

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1551 OF 2017
IN
SUIT NO. 1526 OF 2002

Abhishek Enterprises ...Plaintiff
Versus
Mathurdas Gordhandas Trust & Ors ...Defendants

Mr DD Madon, Senior Advocate, with Dr Birendra Saraf, Ranjeev Carvalho, Jitendra Jain & Krupa Vayeda, i/b Yogesh Adhia, for the Applicant / Plaintiff.

Mr Ashish Ghadge, for Defendants Nos. 1, 2 and 4 to 7.

Mr Abhijeet Kandarkar, for Defendants Nos. 9 & 10A to 10D.

Mr RM Haridas, with Abhijeet Patil i/b Ajay Patil, for Defendants Nos. 16 to 21.

CORAM: G.S. PATEL, J
DATED: 12th June 2018

PC:-

1. Heard. First, there is a typographical error in paragraph 5 of the order of 4th May 2018. The reference in the third and fourth line of that paragraph is to be read as a reference to the MoU dated 5th **August** 2009 and not 5th *September* 2009.

2. Mr Madon for the Plaintiff submits that an order in terms of prayer clause (b)(i) would suffice to dispose of the Notice of Motion. This is how this prayer reads:

(b)(i) That this Hon'ble Court be pleased to direct Defendants Nos. 9 and 16 to 21 and Defendant No. 15 to disclose on oath all other document/s that may have been executed by and/or between Defendants Nos. 9 and 16 to 21 and Defendant No.15 on the basis of the purported letter dated 15th July 2009;

3. Despite ample opportunities, the matter having been listed on several occasions, and several Affidavits having been filed both with leave and under directions of this Court, Defendants Nos. 9 and 16 to 21 and Defendant No.15 (or some or all these Defendants) have made no reference at any stage to any writing executed between them in relation to the subject matter of this specific performance suit for sale of land other than the alleged Memorandum of Understanding (“MoU”) dated 5th August 2009. No copy of that document — and certainly not the original — has ever been disclosed or brought before the Court. It is, therefore, not necessary in my view now to compel these Defendants to bring forward something that they have altogether failed or declined to do despite all these opportunities. Mr Madon will be at liberty to make such submissions as he thinks necessary on account of this failure to make the necessary disclosure/s and to produce the document.

4. This leaves the question of whether an order ought to be made in terms of prayer clause (b)(i) regarding any *other* documents that these Defendants may have executed *inter se*. Again, there is no

averment anywhere by any of these Defendants that they have executed any writing other than the 5th August 2009 MoU. It is sufficient to direct today that should, at any time in any proceeding in the Suit, such a statement be made by any of these Defendants, that statement will necessarily need to be accompanied by a disclosure and a copy of the document in question, and inspection must be given of the original. No further directions are therefore required. If no such disclosure is made, Mr Madon is at liberty to contend that the only conclusion to be drawn is that there exists no such other document.

5. The previous order will continue.

6. The Notice of Motion is disposed of in these terms.

7. Having regard to the manner in which the Notice of Motion proceeded and the observations I was constrained to make on past occasions, I am inclined to award the Plaintiff costs of this Notice of Motion. I will, however, not quantify those costs today but will leave the Plaintiff liberty to make an appropriate application either at the final hearing of the Suit or any time prior thereto for an order of actual and even exemplary costs against these Defendants.

(G. S. PATEL, J)