

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

**NOTICE OF MOTION NO.4336 OF 2009
IN
SUIT NO.2677 OF 2007**

Razia A. Shroff & Ors.Plaintiffs

V/s.

Nishuvi Corporation & Ors.Defendants

Mr. Rushil M. i/b. Mr. Chirag Shah for the plaintiffs.

Mr. P.G. Karande i/b. M.G. Gawde for the defendants.

CORAM : K.R.SHRIRAM,J

DATE : 7th JULY, 2016

P.C.:-

1 On 1st October, 2010 while disposing of the suit as withdrawn, this court, as regards the present notice of motion recorded as under :-

“It is clarified that the defendants are free to prosecute notice of motion no.4336 of 2009. The same shall remain pending and shall be disposed of in accordance with the provisions of law.”

2 The notice of motion was registered on 18th December, 2009. The counsel for the plaintiffs against whom this motion has been taken out confirms that the plaintiffs have been served a copy of this notice of motion. By an order dated 18th February, 2010, the plaintiffs were directed to file their reply to this notice of motion and give their explanation to the allegations which are made in the affidavit in support of the notice of motion. It is more than six years

since then and even today the plaintiffs have neither filed any affidavit in reply nor given any explanation to the allegations made in the affidavit in support.

3 Therefore, I have no hesitation in concluding that the plaintiffs have no explanation to show. The allegations made in the affidavit in support are very very serious and the seriousness can be noted from the order dated 1st October, 2010 wherein even though the suit itself came to be disposed as withdrawn unconditionally, the court directed that the present notice of motion should be kept alive. The three Powers of Attorney about which in the affidavit in support of the notice of motion it is alleged were forged and fabricated based on which the suit was filed, have been deposited with the Prothonotary and Senior Master pursuant to an order dated 20th January, 2010.

4 In the circumstances, the notice of motion is allowed in terms of prayer clauses – (a) and (b) and accordingly disposed of. It is clarified that prayer clause - (c) has already been complied with.

Prayer clauses – (a) and (b) read as under :-

“(a) that this Hon'ble High Court be pleased to record a finding that it appears that the plaintiffs and the respondent have committed an offence under Section 192 of the Indian Penal Code, 1860 of fabricating documents in the above suit and direct the Registrar,

Original Side/The Prothonotary and Senior Master or such other Officer of this Hon'ble High Court as deemed fit and proper to file a criminal complaint under Section 192 of the Indian Penal Code, 1860 in respect of the same before the appropriate court;

(b) that this Hon'ble Court be pleased to record a finding that it appears that the plaintiffs and the respondent have committed an offence under Section 191 of the Indian Penal Code, 1860 of giving false evidence in the above suit and direct the Registrar, Original Side/The Prothonotary and Senior Master or such other Officer of this Hon'ble High Court as deemed fit and proper to file a criminal complaint under Section 191 of the Indian Penal Code, 1860 in respect of the same before the appropriate court.”

(K.R.SHRIRAM,J)