

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

**NOTICE OF MOTION NO.132 OF 2016
IN
SUIT NO.94 OF 2014**

Mrs. Bina Jayraj Shah
And Another

... Applicants

In the matter between

Vardhman Developers Ltd.
Versus

... Plaintiff

Andheri Krupa CHS Ltd And Others

... Defendants

.....

Mr. Sharad Wakchoure I/b Kishore Thakordas & Co. for the Plaintiff.

Ms. Vidhi Patel I/b M/s M. Bhatt & Co. for Defendant No.1.

Mr. P.C. Tated, Applicant No.2 present in person.

Mr. D.R. Shetty, Court Receiver present.

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CORAM : S.C.GUPTE, J.

DATE : 31 OCTOBER 2018

P. C. :

. This Notice of Motion is taken out by original Defendant nos.18 and 20 for injunctive reliefs against the Plaintiff herein. The disputes between the parties concern redevelopment of a building. The Plaintiff, who is a developer, has sought specific performance of the development agreement entered into between the Plaintiff and the first Defendant/society, particularly, by directing Defendant Nos.2 to 21, who are members of the

society, who according to the Plaintiff, are obstructing the development, to vacate their existing premises and shift to transit accommodation. Some reliefs have been granted in the present suit in favour of the Plaintiff/developer against conditions to be complied with by it. It is the case of the Applicants (original Defendant Nos.18 and 20) that the Plaintiff has not complied with its obligations under the development agreement and should be restrained from demolishing the existing building standing on the suit property, till it complies with the terms of development agreement, particularly, by furnishing a bank guarantee, so as to enable it to proceed with the demolition of the existing building. At this stage, learned Counsel for the Plaintiff/developer, who is the Respondent to the Notice of Motion and shows cause to the motion, seeks leave to withdraw the suit. Learned Counsel states that the Plaintiff/developer is not interested in prosecuting the suit. The Applicants in the present notice of motion object to the withdrawal of the suit. The Applicants submit that the Plaintiff must be held to its bargain under the development agreement.

2 It is for the Plaintiff either to choose to prosecute his suit or withdraw it. If any of the defendants has a grievance concerning any issue, which forms the subject matter of the suit, it is for them to adopt a proper remedy.

3 In the premises, the Plaintiff is permitted to withdraw its suit. The suit is disposed of as withdrawn. All the interim orders in the matter are vacated.

4 The Notice of Motion is disposed of as infructuous. The Applicants (original Defendant Nos.18 and 20), however, shall have liberty to prosecute any appropriate proceeding for claiming reliefs prayed for in the Notice of Motion herein. All rights and contentions of the parties, including objections of jurisdiction and time bar as also on merits, are kept open.

5 The Court Receiver appointed in the matter is discharged without passing accounts. The Court Receiver's charges/expenses shall be paid by the Plaintiff/developer. The Court Receiver may raise bill of charges/expenses on the Plaintiff and within three weeks of receipt of such bill, the charges/expenses shall be paid by the Plaintiff.

(S.C. GUPTE, J.)