

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 2411 OF 2015
IN
SUIT (L) NO. 900 OF 2015**

Krishnakant Jayantilal Gandhi & Asha Krishnakant Gandhi	...Plaintiffs
<i>Versus</i>	
Harshul Krishnakant Gandhi & 2 Ors.	...Defendants

**Mr. S. Shah, Senior Advocate, with Mr. S. Kadam, Ms. A. Sharma
& Mr. S. Kadam, i/b M/s. Kadam & Co., for the Plaintiffs.**
**Mr. D.D. Madon, Senior Advocate, with Mr. S. Jagtiani, Mr. A.
Shiralkar, Mr. Ramchandra N, Ms. S. Bandekar, i/b M/s.
Narayanan & Narayanan, for Defendants Nos. 1 & 2.**

**CORAM: G.S. PATEL, J
DATED: 15th October 2015**

PC:-

1. After a great deal of effort by the counsel and advocates on both sides, an understanding has been arrived at. An in-principle Agreement was arrived at yesterday in Court and terms initialled by counsel were taken on record and marked "X". This is noted for the record.

2. Today, final consent terms are tendered. These consent terms are taken, at my suggestion, in the Notice of Motion. The only reason for this is because the parties' understanding envisages the performance of certain obligations and happening of certain events, and these themselves are contingent. Should, for any reason, this not come to pass some months hence, the Plaintiffs and the Defendants should at least be allowed to revert to the position as it stands today without prejudice to their respective rights and contentions. This is substantially what is provided in Clause 11 of the consent terms but I think it is best nonetheless to clarify this aspect of the matter.

3. The consent terms are signed by both the Plaintiffs and Defendants Nos. 1 and 2 as also by their respective Advocates. All parties are personally present in Court. The consent terms are taken on record and marked "X1" for identification. The undertakings in the consent terms are accepted as undertakings to the Court. I also must note that there is a handwritten correction to paragraph 9. This has been initialled by all four parties.

4. The Notice of Motion is disposed of in these terms with the following additional clarifications.

- (a) The Plaintiffs are entitled under these consent terms to get an additional car parking space that is provided in Clause 7 of the consent terms. This car parking space is in addition to the Plaintiffs' entitlement on redevelopment for car parking spaces that are attendant to the allotment of flats in the reconstructed

buildings. It is clarified that the Plaintiffs will be at liberty to independently sell this additional car parking space or to give it out on a temporary leave and licence or lease basis but subject to the terms, conditions, rules, regulations and bye-laws of the Society that may be formed at that time.

- (b) In the event that the amount contemplated by these consent terms cannot be paid and the Suit is required to be proceeded with, the parties shall stand reverted to the position as on today with all rights and contentions expressly being kept open. The fact that the present consent terms were filed by the parties will not be held against either side in that event.
- (c) The consent terms contemplate a third party developer taking up the redevelopment of the property in question. It is clarified that the developer will be entitled to do so in law unaffected by the pendency of the present suit or filing of these consent terms. It is also clarified that the developer is not required to disclose the present suit or these consent terms to any prospective buyer or existing purchaser of the premises in the free sale component of the redeveloped property.

5. The Notice of Motion is disposed of in these terms with no order as to costs.

6. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)