

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

NOTICE OF MOTION NO. 1105 OF 2017
IN
SUIT NO. 928 OF 2013

Smt. Mainabai Pandurang Veta & Ors. ..Applicant/
Org. Defd. Nos. 5 & 7.

In the matter between

Megha Property Developers Pvt. Ltd. ..Plaintiff/s

v/s.

Babu Dagdu Patil & Ors. ..Defendant/s

Mr. Mayank Bagla a/w. Adv. Hussain Dholkawala i/b. Gnesh & Co.
for the Plaintiff/s

Mr. H.G. Wakshe for the Defendant No.5, 6 and 7.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 03 APRIL, 2019.**

P.C.

1. The applicants herein who were defendant nos. 5 and 7 in Suit No.928 of 2013 have filed this Notice of Motion to condone the delay in filing the application for recall of Order dated 8th July, 2014. The applicants have further stated that upon condonation of delay, the Order dated 8th July, 2014 be recalled and they may be permitted to file the written statement.

2. Heard the learned Counsel for the applicants and the learned

Counsel for the respondents. Perused the records.

3. The records reveal that in the Order dated 8th July, 2014 the Prothonotary had observed that the defendant nos.5 and 7 were duly served in the month of January, 2014, despite which they have not put in their appearance. Hence the suit was transferred to undefended suit.

4. The defendants submit that they were not served with the writ of summons and it was only in the last week of December, 2016 that they came to know through one Vinod Mhatre, son of defendant no.6 about the pendency of the said suit. The defendants have stated that they were not residing at the address mentioned in the plaint and that they had not received any notice in respect of the present suit. The learned Counsel for the applicant has placed on record, the copy of the Aadhar Card of defendant nos.5 and 7. A perusal of the said Aadhar Card shows that the defendant no.5 is a resident of House No.703, Behind Yogita Medical, Sector 19, Navi Mumbai, Kopar Khairne, Thane. Whereas, the defendant no.7 is resident of House No.213, Thane Belapur Road, Near Shankar Mandir, Gothivali Gaon, Navi Mumbai, Ghansoli, S.O.Thane. The address stated in the plaint is Samta Nagar, Bonkode, Navi Mumbai, Thane. The records also indicate that the notices were sent to the defendant

nos.5 and 7 by registered post. The acknowledgement receipts placed on record by the plaintiff prima facie indicate that the defendant nos.5 and 7 had allegedly signed the said acknowledgement cards. It is stated that the defendant nos.5 and 7 are illiterate and are not capable of putting any signature.

5. The records reveal that the notices were not sent at the correct address, and the defendant nos.5 and 7 were not served with summons. The defendant nos.5 and 7 have shown sufficient cause to condone the delay and recall the order . Hence, Notice of Motion is allowed. Delay is condoned. Order dated 8th July, 2014 is recalled. The defendant nos.5 and 7 are permitted to file their written statement.

(ANUJA PRABHUDESSAI, J.)