

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

NOTICE OF MOTION NO.62 OF 2015
IN
SUIT NO.1523 OF 2011

Shobha Ramchandra Kripalani & Ors.	 Applicants
IN THE MATTER BETWEEN	
Vashdev Bhagwandas Malpani	 Plaintiff
V/s	
Shobha R. Kriplani & Ors.	 Defendants

Mr. Pradeep J. Thorat for Applicants/Defendant Nos.1 to 3.

CORAM : A.A. SAYED, J.

DATED : 23 MARCH 2015

P.C.

1 This Notice of Motion is taken out by the Applicants/original Defendants to recall the order dated 27 February 2012 passed by the Prothonotary & Senior Master transferring the Suit to the list of Undefended Suits and to permit the Defendants to file Written Statement by condoning the delay of 715 days.

2 The suit is filed by the Plaintiff against the Applicants/Defendants seeking directions to enter into a redevelopment agreement and in the alternative to pay to the Plaintiff a sum of Rs.2.18 Crores alongwith interest.

3 On 10 February 2014 the suit was listed on Board of learned Single Judge. The Advocate for the Applicants had appeared and sought time to

file Notice of Motion for setting aside the impugned order dated 27 February 2012, transferring the suit to the list of undefended suits. It is averred in the Affidavit in support of the Notice of Motion that due to oversight the Advocate for the Applicants did not notice that the suit was listed before the Prothonotary & Senior Master on 27 February 2012. It is contended that the Advocate for the Applicants lost track of the matter and it was only when the matter was listed on 10 February 2014 that the Applicants came to know about the impugned order dated 27 February 2012 of the Prothonotary & Senior Master. It is submitted that the delay caused in filing the present Notice of Motion is not intentional and it was merely due to oversight that the matter was missed out.

4 An Affidavit-in-Reply has been filed on behalf of the Plaintiff wherein it is pointed out that prior to passing of the impugned order of the Prothonotary & Senior Master the matter was listed on innumerable occasions and the Advocate for the Applicants had appeared. It is averred in the Reply that the Applicants have malafidely failed and had avoided to file the Written Statement in spite of being granted repeated opportunities by the Prothonotary & Senior Master and the Applicants were well aware of the listing the suit before the Prothonotary & Senior Master. It is stated that the Applicants have made false statements in the Affidavit-in-support of the Notice of Motion and the Applicants had not made out sufficient cause to grant the reliefs in the Motion.

5 Having heard the learned Counsel for the Applicants and considering the facts and circumstances of the case and in the interest of justice, I am inclined to allow the Motion subject to costs. For the oversight by the Advocate for the Applicants of the listing the matter before the Prothonotary & Senior Master and/or negligence thereof the Applicants cannot be penalised. Moreover, it is seen that in the Notice of Motion taken out by the Plaintiff in the suit, the Applicants had participated and were directed not to part with possession and enter into development agreement with any third party by an order dated 16 April 2012 while disposing of the Motion. In my view, the Applicants have made out a case to grant them an opportunity to defend to suit.

6 In the circumstances, Notice of Motion is allowed in terms of prayer clauses (a) and (b) subject to costs of Rs.20,000/- to be paid by the Applicants/Defendants to the Plaintiff.

7 Written Statement to be filed within a period of three weeks from today after payment of costs to the Plaintiff.

8 The Notice of Motion is allowed in the aforesaid terms.

(A.A. SAYED, J.)