

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.467 OF 2017
IN
APPEAL FROM ORDER (ST) NO. 12459 OF 2017**

K Mehta & Co & Anr	...Applicants
<i>Versus</i>	
Sumitraben T Desai & Ors	...Respondents

Mr Naushad Engineer, *with Bhavin Gada, Kalpesh Mehta, Ms Mansi Shah, i/b M/s Pravin Mehta & Mithi & Co, for the Applicants.*

Mr Piyush Shah, *for Respondent No.1.*

Mr Sanjiv A Sawant, *for Respondent No.3.*

CORAM: G.S. PATEL, J
DATED: 13th June 2017

PC:-

1. Heard.
2. It is impossible to sustain either of the two orders against which this Appeal is directed.
3. The Plaintiff sought relief on the basis that she was entitled to permanent alternative accommodation of 700 sq ft in the reconstructed building. The 1st Defendant to the Suit was the co-

operative housing society. The 2nd Defendant is the present Appellant, a partnership firm. Defendant No.2(a) was or is its partner. Mr Engineer for the Appellant points out that on 13th September 2016 the Plaintiff's Motion was shown as scheduled for 11th November 2016. It appears that without notice to the 2nd Defendant this date was advanced to 3rd October 2016. On 5th October 2016, the learned Judge passed an order in favour of the Plaintiff making her Motion absolute in terms of prayer clauses (a) and (b). Now prayer clause (a) of this Motion admittedly is directed against the 2nd Defendant and requires, amongst other things, the 2nd Defendant to make payment to the Plaintiff of various quite substantial amounts including Rs.3,00,000/- as hardship compensation, Rs.22,000/- per month for transit accommodation, Rs.44,000/- as brokerage and Rs.10,000/- as transportation charges. The order of 5th October 2016 does not record the appearance of the 2nd Defendant or its Advocates or indicate that the 2nd Defendant was represented by anyone, or even given notice. No submissions on behalf of 2nd Defendant are noted. Indeed it seems that on a concession by the 3rd Defendant the Motion came to be decided. The Appellant, the original 2nd Defendant then took what, according to me, was the correct course of action, which was to go back to the learned Judge and seek a review or a rehearing after notice so that the 2nd Defendant could put forth its contentions, which I understand is that these amounts have already been paid. This is an aspect of the matter that has, as a result, not been considered by the Court at all.

4. The result is most unsatisfactory. Both orders, of 5th October 2016 and 6th April 2017, will have to be set aside. They are. Notice

of Motion No.3361 of 2016 is restored to file. The parties will appear before the learned Single Judge on 3rd July 2017. Appropriate directions will be passed for filing of replies and rejoinders. The learned Single Judge will dispose of the Motion on its merits uninfluenced by either of the previous orders or this order at the earliest possible.

5. In the meantime the Registrar of the City Civil Court has issued notice to the Defendant for non-compliance of the order of 5th October 2017. The learned Judge will pass appropriate directions for cancellation of the show cause notice.

6. All rights and contentions of the parties are kept open.

7. The Appeal from Order and the Civil Application are disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)