

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 202 OF 2018
IN
REVIEW PETITION (L) NO. 47 OF 2017
IN
SUIT NO. 306 OF 2016**

US Holiday Realty Private Ltd & Anr	...Plaintiffs
<i>Versus</i>	
Niranjan Realtors LLP & Ors	...Defendants

Mr Satyadev D Joshi, *i/b Devendra Singh, for the Applicants.*
Mr Durgaprasad Halwai, *i/b Singhi & Co., for Defendant No. 5.*
Mr Shakeeb Shaikh, *with Ashraf Diamondwala, i/b Diamondwala & Co., for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 8th January 2019

PC:-

1. There is more than one reason to dismiss this Notice of Motion. There is first of all a completely unexplained delay of 265 days. Not only is that delay unexplained but such explanation as is attempted is on a patently incorrect and wholly unsustainable basis.

2. The Notice of Motion seeks that this delay be condoned in the filing of a Review Petition (L) No. 47 of 2017, which seeks a

review of my order dated 17th February 2017 on the Plaintiff's Notice of Motion No. 1766 of 2016. In the present Notice of Motion for delay condonation there is a statement in paragraph 4 that the Applicants/original Defendants Nos. 1 and 3 were unaware of the order dated 17th February 2017 and that their Advocate did not appear. What is not pointed out is that the Advocates for the Plaintiffs, Diamondwala & Co, gave notice on 15th February 2017 to Mr Kamlakant Pandey who had filed his vakalatnama for Defendants Nos. 1 and 3 that the Plaintiff's Notice of Motion would be taken up for ad-interim reliefs on my board on 17th February 2017.

3. I am now told that Mr Pandey "never appeared" in the matter. Then I am told that he had "only filed his vakalatnamaa". I do not even pretend to understand what, if anything, this is supposed to mean and how this can possibly be used as a reason to condone any delay. Once an Advocate has filed a vakalatnama, it is not for the other side to go around attempting to serve both the Advocate and the litigant he represents. Otherwise, there would be no purpose to filing vakalatnamas at all. It is also not as if these Defendants are impoverished illiterates. The 1st Defendant claims to be a real estate company with a more than somewhat ambitious name. The 3rd Defendant is one of its directors. They are certainly expected to be more vigilant. I see no cause whatsoever to allow the Notice of Motion.

4. Without looking at the Review Petition itself, and looking only to the Affidavit in Support of the present Notice of Motion and order dated 17th February 2017 it further appears to me that the

entire case now presented is deliberately mischievous. Even in the Affidavit in Support of the delay condonation Notice of Motion, the Applicants attempt to make out that the order of 17th February 2017 was passed solely on the statement I recorded on behalf of Mr Dhaval Patil for Defendant No. 5 that his client, the Bank of Maharashtra had a mortgage of the whole of the property in question was the basis of my order. In fact, the Bank of Maharashtra was not the Plaintiff. The fact that it had a mortgage was only one of the reasons to grant the Plaintiff the injunction, and indeed I did observe that contentions of the Bank of Maharashtra were left open but that the Defendants could not transact the property to defeat the rights of either the Bank of Maharashtra or the Plaintiffs. In paragraph 5 of that order, I also said that the injunction would operate against the Defendants only so that they would not transfer, sale etc the suit property in the claim only to a limited extent and not to the extent of the entire relief claimed, i.e. only to the extent necessary to discharge and satisfy the claim of the Bank of Maharashtra. In other words, if the mortgage was only for a portion of the property, and that was sufficiently clear and clarified in paragraph 5.

5. Obviously, the Defendants Nos. 1 and 3 do not want to subject themselves even to this limited injunction. It is for this reason that they have deliberately not filed any kind of application for clarification, speaking to the minutes or a review petition in time but only done so at a very late stage. This is the only explanation for the wholly misleading statements in the Affidavit in Support of the present Notice of Motion.

6. The Notice of Motion is dismissed. There will be no order as to costs.

(G. S. PATEL, J)