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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1631 OF 2017
IN
SUIT NO. 2092 OF 2006
WITH
NOTICE OF MOTION NO. 631 OF 2014

Vishal H Gupta	...Plaintiff
<i>Versus</i>	
Mangal Prachar Co-op Hsg Soc Ltd	...Defendant

Ms Purnima G Bhatia, *with Neelam S Vyas, for the Plaintiff.*
Ms Pamela N Dalal, *I/b MP Vashi & Associates, for the Applicant in*
NMS/1631/17 & NMS/631/14 and for Defendant in Suit.

CORAM: G.S. PATEL, J
DATED: 23rd April 2018

PC:-

NOTICE OF MOTION NO. 1631 OF 2017

1. The Notice of Motion is by the Defendant. It seeks restoration of Defendant's Notice of Motion No. 631 of 2014 which was dismissed by KR Shriram J on 3rd August 2017 for non-prosecution.

2. I am prepared to restore the Notice of Motion on condition that the Defendant argues the restored Motion immediately. The Defendant agrees. The order dated 3rd August 2017 is recalled. Notice of Motion No. 631 of 2014 is restored to file.

3. The Notice of Motion is disposed of in these terms. No costs.

NOTICE OF MOTION NO. 631 OF 2014

4. By consent, this Notice of Motion is taken up for hearing and final disposal.

5. The Suit is for specific performance of a Memorandum of Understanding dated 5th January 2003. The Plaintiff has already obtained an order and injunction in the Plaintiff's own Notice of Motion. This is an order of 30th March 2011 that was passed by consent (SJ Kathawalla J) and it noted a statement made by the Defendant to a previous Court (Smt NN Mhatre J, as she then was) on 3rd October 2006 to the effect that the Defendant-Society was not interested in giving development rights to anybody; and that should it want to do so, it would give notice of at least 12 weeks to the Plaintiff to allow the Plaintiff to seek interim relief.

6. This position has continued ever since 2011 and has not been disturbed. The present Notice of Motion was filed in 2014, a good three years later. What the Defendant seeks is a restraint against the Plaintiff "from acting upon and relying upon the MoU dated 5th January 2003" and for an injunction restraining the Plaintiff from

creating third party rights, alienation etc in respect of the property that was the subject matter of the MoU.

7. The Notice of Motion is thoroughly misconceived. There can be no question of restraining the Plaintiff from 'acting upon' the MoU. This is after all a Suit for specific performance and that MoU is before this Court in search of a decree. It is not the Defendant's case that the Plaintiff is in possession of the property. It is the Defendant-Society that is in possession. There is no question of the Plaintiff disposing of or transferring any rights in that property or acting as the owner thereof. The agreement in question was for construction of additional floors.

8. The Notice of Motion is without merit. It is dismissed. There will be no order as to costs.

(G. S. PATEL, J)