

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1474 OF 2013

IN

SUIT NO.1375 OF 1991

Vilas A. Bharate and others

...Applicants

In the matter between:

Vilas A. Bharate and others

...Plaintiffs

vs.

M/s. Correa Builders and others

....Defendants

Ms. Harbans Kaur, instructed by M/s. K.P. Tiwari & Co., for the Applicants/Plaintiffs.

Ms. Sandhya Nanavare, instructed by Mr. M. Janardhanan, for the Defendants.

CORAM: S.J. KATHAWALLA, J.
DATE : 14th March, 2016

P.C.

The above Suit is filed by the Plaintiffs, inter alia, seeking an order and decree against the Defendants to specifically perform the agreements for sale entered into between the Plaintiffs and Defendant No.1, particulars whereof are set out in Exhibit-A to the Plaint and a copy of one such agreement is annexed as Exhibit-C to the Plaint.

2. On 15th December, 2006, this Court had directed the office to issue notice

to the Plaintiffs since the Advocate for the Plaintiffs had obtained a discharge. On 19th January, 2007, when the suit was listed before this Court, none appeared for the Plaintiffs and/or the Defendants. The suit was therefore dismissed. The Plaintiffs took out Notice of Motion No. 871 of 2007 seeking restoration of the suit. The same was restored on 14th November, 2008. Since none appeared for the Defendants on that day, the suit was directed to be placed for ex parte decree on 10th December, 2008.

3. Thereafter on 6th April, 2009 when the suit was called out, none appeared for the Plaintiffs and/or the Defendants. From the order it is not clear whether the suit was placed on Board under the caption for 'ex parte decree'. However, since none appeared for the Plaintiffs and/or the Defendants, the suit was dismissed. The Plaintiffs not being aware of the suit being dismissed had taken out Chamber Summons No. 1349 of 2011 seeking certain amendments to the Plaint. It appears that the Chamber Summons came up for hearing before this Court for the first time after two and half years i.e. on 5th February, 2014, when the same was, at the request of the Advocate for the Plaintiffs, adjourned to 12th February, 2014. In the meantime, the Plaintiffs had realised that the suit was dismissed by an order dated 6th April, 2009. The Plaintiffs, on 29th October, 2013, therefore took out the above Notice of Motion seeking condonation of delay and restoration of the suit. The said Notice of Motion has now taken up for hearing.

4. The Learned Advocate appearing for the Plaintiffs has explained that his Clerk had made an entry in the diary that the suit will be appearing before Mrs. Justice Roshan Dalvi on 6th April, 2009 (wrongly mentioned as 6th April, 2013 in the affidavit in support of the Notice of Motion) and since the matter appeared before Justice D.G. Karnik, J. on that day, the Advocate for the plaintiff missed the matter and the same was dismissed.

5. Though the aforestated facts show that the Plaintiffs have been negligent in pursuing the suit, since the Advocate for the Plaintiffs has appeared before this Court and has explained that the non-appearance before this Court on 6th April, 2009 was due to a mistake on the part of his office and further since the Plaintiffs have agreed to pay Rs. 2,00,000/- towards cost to the Defendants within a period of two weeks from the date of this order and further since in the event of dismissal of the above Notice of Motion, grave harm and prejudice will be caused to the Plaintiffs, the following order is passed:

- (i) The undertaking given by the Plaintiffs, through Mr. John Rodrigues, Plaintiff No.3, to pay Rs. 2,00,000/- towards costs to the Defendants within a period of two weeks from today is accepted;
- (ii) Upon payment of Rs. 2,00,000/- towards costs to the Defendants within a period of two weeks from today as undertaken, the suit shall stand restored.

- (iii) Place the suit for directions on 29th March, 2016 for directions.

Notice of Motion is accordingly disposed of.

(S.J. KATHAWALLA, J.)