

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

**NOTICE OF MOTION NO.3241 OF 2011  
IN  
SUIT NO.2660 OF 2011**

Mr.Paras s/o Tarachand Jain & Anr. )....Plaintiffs/Applicants  
V/s.

Usman Ghani Thim & Ors. )....Defendants

Ms.Devki R.Sahu a/w Mr.R.R.Varma i/by A.M.Saraogi for  
plaintiffs/applicants.

Mr.Dharmendra J.Damani for defendant no.1.

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**CORAM : K.R.SHRIRAM,J**  
**DATE : 7.9.2017**

**P.C.:-**

1 This Notice of Motion is taken out by plaintiffs for an injunction restraining defendants from in any manner disturbing the plaintiffs' use and occupation of the suit property and also for restraining defendant no.4 i.e., Municipal Corporation of Greater Mumbai from issuing any IOD or CC for carrying out any construction in the suit plot. The suit was lodged on 9.9.2011. Notice of Motion was lodged on 9.11.2011.

2 The suit filed is for specific performance of an agreement dated 13.5.2008. It should be noted that the suit has been filed more than 3 years after the date of the Memorandum of Understanding. Notice of Motion was lodged 2 months later. No application for any

ad-interim relief was moved.

3           It is stated in the affidavit in reply that plaintiffs prior to filing of this suit, had filed a suit being L.C.Suit No.408 of 2011 in the City Civil Court at Dindoshi. Plaintiffs had also taken out a Notice of Motion and when they moved for ad-interim relief on 25.2.2011, the same was refused. Against that order, plaintiffs preferred an Appeal from Order No.453 of 2011. When the Appeal from Order was about to be dismissed, plaintiffs sought leave to withdraw the suit with liberty to file a suit for specific performance. That is how the present suit came to be filed.

          It is also stated in the affidavit in reply that the building in the suit plot has already been completed and flats have been sold and the Municipal Corporation of Greater Mumbai-defendant no.4 has even issued building completion certificate and occupation certificate.

          No rejoinder has been filed. Counsel for defendant no.1 states that a building has already come up.

4           In the circumstances, in my view, nothing remains in the Notice of Motion. Notice of Motion dismissed.

**(K.R.SHRIRAM,J)**