

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

**NOTICE OF MOTION NO.1014 OF 2009
IN
SUIT NO.133 OF 1973**

Kantilal C. Kothari and Ors. ... Plaintiffs
versus
The Bharat Building Co. and Ors. ... Defendants

**WITH
NOTICE OF MOTION NO.1015 OF 2009
IN
SUIT NO.132 OF 1973**

Kantilal C. Kothari and Ors. ... Plaintiffs
versus
The Bharat Building Co. and Ors. ... Defendants

**WITH
NOTICE OF MOTION NO.1113 OF 2013
IN
SUIT NO.130 OF 1973**

Sukh Shantiniketan Co-operative Housing
Society Ltd. ... Applicant
and
Premchand Champalal Kothari and Anr. ... Plaintiffs
versus
The Bharat Building Co. and Ors. ... Defendants

**WITH
NOTICE OF MOTION NO.1287 OF 2013
IN
SUIT NO.131 OF 1973**

Sukh Shantiniketan Co-operative Housing
Society Ltd. ... Applicant
and
Ichrajdevi Daulatram Gandhi and Anr. ... Plaintiffs
versus
The Bharat Building Co. and Ors. ... Defendants

Astad Randeria i/by Mr. R.K.Satpalkar, Mr. Mutahhar Khan i/by M/s. Mulla and Mulla and Craigie Blunt and Caroe, for Plaintiffs.
Mr. D.H.Mehta i/by Mr. Y.R. Shah, for Defendant No.3.

CORAM: S.J. KATHAWALLA, J.

DATE: 15th SEPTEMBER, 2015

PC.:

1. Heard the learned Advocates for the parties and by consent, the following order is passed :

(i) The Notice of Motion No.1014 of 2009 is allowed in terms of prayer clauses (a) and (b), which are set out hereunder :

“(a) that the delay of 1316 days in taking out this Notice of Motion be condoned;

(b) this Hon'ble Court be pleased to set aside the order dated 23rd June, 2005 passed in the above Suit by His Lordship Mr. Justice D.G.Karnik dismissing the suit for default under Order 9 Rule 3 of the Code of Civil Procedure, 1908”;

(ii) The Notice of Motion No.1015 of 2009 is allowed in terms of prayer clauses (a) and (b) which are set out hereunder :

“(a) that the delay of 2003 days in taking out this Notice

of Motion be condoned;

(b) this Hon'ble Court be pleased to set aside the order dated 6th August, 2003 passed in the above Suit by His Lordship Mr. Justice D.G.Deshpande dismissing the Suit for default”;

(iii) The Notice of Motion No.1113 of 2013 is allowed in terms of prayer clause (a), which is set out hereunder :

“(a) that the ex-parte decree passed by this Hon'ble Court dated 20th June, 1991 be set aside”;

(iv) The Notice of Motion No.1287 of 2013 is allowed in terms of prayer clause (a), which is set out hereunder :

“(a) that the Ex-parte decree passed by this Hon'ble Court dated 20th June, 1991 be set aside”;

(v) Hearing of the above Suits is expedited upon the formal amendments being carried out and framing of issues, if not framed till date.

(vi) The City Civil Court is requested to commence trial if possible on day to day basis and endeavour to conclude the trial and pass orders within one year from the date of this order.

(vii) All ad-interim/interim orders passed earlier is/are hereby revived

and shall continue to be in force until final disposal of the Suits.

(viii) The learned Advocate for Defendant No.3 in all the above Suits states that till date Defendant No.3 has not created any third party rights in respect of the Suit property and shall not create third party rights or redevelop the Suit property by themselves and/or through an independent developer, until the hearing and final disposal of the Suits and for a period of 8 weeks in the event of the order being adverse to the Plaintiffs.

(ix) All contentions of the parties are kept open.

(x) Office to forthwith forward papers and proceedings in the above Suits to the Registrar, City Civil Court, Mumbai, who shall place the above Suits before the Principal Judge, for being assigned to a specific Court on or before 28th September, 2015.

(xi) The parties and their Advocates shall on 1st October, 2015 appear at 11.00 a.m. before the learned Judge to whom the four Suits are assigned and obtain necessary directions.

(xii) The learned Advocate for Defendant No.3 states that in the event of an Application being made by the Plaintiffs to have the evidence of the Plaintiffs recorded on Commission, they shall not object to the same, but submit to the orders of the Court.

(xiii) In the event of the parties requiring any

clarification/modification of this order, they shall be at liberty to move an appropriate application before this Court.

(xiii) The above Notices of Motions are accordingly disposed of.

(S.J.KATHAWALLA, J.)

Certified to be true and correct copy of the original signed order.