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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO.107 OF 2016

IN

SUIT NO.1210 OF 2003

Mrs. Kalpana Bhagwan Jathar And 4 Others ...Plaintiffs

vs

Mr. Prabhakar B. Jathar And 3 Ors. ...Defendants

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Mr. Rajesh Patil, a/w. Ms. Kanchi K. Joshi, i/b. M/s. Mahesh Jani & Co.,
for the Plaintiffs.

Mr. A. Talreja, for Defendant No.1.

Mr. B.M. Gore, Commissioner for Taking Accounts present.

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CORAM : S.C. GUPTE, J.

DATED : JANUARY 15, 2016

P.C. :

. The Notice of Motion seeks in effect a review and recall of an order passed by this Court on 17 December 2015. A Notice of Motion is not a proper proceeding for seeking review of an order passed by this Court disposing of a Chamber Summons. Nevertheless, I have heard the parties with a view to see if there is any error in the order within the meaning of Order 47 Rule 1 of the Code of Civil Procedure, which calls for a review or recall of the order.

2. Under Order 47 Rule 1, an aggrieved person can seek a

review of a decree passed or an order made against him on the basis of discovery of new and important matter or evidence which, despite exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of record or for any sufficient reason, the order needs to be reviewed. Evidently, there is no new or important matter or evidence, which is placed before this Court whilst seeking the present review. So also, there is no mistake or error apparent on the face of the record, which can be demonstrated by the Defendants/Applicants. There is no other sufficient reason either for review of the order.

3. Learned Counsel for the Defendants/Applicants submits that his clients originally did not contest the Chamber Summons in view of settlement talks between the parties. This is no ground to seek a review of the order. Neither the absence of the Defendants at the time the Chamber Summons was heard nor the failure of the Defendants to file any reply to the Chamber Summons is accounted for. Learned Counsel for the Defendants/Applicants makes a bald assertion that the suit property has not been valued properly. The suit property has been valued in pursuance of an order passed by this Court through a valuer on the panel of the Commissioner for Taking Accounts. That valuation was fixed for Rs.1.52 crores. In pursuance of a decree passed by this Court directing administration of the assets of the deceased predecessor-in-title of the Plaintiffs and Defendants, the property was put up for an auction sale with reserved price of Rs.1.52 crores. Since no offer for purchase of the property was received from any party upto Rs.1.52

crores, the sale could not go through. In the premises, the present Chamber Summons was taken out by the Plaintiffs. The Chamber Summons was not contested by the Defendants. There was no reply filed by the Defendants to the Chamber Summons. The Chamber Summons was heard by this Court on 17 December 2015. On that date, none appeared for the Defendants. The Chamber Summons was accordingly disposed of by passing the order sought to be recalled or reviewed. The order, as I have noted above, does not demonstrate any error or mistake apparent on the record, calling for its review.

4. Learned Counsel for the Defendants/Applicants was asked by this Court, if he was willing to make any higher offer than the Plaintiffs. He communicated that he would do so later after a proper valuation of the property is carried out by the valuer. In other words, there is no offer by the Defendants for any particular price, though the Defendants state that their offer would be higher than the offer of the Plaintiffs. That is as vague as can be.

5. In sum, there is no merit in the Notice of Motion. The Notice of Motion is dismissed. No order as to costs.

6. On the Defendants' application for stay of this order, I am not inclined to grant any stay, since the review is patently not maintainable. I am, however, inclined to consider granting twelve weeks' time to the Defendants to vacate the suit flat on an undertaking to be furnished to this Court to do so within a period of four weeks from today. The undertaking must also affirm that the Defendants will not

create any third party rights in respect of the suit flat or their share in the same. In case the Defendants want to vacate the flat at any time earlier, the Defendants may do so. In that case, the Commissioner for Taking Accounts to make over the entire share of the Defendants deposited by the Plaintiffs with the Commissioner in terms of the order dated 17 December 2015. Subject to the Defendants furnishing an undertaking in the form referred to above to the satisfaction of the Commissioner for Taking Accounts, the Commissioner shall pay the Defendants' share held by him and, thereafter, allow a total period of twelve weeks from today to the Defendants to vacate the suit flat in terms of this order.

(S.C. GUPTE, J.)