

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7688 OF 2013

M/s. Mukund Iron Staff Association	]	
Co-op. Housing Society Ltd. A Society	]	
registered under the Maharashtra Co-op.	]	
Societies Act, 1960 (Act 24 of 1961)	]	
under Serial No.BOM/SSG/4536 of 1971	]	
having its office at 7/12	]	 Petitioner
Govandpada Mulund (East), Bombay 400 081	]	(Orig. Plaintiff)

versus

1]	Vasant Ramchandra Patil	]	
	since deceased through legal heirs	]	
		]	
	1a) Mrs. Sandhya Prashant Koli	]	
	Age 40, Occupation ____	]	
		]	
	1b) Dr.Nitin Vasant Patil	]	
	Age Adult, Occupation ____	]	
		]	
	1c) Dr.Nilesh Vasant Patil	]	
	Age Adult, Occupation ____	]	
		]	
	All residing at Chandra Ganga Building	]	
	Near Neelam Nagar, Mulund (East)	]	
	Mumbai – 400 081	]	
		]	
2]	Trimbak Ramchandra Patil	]	
	since deceased through legal heirs	]	
		]	
	2a) Mrs. Suvasha B Tari	]	
	Age Adult, Occupation ____	]	
		]	
	2b) Mrs. Dr.Pratibha V Gupte	]	
	Age Adult, Occupation ____	]	
		]	
	Both residing at Patil Heritage Building S.N.	]	
	Road, Tambe Nagar, Mulund (West),	]	
	Mumbai – 400 080	]	

- 2c) Mr. Abhay Trimbak Patil
Age Adult, Occupation ____
Residing at 1531, Deer Crossing
Dr.Alamond Br C. a. 91765
- 2d) Mr. Bipin Trimbak Patil
Age Adult, Occupation ____
- 2e) Mr. Charan Trimbak Patil
Age Adult, Occupation ____
- Residing at beach Bungalow Society,
S.N. Road, Tambe Nagar,
Mulund (West), Mumbai 400 080
- 3] Smt. Prabhavati W/o Late Kamlakar
Ramchandra Patil.
- 4] Smt.Nutun Shashikant Keni of Bombay
Indian Inhabitant
- 5] Smt. Navlatanee Kanchan Kandilal Deo
- 6] Mr. Milinda Jagadish Worlikar of Bombay
Indian Inhabitant
- 7] Miss Bhavana Kamlakar Patil of Bombay
Indian Inhabitant
- 8] Santosh Kamlakar Patil of Bombay
Indian Inhabitant
- (Nos. 3 to 8 R/at – Chandrakutir Bungalow
Dr. Rajendra Prasad Road
Mulund (West), Bombay – 400 080.
- 9] Smt. Jankibai W/o of Late Raghunath
Ramchandra Patil
- 10] Arun Raghunath Patil for self and as
Karta and Manager of his joint and
Undivided Hindu Family consisting of
himself, his wife Smt. Aruna Arun Patil

- and his sons and daughters Kum. Harshada
Arun Patil, Kum. Shital Arun Patil
Kum. Rohit Arun Patil.
- 11] Ashok Raghunath Patil for self and
as Karta and Manager of his joint and
undivided family consisting of himself,
his wife Smt. Sunanda Ashok Patil and
his daughters Kum. Spriya Ashok Patil,
Kum. Suchitra Ashok Patil
- 12] Smt. Asha Narendra Patil for self and as
Mother and natural guardian of Kum. Neeta
Narendra Patil.
- 13] Dilip Raghunath Patil for self and as Karta
and Manager of his joint and undivided family
consisting of himself, his wife Mrs.Kalpana
Dilip Patil and his daughter Kum.Mridula
Dilip Patil
- 14] Nandu Raghunath Patil for self and as Karta
and Manager of his joint and undivided family
consisting of himself, his wife Smt.Jayshree
Nandu Patil and his sons and daughters
Kum. Abhijit Nandu Patil
Kum. Aditi Nandu Patil
- 15] Vindo Raghunath Patil for self and as Karta
and Manager of his joint and undivided
family consisting of himself, his wife
Smt. Neema Vindo Patil and his
Son Kum. Omkar Vinod Patil
- 16] Smt. Shashikala Keny
- Nos. 9 to 16 having their common address at
Patil House, Govandpada, Mulund (East)
Bombay 400 081.
-]..... Respondents
](Orig. Defendants)

Mr. S M Oak i/by Mr. Sagar Joshi for the Petitioner.

Mr.Ibrahim Merchant i/by Kvaiyar and Associates for the Respondent Nos.1(a) to 1(c).

Mr. Abdul Latif N Khatri for the Respondent Nos.2(d) and 2(e).

Mr.V N Bodke i/by M/s. Chitnis Vaithy & Co. for the Respondent Nos.9 to 15.

None appears for the other Respondents.

CORAM : R. M. SAVANT, J.

DATE : 18th February 2015

ORAL JUDGMENT

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 2/8/2013 passed by the learned Judge of the City Civil Court, Greater Bombay by which order the Application being Notice of Motion No.2461 of 2013 filed by the Petitioner/Plaintiff for re-calling of its witness and tendering additional affidavit of examination in chief, for leading evidence in terms of Section 16(c) of the Specific Relief Act, 1963 came to be rejected.

3 Shorn of unnecessary details, a few facts, which are necessary for the adjudication of the above Petition, can be stated thus :- The Petitioner herein is the original Plaintiff and the Respondents herein are the original Defendants in the suit which was initially filed in this Court being H C Suit No.2526 of 1988. The said suit was filed for specific performance of 4 agreements dated 13/2/1975 in respect of 4 pieces of land which were agreed

to be sold to the Plaintiff. The Plaintiff is a Co-operative Housing Society of the employees of one Mukund Iron. It seems that the Plaintiff had also purchased other plots of land from the Defendants. The Defendants, it seems had conveyed the other plots of land which were purchased but in spite of having been called upon to do so had failed to execute the conveyance deeds in respect of the 4 plots of land covered by the agreements dated 13/2/1975. The Plaintiff was therefore constrained to file the suit in question for specific performance.

4 In the context of the challenge raised in the present Petition, it is required to be noted that in Paragraph 14 of the plaint, the Plaintiff has referred to the letters by which the Plaintiff had called upon the Defendants to execute the conveyance and it has been averred that the Plaintiffs have shown their readiness and willingness to pay the balance of the purchase price viz. Rs.7,67,250/- but the Defendants on one pretext or the other have failed and neglected to come forward to execute the conveyance in respect of the said remaining area particularly the lands covered by the 4 agreements. The said paragraph is followed by paragraphs 15 and 16 in which paragraphs the Plaintiff has further reiterated its case in respect of its readiness and willingness.

5 The Defendants have filed their written statement pursuant to

which the Issues came to be framed by a learned Single Judge of this Court on 3/12/2009 and amongst the issues framed was Issue No.4 which reads thus :-

“Issue No.4 : Whether the Plaintiffs prove that they were always ready and willing and are still ready and willing to perform their part of the agreements?

It is thereafter that the Commissioner came to be appointed for recording of evidence by a learned Single Judge of this Court. The affidavit of evidence was filed by the Plaintiff on 13/1/2010 along with the compilation of documents. The documents were numbered on 29/4/2011 whilst the suit was pending in this Court. The Commissioner thereafter recorded the evidence and the 3 sets of Defendants being Defendant Nos.1(A) to 1(C), Defendant Nos.5 to 15, and the Defendant Nos.2(D) and 2(E) have cross examined the Plaintiff's witness which cross examination covered the aspect of the readiness and willingness of the Plaintiff.

6 The suit came to be transferred to the City Civil Court, Greater Bombay in October 2012 on the pecuniary jurisdiction of the City Civil Court being enhanced. The Plaintiff closed its evidence on 21/6/2013. The Defendants did not lead any evidence and accordingly closed their evidence. The suit is therefore at the stage where the arguments are to be heard. However, on 29/6/2013 an application came to be filed by the Defendant Nos.2(c) and 2(d) for directions to be issued to the Plaintiff to produce the documents which have been mentioned in paragraph 14 of the plaint. The said

documents relate to the readiness and willingness of the Plaintiff. The said application came to be rejected by the Trial Court by an order passed on the same day on the ground that the said application could not be allowed and if the Plaintiff fails to produce the documents mentioned in paragraph 14 of the plaint, then adverse inference would be drawn against the Plaintiff. It is thereafter that the instant Notice of Motion being No.2461 of 2013 came to be filed by the Plaintiff for the reliefs which have been adverted to in the earlier part of this order. In the affidavit in support of the Motion the ground stated therein is that due to inadvertence the averments relating to the documents in support of the case of readiness and willingness were not made in the affidavit in examination in chief filed by the Plaintiff. Hence leave of the Court was sought for recalling of the Plaintiff's witness and for permission to file additional affidavit of examination in chief of the Plaintiff's witness.

7 The said application was opposed to on behalf of the Defendant Nos.1(A) to 1(C) by filing affidavit in reply of one Dr. Nitin Vasant Patil. The objection was on the ground of delay as also on the ground that though the documents have been mentioned in the plaint, the Plaintiff has not produced the same, and therefore, the Trial Court has passed an order on the application filed by the Defendant Nos.2 (c) and 2(d) for adverse inference being drawn against the Plaintiff. It is on the said ground that the Notice of Motion was opposed to on behalf of the said Defendant Nos.1A to 1C.

8 The Trial Court considered the said Application being Notice of Motion No.2461 of 2013 and as indicated above by the impugned order rejected the same. The gist of the reasoning of the Trial Court is that since the application is referable to Order XVIII Rule 17 of the Code of Civil Procedure, and since the evidence of the Plaintiff is complete, the Application could not be allowed as the same would amount to filling up the lacuna in the evidence of the Plaintiff. The Trial Court has relied upon the judgment of the Apex Court reported in (2009) 4 SCC 410 in the matter of Vadiraj Naggappa Vernekar. (Dead) Through LRs v/s. Sharadchandra Prabhakar Gogate. The Trial Court observed that the provisions of Order XVIII Rule 17 of the Code of Civil Procedure can be invoked only for the purpose of clarifying the material that has been placed on record in order to reach a proper conclusion and could not be invoked to fill up the lacuna in the evidence. The Trial Court accordingly by the impugned order dated 2/8/2013 has rejected the said application being Notice of Motion No.2461 of 2013. As indicated above it is the said order dated 2/8/2013 which is taken exception to by way of the above Writ Petition.

9 Heard the learned counsel for the parties. The learned counsel appearing on behalf of the Petitioner Shri S M Oak would contend that in terms of the law laid down by the Apex Court in *Vernekar's* case (supra) as also the judgment of the Apex Court reported in (2011) 11 SCC 275 in the]

matter of *K K Velusamy v/s. N Palansamy*, the Trial Court is not powerless in allowing the application for recalling of the witness and for permitting the Plaintiff to adduce additional evidence if interest of justice so requires. The learned counsel for the Petitioner would contend that in the instant case the plaint ex-facie discloses that the averments relating to the readiness and willingness have already been made and therefore this is not a case where the Plaintiff is seeking permission to lead evidence in respect of the readiness and willingness in the absence of pleadings. The learned counsel would contend that it is through inadvertence or mistake that the averments relating to the documents to buttress the case of the Plaintiff as regards the readiness and willingness remained to be incorporated in the affidavit of examination in chief. The learned counsel in support of this contention would place reliance on the judgment of the Apex Court in *Velusamy's* case (supra) and would contend that the paramount consideration has to be the interest of justice. The learned counsel would contend that grave prejudice would be caused to the Plaintiff, if the Application is not allowed as in the absence of the said evidence grave prejudice would be caused to the Plaintiff. The learned counsel would draw the Court's attention to the fact that pursuant to the agreements to sale and the power of attorney executed by the Defendants, 15 buildings have been constructed in the mid eighties wherein the members of the society are residing, the buildings are constructed on the lands which have been conveyed as also the lands covered by the agreements in respect of which specific

performance is sought as all the plots have been amalgamated.

10 Per contra, the learned counsel appearing on behalf of the Respondent Nos.1(a) to 1(c) Shri Merchant would contend that the Plaintiff having been cross examined extensively by the Defendants even on the aspect of readiness and willingness cannot be now permitted to lead additional evidence as the same would amount to Plaintiff being permitted to lead evidence to fill up the lacuna which is there in the evidence. The learned counsel drew this Court's attention to the cross examination of the Plaintiff's witness which was conducted before the Court Commissioner on the aspect of readiness and willingness. The learned counsel would contend that though the Apex Court has held that in the interest of justice the course of action of recalling the witness can be permitted. The facts of the case before the Apex Court in *Vernekar's* case (supra) are identical to the facts of the present case and therefore the Apex Court in the said case having refused to permit additional evidence from being led, the same analogy would have to be applied to the Plaintiff in the instant case as in the instant case the Plaintiff was very well aware of the material which it had to place on record in respect of the case of the readiness and willingness and having not done so, the Plaintiff now cannot be permitted to adduce additional evidence and bring the said documents on record. The learned counsel sought to distinguish the judgment of the Apex Court in *Velusamy's* case (supra) on the basis of the fact that in

Velusamy's case (supra) the facts in respect of which the permission to file additional affidavit of evidence was sought was in respect of the events which had taken place post the filing of the suit and in fact just before the arguments had commenced. Such is not the case in the instant matter, according to the learned counsel and therefore invocation of Order XVIII Rule 17 of the Code of Civil Procedure or Section 151 of the Code of Civil Procedure cannot be permitted.

11 The learned counsel appearing on behalf of the Respondent Nos.9 to 15 Shri Bodke would support the submissions made by the learned counsel for the Respondent Nos. 1(a) to 1(c) Shri Merchant, however, in addition would contend that the instant Notice of Motion was filed after the application filed by the Defendant No.2 (c) and 2(d) was rejected by the Trial Court and is therefore an afterthought. The learned counsel would contend that having regard to the evidence which had come on record on behalf of the Plaintiff, that the Defendants did not choose to lead any evidence.

12 The learned counsel appearing on behalf of the Respondent Nos.2 (d) and 2(e) Shri Khatri would also support the submissions made by the learned counsel for the Respondent Nos.1(a) to 1(c) Shri Merchant, however, in addition would contend that the delay and laches in filing the Notice of Motion has not been properly explained by the Plaintiff, and therefore, this

Court would not permit the Plaintiff to invoke Order XVIII Rule 17 of the Code of Civil Procedure or Section 151 of the Code of Civil Procedure.

13 Having heard the learned counsel for the parties, I have considered the rival contentions. The question that is posed in the above Petition is whether the Plaintiff should be allowed to lead additional evidence and thereby re-open its evidence. To answer the said question the facts which have been narrated herein above would have to be re-visited. As indicated above, the suit in question has been filed for specific performance of 4 agreements dated 13/2/1975 in respect of the 4 plots of land. It appears that the owners had also agreed to sell other plot of lands to the Plaintiff's society, save and except the 4 lands which are the subject matter of the 4 agreements of which specific performance is sought, the other lands have been conveyed to the Plaintiff society. It is also required to be noted that pursuant to the agreements to sale and the power of attorney executed by the owners the Plaintiff society has constructed 15 buildings for its members, which members as mentioned herein above are belonging to the company known as Mukund Iron. It seems that the said construction was carried out after the amalgamation of all the plots. The said buildings have been constructed in the early eighties and are presently in occupation of the Plaintiff's members. In so far as the agreements in question are concerned, as indicated herein above, in paragraphs 14 to 16 the Plaintiff has pleaded its case of readiness and

willingness to perform its part of the agreements and has also pleaded the refusal of the Defendants to abide by the terms and conditions of the agreements. The Plaintiff has also referred to the documents in support of the said case which find place in paragraph 14 of the plaint. No doubt the affidavit of evidence of the witness of the Plaintiff was filed wherein the evidence in respect of the case of the readiness and willingness of the Plaintiff remained to be incorporated. The witness of the Plaintiff has been cross examined also on the aspect of readiness and willingness. The fact that the Defendants have chosen to cross examine the Plaintiff's witness on the aspect of readiness and willingness shows that the parties were knowing as to in respect of what matters they were litigating. The anxiety of the Defendants can also be seen from the fact that the Defendant Nos. 2(c) and 2(d) had filed the application for a direction to be issued to the Plaintiff to produce the documents which are mentioned in paragraph 14. The Trial Court has rejected the said application by holding that such a direction could not be issued and if the Plaintiff does not produce the said documents then adverse inference can be drawn against the Plaintiff. It is thereafter that the instant Notice of Motion came to be filed for the relief which has been adverted to herein above. In so far as Order XVIII Rule 17 of the Code of Civil Procedure is concerned, the same has been the subject matter of interpretation from time to time. The Apex Court in *Vernekar's* case (supra) was also concerned with the application made by the Plaintiff in the said case for being permitted to lead additional evidence. The

Apex Court in the facts of the said case had come to a conclusion that the person who had filed the affidavit of evidence was knowing the facts right from the beginning and therefore did not permit the Plaintiffs in the said case to adduce the additional evidence as the Apex Court was of the view that granting permission in the said case would amount to the Plaintiffs being permitted to fill up the lacuna in the evidence.

14 The said provision had also come up before the Apex Court for interpretation in *Velusamy's* case (supra). In the said case applications by the Defendant/Appellant under Order XVIII Rule 17 and Section 151 of the Code of Civil Procedure were for recall of the witness and for leading and/or reopening the evidence filed on the basis that after the suit was set down for arguments, the conversation between the Plaintiff and the Defendant and some of the witnesses was recorded, which conversation disclosed that the transaction was in the nature of a money lending transaction which was the case of the Defendant in the suit. Since the compact disc containing the conversation which had taken place at the contemporaneous time when the suit was being heard and since the Defendant/Appellant sought to produce the compact disc as and by way of additional evidence, that the Apex Court deemed it appropriate to allow the application. The Apex Court held that after the deletion of Order XVIII Rule 17A for reopening of evidence and recall of witness for further examination or cross examination, for purposes other than

securing clarification required by the Court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases. However, in the context of the present case, the observations of the Apex Court in Paragraphs 12, 14, 15 and 19 of the said Report are relevant. The said paragraphs are reproduced herein under for the sake of ready reference :-

12 The respondent contended that section 151 cannot be used for re-opening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of section 151 has been explained by this Court in several decisions (See : Padam Sen vs. State of UP-AIR 1961 SC 218; Manoharlal Chopra vs. Seth Hiralal - AIR 1962 SC 527; *Arjun Singh vs. Mohindra Kumar* - AIR 1964 SC 993; Ram Chand and Sons Sugar Mills (P) Ltd. vs. Kanhay Lal - AIR 1966 SC 1899; *Nain Singh vs. Koonwarjee* - 1970 (1) SCC 732; *The Newabganj Sugar Mills Co.Ltd. vs. Union of India* - AIR 1976 SC 1152; *Jaipur Mineral Development Syndicate vs. Commissioner of Income Tax, New Delhi* - AIR 1977 SC 1348; *National Institute of Mental Health & Neuro Sciences vs. C Parameshwara* - 2005 (2) SCC 256; and *Vinod Seth vs. Devinder Bajaj* - 2010 (8) SCC 1). We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice

warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.

14 The amended provisions of the Code contemplate

and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

15 The learned counsel for respondent contended that once arguments are commenced, there could be no re-opening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.

19 We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bonafide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.”

(Emphasis supplied)

The Apex court has therefore held that the need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. The Apex court further held that if there is abuse of the process of the Court, or if interests of justice require the court do do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard either fully or partly. The Apex Court has crystallized the proposition of law by observing that where the application is found to be bonafide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering

justice, that the application is required to be allowed. The Apex Court therefore held that the court is not powerless to consider the application for leading the additional evidence filed by the Plaintiff but the same is circumscribed by the tests which have been laid down by the Apex Court. The paramount consideration if one can say is that the same has to assist in rendering justice. In the instant case, the suit being one for specific performance. The aspect of readiness and willingness assumes importance and can be said to be the defining aspect in so far as the entitlement of the Plaintiff to the relief of specific performance is concerned. As indicated herein above, this is not a case where for the first time the Plaintiff wants to produce the evidence in respect of its readiness and willingness without there being any pleadings. The pleadings are already there in place. The parties are also aware as to in respect of what matters they are litigating. However, in the affidavit in evidence that was filed on behalf the Plaintiff, the evidence in that regard remained to be incorporated. It is required to be borne in mind that the Defendants have conveyed other lands which they had agreed to sell to the Plaintiff except 4 plots of land covered by the 4 agreements of which the specific performance has been sought. The fact that the lands have been constructed upon and that the buildings are standing thereon since the early eighties cannot be lost sight of. The Defendants would be obviously entitled to cross examine the Plaintiff's witness in respect of the additional evidence. For the delay in filing the Application the Defendants can be compensated by way of costs. However, if

the application is not allowed then grave prejudice is likely to cause to the Plaintiff having regard to the facts and circumstances which are prevailing in the present case. The interest of justice therefore requires that the Plaintiff be given an opportunity to lead evidence in respect of its readiness and willingness. The Trial Court seems to have taken a highly technical view of the matter and has rejected the application without taking into consideration the aforesaid facts. In that view of the matter, the impugned order dated 2/8/2013 would have to be quashed and set aside and is accordingly quashed and set aside. The Notice of Motion No.2461 of 2013 would accordingly stand allowed and the following directions are issued :-

- [1] The Plaintiff to file the additional affidavit of evidence only in respect of the aspect of its readiness and willingness latest by 17/03/2015 when the suit in question is to come up before the Trial Court.
- [2] The Defendants would be entitled to cross examine the Plaintiff's witness and lead rebuttal evidence if they so deem it appropriate.
- [3] The contentions of the parties on merits are kept open for being agitated before the Trial Court at the hearing of the suit.
- [4] Allowing the instant Writ Petition should not be construed as

any expression of opinion on the merits of the suit. The suit would undoubtedly be tried on its own merits and in accordance with law.

[5] In the facts and circumstances of the present case, the Plaintiff to pay costs of Rs.5000/- to each set of Defendants represented by the learned counsel Shri Ibrahim Merchant, Shri Abdul Khatri and Shri V N Bodke. The same to be done on or before 17/03/2015.

[6] The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[7] The learned counsel appearing on behalf of the Respondent Nos.1(a) to 1(c) Shri Merchant seeks stay of the instant order. In view of the fact that the Plaintiff has been granted time up to 17/03/2015, the said prayer is rejected.

[R.M.SAVANT, J]