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

**NOTICE OF MOTION (L) NO. 1235 OF 2015
IN
SUIT (L) NO. 396 OF 2015**

Shreeniwas Sadan Rahiwashi Sangh ...Applicant

In the matter between:

Shreeniwas Sadan Rahiwashi Sangh ...Plaintiffs

Vs.

Shreeniwas Cotton Mills Limited & Anr. ...Defendants

Mr. C.R. Naidu i/b. C.R. Naidu & Co., for the Plaintiffs

Mr. Dinyar Madon, Sr. Counsel a/w Mr. Cyrus Ardeshir,

Ms. Prachi Dhanani i/b. Wadia Ghandy & Co., for the Defendants

CORAM : MRS. ROSHAN DALVI, J.

DATED : 7TH MAY, 2015

P.C. :

1. The plaintiffs are the occupants of the building which is being redeveloped as a rehab building. The building would have 19 floors. The 8th and 15th floors would have the refuge area. There are to be 9 flats on each floor. Hence there would be at least 153 flats for the 17 clear floors plus six flats for 8th and 15th floors which would have refuge area also.

2. The occupants who have to be rehabilitated are 133 in number. The remaining flats are to be given to MHADA.

3. Each of the flats have to be of 363 sq. ft. carpet area. The parties are at dispute as to whether this carpet area is given. The carpet area in the revised sanctioned plan for each of the flats is shown to be 363.82 sq. ft. This includes 6 sq.ft of total door-jam area. That is the area where the door, would be closed.

4. Regulation 2(15) of the Development Control Regulations For Greater Mumbai, 1991 (DC Rules) defines carpet area thus:

2(15) "Carpet area" means the net usable floor area within a building excluding that covered by the walls or any other areas specifically exempted from floor space index computation in these Regulations"

5. This would be excluded areas specifically exempted from the FSI computation in the DC Regulation. The areas specifically exempted are shown in DC Rule No.35(2).

6. The defendants contend that the door-jam area is not specifically exempted in Rule 35(2). Mr. Naidu on behalf of the plaintiffs contends that under rule 38(2) and table 18 thereunder the habitable area must be minimum 9.5 sq. mtrs with a width of minimum 2.4 mtrs. He contends that this width would be wall to wall and hence the door-jam area would be excluded. The plaintiffs have not shown the specific

exemption of the door-jam area. The plaintiffs' contention that the door-jam area is required to be excluded therefore, cannot be accepted. The carpet area provided to the plaintiffs is correct.

7. The plaintiffs claim relief in respect of a fitness centre and a temple to be provided by the defendants.

8. The fitness centre is to be provided in lieu of a Balwadi which existed. The plaintiffs have not shown the dimensions of the Balwadi. The defendants contend that the Balwadi was 100 sq.ft area. Hence the fitness centre must be 100 sq. ft area. The fitness centre has to be provided on the 8th floor of the rehab building. The 8th floor has a refuge area. The refuge area would have to be computed as per rule 44(7) of the D.C. Rules. That area is shown in the sanctioned plan. It is not contended by the plaintiffs that that area is illegally shown. The fitness centre is provided on the 8th floor of the rehab building. It is in the corner of the refuge area. It is adjacent to one of the flats constructed on the 8th floor. A look at the plan cannot itself show whether it is in the refuge area or in, what the plaintiffs call, the habitable area; it is separately shown. It is shown to be of about 270 sq. ft. Since the Balwadi was 100 sq. ft in area the fitness centre has to be of not less than 100 sq. ft in area. The defendants claim that they shall provide a fitness centre of 170 sq. ft in area.

9. A temple also has to be provided on the 8th floor of the building. The dimensions of the temple which existed are not shown by the plaintiffs. The defendants claim that the temple was of 25 to 30 sq. ft in area. The defendants would provide a temple of similar area. Mr. Madon on behalf of the defendants stated to Court that the temple would be provided within the area shown as the fitness centre since the area of the fitness centre is far larger than what is required to be provided. The temple is not separately shown in the plan. It is, therefore, clarified that the temple area would be provided on the 8th floor of the rehab building within the fitness centre shown on the plan.

10. The plaintiffs do not press for any other reliefs at this stage.

11. The notice of motion is made returnable on 15th July, 2015.

(ROSHAN DALVI, J.)