

SHEPHALI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 126 OF 2016
AND
NOTICE OF MOTION (L) NO. 1194 OF 2015
AND
NOTICE OF MTOION NO. 663 OF 2012
AND
NOTICE OF MOTION NO. 208 OF 2013
IN
SUIT N. 66 OF 2010

Maqbool Mohd Hanif Qureshi & Ors ...Plaintiffs
Versus
Crown Builders & Developers & Ors ...Defendants

**Mr Suresh M Sabrad, a/w Mr Sanjay Gawde, for the Applicants/
Plaintiffs in all Notices of Motion.**
Mr Omar Khayam Shaikh, for the Defendant No. 1.

CORAM: G.S. PATEL, J
DATED: 23rd January 2017

PC:-

I. NOTICE OF MOTION NO. 126 OF 2016

1. This is the Plaintiffs' Notice of Motion for restoration of its own Notice of Motion No. 1194 of 2015, which in turn seeks restoration of Notice of Motion No. 663 of 2012 and Notice of Motion No. 208 of 2013. There is actually no reason whatsoever disclosed in the present or latest restoration application except the puzzling averment in paragraph 7 that the previous Notice of Motion No. 1194 was "*dismissed for non-prosecution for no fault of the Plaintiffs.*" I do not know what to make of this. I should have thought non-prosecution is, as the phrase suggests, indeed the Plaintiffs' fault. It is hardly possible to blame anyone else for the Plaintiffs' non-prosecution.

2. That said, I told the Advocate for the Plaintiffs that I would grant the Notice of Motion as also the previous Notice of Motion provided both the earlier Notices of Motion No. 663 of 2012 and No. 208 of 2013 were argued right away. He agreed, but asked these to be kept back. I agreed. The matter was then called a second time a short while later.

3. Accordingly, the Notice of Motion is allowed. It is made absolute. Notice of Motion (L) No. 1194 of 2015 is restored.

II. NOTICE OF MOTION (L) NO. 1194 OF 2015

4. By consent, the Notice of Motion is taken up for hearing and final disposal. For the foregoing reasons, it is allowed and made

absolute. Notices of Motion No. 663 of 2012 and 208 of 2013 are restored to file.

III. NOTICE OF MOTION NO. 663 OF 2012

5. By consent, taken up for hearing and final disposal forthwith. Heard both sides.

6. Notice of Motion No. 663 of 2012 seeks a decree on admission against Defendant No. 1 who has filed a Written Statement. Defendant No. 1 exited the development project. Defendants Nos. 2 and 3 came on the scene thereafter. There can, therefore, be no decree for specific performance against Defendant No.1 This is fairly accepted by Mr Sabrad for the Plaintiffs. At his request, Notice of Motion 663 of 2012 is dismissed as withdrawn.

II. NOTICE OF MOTION NO. 208 OF 2013

7. By consent, this Notice of Motion is also taken up for hearing and final disposal.

8. This Notice of Motion is for appointment of the Court Receiver.

9. This too is dismissed as withdrawn at the request of the Advocate for the Plaintiffs.

10. All four Notices of Motion are disposed of in these terms.

11. There will be no order as to costs.

(G. S. PATEL, J.)