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

*APPEAL No. 251 OF 2015
IN
NOTICE OF MOTION No. 37 OF 2015
IN
SUIT No. 3 OF 2015*

Twin Developers

...Appellant

Vs.

*Saheeda Begum Alvi
(since deceased) and Ors.*

...Respondents

Mr. J.P. Sen, Senior Advocate a/w. Mr. Naushad Engineer a/w. Mr. Rohan J. Cama a/w. Mr. G.C. Mohanty i/b. Mohanty & Associates for Appellant
Mr.R.D. Soni a/w. S. Shamin i/b. Shamin & Co. for Respondents

***CORAM : V. M. KANADE &
REVATI MOHITE DERE, JJ.***

DATE : MARCH 1, 2016

P.C. :

1. The Appellant is aggrieved by an order passed by the Learned Single Judge dated 5th March, 2015 only to the extent of what is mentioned in paragraph 6 of the order. In paragraph 6, it is mentioned that the notice of

motion is disposed of.

2. It is submitted that the Court Receiver was directed to submit a report indicating what, according to the records of the Receiver, is the property in which the Defendants are said to be in possession. It is submitted that having thus asked the Court Receiver to submit a report, there was no occasion to dispose of the notice of motion since the Appellant was also seeking the other prayers made in the motion.

3. On the other hand, Shri Soni, learned counsel appearing on behalf of the respondents submitted that paragraph 5 clearly indicates that the parties are at liberty to apply and, therefore, the Appellant can always take out a fresh Notice of Motion.

4. In our view, there is some substance in the submissions made by the learned Senior Counsel for the Appellant since when the matter was called out, there was no reason to dispose of the notice of motion, particularly, when the Appellant is seeking other reliefs also. Hence, the observation made by the Learned Single Judge that “the notice of motion is disposed of” is set

aside. We direct the Learned Single Judge to dispose of the notice of motion expeditiously. Needless to mention that the parties are at liberty to file further affidavit in reply in view of the report submitted by the Court Receiver and Surveyor. All contentions raised by both the parties are kept opened. Appeal is disposed of in the aforesaid terms.

REVATI MOHITE DERE, J.

V.M. KANADE, J.