

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

**NOTICE OF MOTION NO.2059 OF 2010
IN
SUIT NO.1022 OF 2009**

Paras Constructions

....Plaintiffs

V/s.

Panalal D.Shethia & Ors.

....Defendants

Mr.Jariwala a/w Mr.Ganesh Ambekar i/by Thakore Jariwala & Associates for plaintiffs.

Mr.Akshay Kapadia i/by Shekhar Jagtap for defendant no.1.

CORAM : K.R.SHRIRAM,J

DATE : 18.8.2016

P.C.:-

1 This Notice of Motion is to dismiss the suit on the preliminary issue of maintainability of suit on the ground of bar of provision under Order-2 Rule-2 of the Code of Civil Procedure. In the same suit there was another Notice of Motion No.1567 of 2009 which came to be disposed on 7.5.2013. While disposing of that Notice of Motion, this court has observed in paragraph-14 as under :-

“14) One more fact which is to borne in mind is that the entire object of Order II Rule 2 of the Civil Procedure Code is that a person is not vexed twice on the same cause of action by filing of repetitive suits. In this case, the earlier suit being withdrawn, no such case arises. Besides Order XXIII Rule 1 of the Civil Procedure Code is a procedural provision and must be construed liberally to ensure that a just cause is not

thrown out at the threshold. In view of the above, I hold that Suit No.1022/2009 filed by M/s.paras Constructions is maintainable as necessary leave has been obtained under Order XXIII Rule 1 of the Civil Procedure Code and the bar of obtaining leave under Order II Rule 2 of the Civil Procedure Code would not apply. This of course is dehorse my finding that the order dated 9/3/2009 of the City Civil Court granting liberty to withdraw the suit contained in itself also leave under Order II Rule 2 of the Civil Procedure Code inasmuch as it permitted M/s.Paras Constructions to file a fresh suit for possession and other reliefs arising out of the MOU dated 13/2/1997. Therefore, the suit as filed by M/s.Paras Constructions is maintainable."

2 In view of the observations of this court, this Notice of Motion does not survive and stands disposed accordingly.

3 The counsels for the parties also state that pleadings in the suit are complete. The counsels also state that there is a connected suit between the same parties i.e., Suit No.589 of 2009 and pray that both the suits be tagged together. The counsels also state that pleadings in that suit are also completed. Both the suits be tagged together. Parties are directed to strictly comply with the following directions :-

- (a) File respective affidavit of documents on or before 3.9.2016 ;
- (b) Complete inspection by 14.9.2016
- (c) Exchange statement of admission and denial with reasons for denial by 23.9.2016 ;

4 Stand over to 26.9.2016 for issues on which date parties are directed to come with agreed draft issues.

(K.R.SHRIRAM,J)