

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2007 OF 2017**

IN

SUIT NO. 1032 OF 1997

Ansal Housing & Construction	...Applicant
<i>In the matter between</i>	
Usha D Shah	...Plaintiff
<i>Versus</i>	
Utility Premises Pvt Ltd & Anr	...Defendants
<i>And</i>	
Mallesham R Kunta	...Respondent

AND

NOTICE OF MOTION NO. 2003 OF 2017

IN

SUIT NO. 1057 OF 1997

Ansal Housing & Construction	...Applicant
<i>In the matter between</i>	
Usha D Shah	...Plaintiff
<i>Versus</i>	
Utility Premises Pvt Ltd & Anr	...Defendants
<i>And</i>	
Mallesham R Kunta	...Respondent

Ms Alpana Ghone, with Ravi Gandhi & Rishabh Ranka, i/b Kanga & Co., for the Plaintiff.
Ms Prachi Tatake, i/b Chetan Agrawal, for the Applicant/Defendant
No. 2.

CORAM: G.S. PATEL, J
DATED: 26th March 2018

PC:-

1. Both Notices of Motion by the original 2nd Defendant in the respective Suits suffer from one fatal defect: they are over ambitious. The Respondent, one MR Kunta, Executive Engineer of the Building Proposals Department of the Municipal Corporation for Greater Mumbai was summoned by the 2nd Defendant to give evidence. He obeyed. He did give evidence. He was questioned about building height restrictions and mandatory set back rules in Question 8. He replied saying that “to his knowledge” there were no restrictions and it was, therefore, incorrect to say that the plans were not sanctioned on account of such restrictions.

2. The Notices of Motion say this statement is false and Mr Kunte should be punished and prosecuted for both contempt and perjury. I disagree. His knowledge may have been incomplete or faulty or inaccurate, and it is equally possible that one of the contesting parties may yet be able to show at the final hearing that the answer is in fact correct. What the Notices of Motion demand is that I must isolate a piece of evidence and decide its evidentiary value before the final hearing of the Suits. This is not possible.

3. The Notices of Motion are entirely misconceived. They are dismissed. No costs.

(G. S. PATEL, J)