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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1495 OF 2017
IN
SUIT NO. 1450 OF 1999

Mahendrakumar C Sanghvi & Ors	...Applicants
<i>In the matter between</i>	
Mahendrakumar C Sanghvi & Ors	...Plaintiffs
<i>Versus</i>	
SP Builders & Ors	...Defendants

Mr Ganesh Ambekar, *i/b T Jarimala & Associates, for the Plaintiffs.*
Mr Sanjay Manek, *for Defendant No.3.*
Ms Mitali Chhatpar, *i/b Solicis lex, for proposed Intervenor (Heera Panna Shopping Centre).*

CORAM: G.S. PATEL, J
DATED: 3rd December 2018

PC:-

1. This is the Plaintiffs' Notice of Motion seeking a recall of an order of KR Shriram J of 14th October 2016 and seeking leave to file an Affidavit of Documents, an Affidavit of Evidence and a Compilation of Documents.

2. The order of 14th October 2016 records that several months earlier on 18th July 2016, the Court recorded the Plaintiffs'

statement that they were closing their examination-in-chief and would file the Evidence Affidavit of PW2 within two weeks. That was not done and the Court, therefore, closed the evidence of the Plaintiffs. It is this order that is sought to be recalled. However, what is also pertinent is that on 8th September 2017, KR Shriram J dismissed the suit itself. The Plaintiffs thereafter filed Review Petition No. 9 of 2018. This was allowed on 13th June 2018 and the suit was restored to file.

3. The present Notice of Motion was filed in September 2017 but for reasons that are wholly unconvincing it has not been served till date. I am told this was because of the dismissal and restoration of the Suit, which is no excuse. I am also told that it was because the parties were negotiating a settlement, which is even less of an excuse.

4. The Suit having been restored, I will give the Plaintiffs a final opportunity. Rather than imposing costs, the Plaintiffs will be required to adhere to an extremely abbreviated time line. They will file and serve their supplementary Compilation of Documents and supplementary Evidence Affidavit on or before 6th December 2018 with no possibility of an extension under any circumstances.

5. It is noted that PW1 passed away even before his cross-examination could be completed. He suffered an accident while his evidence was being recorded.

6. Consequently, if the Plaintiffs do not comply with these directions the suit itself will stand peremptorily dismissed without further reference to the Court. It will not be restored thereafter under any circumstances, even on payment of costs. This is a suit of 1999 and it is not open to the Plaintiffs to proceed in this lethargic fashion.

7. The Notice of Motion is disposed of in these terms. No order as to costs.

8. The objections of the Defendants to the Notice of Motion are noted.

9. The Registry is directed to immediately comply with the directions in the order of 20th June 2018 and 18th November 2016 and to update the CMIS records. The Heera Panna Cooperative Housing Society Limited is to be shown as the 7th Plaintiff and not as the 1st Defendant. I do not understand why despite judicial orders the Registry persists in ignoring them. A copy of this order is to be placed before the Prothonotary and Senior Master and I expect compliance to be reported by 5th December 2018.

(G. S. PATEL, J)