to explore on overall settlement, but that was not possible. It appears that due to financial constraints the appellants can develop the property only when they enter into an agreement with another developer. Hence, we would like to put the appellants to terms and in our view, the appropriate interim order would be to direct the appellants to deposit an amount equivalent to interest at the rate of 10% for the aforesaid period which they will deposit in this Court as and when they decide to develop this property. This order will work as an interim order till the disposal of the suit."

Hence, this appeal.

Though, normally this Court would have been reluctant to entertain this appeal at this stage, keeping in view the views expressed by the Division Bench of the High Court on the scope and purport of statutory charge engrafted in Section 55(6), and the serious repercussion that may follow not only in this case but generally as a principle of law, it became necessary for this Court to deal with the legal issue, leaving otherwise, the parties to work out their ultimate rights respectively, finally in the pending suit, ensuring of course in the meantime proper and sufficient safeguards, as would emanate from the statutory charge envisaged under Section 55(6) of the Transfer of Property Act. Though the learned counsel on either

A side attempted to make submissions generally on the disputes between the parties, we indicated to them that they must confine their claims and submissions to the actual issues that would arise on the interim orders passed as to the scope and ambit of the statutory charge generally and for the protection of rights of parties in this case leaving aside other claims B and issues, which are only to be adjudicated in the main suit, which is still pending on the original side of the High Court.

The learned senior counsel for the appellants contended that the statutory charge envisaged under Section 55(6)(b) of the Transfer of Property Act would enure not only to the amount of any purchase money C paid and for interest on such amount, but also for the earnest money deposit paid and for interest due thereon besides for the costs awarded to the purchaser to compel specific performance of the contract or to obtain a decree for its rescission and the contra view taken by the Division Bench differing from the view taken by the learned Single Judge is contrary to D law and cannot be sustained. It was also contended that the omission to specifically specify in the said provision of the Act interest on earnest money may, at the most, be indicative of the discretion left with the Court in the matter of the rate of interest permissible on the earnest money deposit and not to deny the same once and for all. It was also urged on behalf E of the appellants that on the peculiar terms and conditions of the agreement between parties, which in Clause 2.3 specifically provided for the rate of interest with which the earnest money deposit has to be refunded in case the respondents-vendors fail to fulfill their obligations, the entire sum of earnest money deposit inclusive of the interest so provided for being repaid would form the subject matter of the statutory charge envisaged under F Section 55(6)(b) of the Transfer of Property Act. It was also contended for the appellants that in a matter like the one on hand where the earnest money deposited is to be part of the sale consideration agreed to between the parties, the said sum of Rs. 38 lacs will not cease to be purchase money merely because it is referred to also as deposit or earnest money as well G and, therefore, it would fall even within the first limb of Section 55(6)(b) and satisfy the stipulation expressed as 'any purchase money properly paid by the buyer' and for interest on such amount and consequently, the order of the learned Single Judge should be restored by setting aside the order of the learned Judges of the Division Bench. *Per contra,* the learned H counsel appearing for the respondents, while adopting the reasoning of the

Division Bench of the High Court, reiterated the stand taken on their behalf before the High Court to justify the order passed by the Division Bench under challenge. A

Though initially no interim orders were passed after the respondents entered their appearance and the matter was being adjourned from time to time an apprehended alienation of the property and an attempt to further encumber the same to the prejudice of the appellants was highlighted and when the counsel, after instructions from the respondents, expressed his client's inability to furnish any security to the satisfaction of the learned Trial Judge or give any undertaking not to alienate or encumber, by an order dated 31.10.2003 the respondents were directed to maintain the *status quo* and an interim order that they shall not alienate the property, pending further orders, was also made. The learned counsel for the respondents, in addition to responding to the contentions on behalf of the appellants, also submitted that if for any reason this Court is not inclined to agree with the stand of the respondents, their right to sell the property should not be completely freezed and appropriate liberties may be granted to alienate the same, with the leave of the learned Trial Judge and subject to sufficient safeguards being made to protect the claims and interest of the appellants in the suit. B C D

We have carefully considered the submissions of the learned counsel appearing on either side. It would be necessary to set out the relevant portions of Section 55 to the extent necessary for appreciating the contentions of the parties on either side. E

> *"55. Rights and Liabilities of buyer and seller.–* In the absence of a contract to the contrary, the buyer and seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold: F
>
> ..... G
>
> .....
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> (6) The buyer is entitled—
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> (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the H

A property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him,* * * to the extent of the seller's interest in the property, for the amount of any purchase-money B properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when the properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission."

C

The buyer's charge engrafted in clause (b) of paragraph 6 of Section 55 of the Transfer of Property Act would extend and enure to the purchase-money or earnest money paid before the title passes and property has been delivered by the purchaser to the seller, on the seller's interest in the D property unless the purchaser has improperly declined to accept delivery of property or when he properly declines to accept delivery - including for the interest on purchase money and costs awarded to the purchaser of a suit to compel specific performance of the contract or to obtain a decree for its rescission. The principle underlying the above provision is a trite principle of justice, equity and good conscience. The charge would last E until the conveyance is executed by the seller and possession is also given to the purchaser and ceases only thereafter. The charge will not be lost by merely accepting delivery of possession alone. This charge is a statutory charge in favour of a buyer and is different from contractual charge to which the buyer may become entitled to under the terms of the contract, F and in substance a converse to the charge created in favour of the seller under Section 55(4)(b). Consequently, the buyer is entitled to enforce the said charge against the property and for that purpose trace the property even in the hands of third parties and even when the property is converted into another form by proceeding against the substituted security, since none G claiming under the seller including a third party purchaser can take advantage of any plea based even on want of notice of the charge. The said statutory charge gets attracted and attaches to the property for the benefit of the buyer the moment he pays any part of the purchase money and is only lost in case of purchaser's own default or his improper refusal H to accept delivery. So far as payment of interest is concerned, the section

specifically envisages payment of interest upon the purchase-money/price prepaid, though not so specifically on the earnest money deposit, apparently for the reason that an amount paid as earnest money simplicitor, as mere security for due performance does not become repayable till the contract or agreement got terminated and it is shown that the purchaser has not failed to carry out his part of the contract, and the termination was brought about not due to his fault, the claim of the purchaser for refund of earnest money deposit will not arise for being asserted.

The further aspect that requires to be noticed is as to the nature and character of earnest money deposit and in that context the distinguishing features, which help to delineate the differences, if any. The matter is not, at any rate, *res integra*. In *(Kunwar) Chiranjit Singh* v. *Har Swarup,* AIR (1926) P.C. 1, it was held that the earnest money is part of the purchase price when the transaction goes forward and it is forfeited when the transaction falls through, by reasons of the fault or failure of the purchaser. This statement of law had the approval of this Court in *Maula Bux* v. *Union of India,* AIR (1970) SC 1955. Further, it is not the description by words used in the agreement only that would be determinative of the character of the sum but really the intention of parties and surrounding circumstances as well, that have to be looked into and what may be called an advance may really be a deposit or earnest money and what is termed as 'a deposit or earnest money' may ultimately turn out to be really an advance or part of purchase price. Earnest money or deposit also, thus, serves two purposes of being part payment of the purchase money and security for the performances of the contract by the party concerned, who paid it.

Coming to the facts of the case, it is seen from the agreement dated 13.5.1994 entered into between parties – particularly Clause 1, which specifies more than one enumerated categories of payment to be made by the purchaser in the manner and at stages indicated therein, as consideration for the ultimate sale to be made and completed. The further fact that the sum of Rs. 38 lakhs had to be paid on the date of execution of the agreement itself, with the other remaining categories of sums being stipulated for payment at different and subsequent stages as well as execution of the sale deed by the Vendors taken together with the contents of the stipulation made in Clause 2.3, providing for the return of it, if for any reason the Vendors fail to fulfill their obligations under Clause 2,

A strongly supports and strengthens the claim of the appellants that the intention of the parties in the case on hand is in effect to treat the sum of Rs. 38 lakhs to be part of the prepaid purchase-money and not pure and simple earnest money deposit of the restricted sense and tenor, wholly unrelated to the purchase price as such in any manner. The mention made B in the agreement or description of the same otherwise as "deposit or earnest money" and not merely as earnest money, inevitably leads to the inescapable conclusion that the same has to and was really meant to serve both purposes as envisaged in the decision noticed supra. In substance, it is, therefore, really a deposit or payment of advance as well and for that matter actually part payment of purchase price, only. In the teeth of the further C fact situation that the sale could not be completed by execution of the sale deed in this case only due to lapses and inabilities on the part of the respondents – irrespective of *bonafides* or otherwise involved in such delay and lapses, the amount of rupees 38 lakhs becomes refundable by the Vendors to the purchasers as of the prepaid purchase price deposited with D the Vendors. Consequently, the sum of rupees 38 lakhs to be refunded would attract the first limb or part of Section 55(6)(b) of the Transfer of Property Act itself and therefore necessarily, as held by the learned Single Judge, the defendants *prima facie* became liable to refund the same with interest due thereon, in terms of Clause 2.3 of the agreement. Therefore, E the statutory charge envisaged therein would get attracted to and encompass the whole of the sum of rupees 38 lakhs and the interest due thereon. In the light of the above, in our view, the learned Single Judge on the original side was right in passing the order dated 23.10.2001 and the order of the Division Bench, taking a contrary view in the order under challenge, F is contrary to law and the reasons assigned therefor cannot be countenanced. Hence, the same is hereby set aside and the order of the learned Single Judge shall stand restored and to be in force pending disposal of the suit.

The question relating to manner of appropriation, attempted to be G argued before us, is really a matter, which has to be, properly speaking canvassed and got adjudicated in the suit only and we express no opinion on the same.

So far as the submission made that the injunction granted should H not completely foreclose the liberties of the respondents, if an appropriate

offer comes to sell the property after seeking directions of the judge on the original side, we leave liberties with the parties as and when necessary to approach the court before which the suit is pending for any such permission and the court after hearing the plaintiffs as well on any such request may consider the request in this regard on the defendants/ respondents sufficiently securing and safeguarding the interests of the plaintiff by depositing in court to the credit of the suit so much of the sale consideration, as would be necessary to meet the claims of the plaintiffs before granting any such permission so that the amount so deposited may abide by the ultimate decision in the suit, to satisfy the decree that may be passed.

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The appeal is accordingly allowed as indicated above. No costs.

B.K.M. Appeal allowed.