

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

**NOTICE OF MOTION NO.1188 OF 2015
IN
SUIT NO.1052 OF 2012
WITH
NOTICE OF MOTION NO.1431 OF 2015**

M/s K. Bhatia Developers And Others ... Applicants

In the matter between :

Roop Subhash Desai ... Plaintiff

Versus

M/s. Bhatia Developers And Others ... Defendants

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Mr. Yatin R. Shah for Defendant Nos.1, 2 And 4/Applicants in Notice of Motion No.1188 of 2015.

Mr. Ajay Kumar I/b Shine Mohammed for the Respondent in Notice of Motion No.1188 of 2015 and the Plaintiff in Suit No.1052 of 2012.

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CORAM : S.C.GUPTE, J.

DATE : 24 JANUARY 2018

P.C. :

Heard learned Counsel for the parties.

2 Notice of Motion No.1188 of 2015 is taken out by original Defendant
Nos.1, 2 and 4 to the suit for recall of an order treating the suit as
undefended suit, and for leave to file their written statement after
condonation of delay. The motion is opposed by the Plaintiff. The case of
the Applicants/Defendant Nos.1, 2 and 4 is that there were settlement talks
between the parties concerning the present suit. Learned Counsel submits

that the settlement terms were even drawn and signed between the parties. These consent terms required reciprocal performances from the parties and pending such performances, further proceedings in the suit were not to be pressed. Learned Counsel submits that his clients were under the impression that since the suit is settled and further proceedings are stalled, the Applicants/Defendant Nos.1, 2 and 4 did not attend the proceedings and as a result, the order treating the suit as an undefended suit came to be passed on 10 February 2014. Learned Counsel submits that his clients were not aware of this order and learnt about the same only in the year 2015, when notices were issued to them as directed by the Court. Learned Counsel submits that immediately thereafter, his clients took out the present notice of motion, seeking recall of that order and leave to file their written statement. The explanation of the Applicants/Defendant Nos.1, 2 and 4 for not filing their written statement within time appears to be in order and their application deserves to be allowed, though interest of justice would be served better if the Plaintiff is compensated by some costs. After all the Plaintiff has diligently taken steps for prosecuting of the suit, and would suffer for no fault of his, if the application is allowed.

3 Accordingly, the notice of motion is made absolute in terms of prayer clause -(a). The Applicants/Defendant Nos.1, 2 and 4 shall pay the costs of this notice of motion, quantified at Rs.25,000/- (Rs.Twenty Five Thousand Only) to the Plaintiff. The costs to be condition precedent. The Applicants/Defendant Nos.1, 2 and 4 shall file their written statement within two weeks from today after payment of the costs to the plaintiff.

(S.C. GUPTE, J.)