

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

NOTICE OF MOTION NO. 1113 OF 2018

IN

SUIT NO. 1821 OF 2004

WITH

SUIT NO. 1821 OF 2004

Mahesh Govindji Trivedi	...	Applicant (Orig. Defendant No.3)
In the matter between		
Bakul Maganlal Vyas & Ors.	...	Plaintiffs
Versus		
Babubhai (@ Harsukhlal) Govindji Trivedi (deceased) & Ors.	...	Defendants

Mr. Yadunath Chaudhary a/w Ms. Prerna Lakhandani i/b Reena Salankhe for the Applicant/Defendant No.3.
Mr. Sanjay Jain a/w Mr. H. Trivedi, Ms. Sarika Mehra i/b L.J. Law for the Plaintiffs.

CORAM : R.I. CHAGLA, J.

DATED : 17th JUNE, 2019.

P.C. :

1 After hearing the parties at considerable length, the learned Counsel for the Applicant seeks permission to withdraw the Notice of Motion in order that the hearing of the Suit may be expedited. Permission is granted. Notice of Motion is dismissed as withdrawn.

2 The Suit is of the year 2004 and is a Suit for specific performance. On the prior date i.e. 02.05.2019 when the Plaintiff made an application for leave to file the counter-claim, this Court had granted the application with a clarification that all defences of the Plaintiff including as to limitation are specifically kept open. The written statement was to be filed and served on or before 21.06.2019 and the counter-claim has been listed for framing issues on 28.06.2019. It appears that the Suit of 2004 and the counter-claim have the same subject matter and that it would be necessary to expedite the hearing of the Suit of 2004 and the evidence in the Suit of 2004 can be treated as a common evidence in the counter-claim. It is pointed out by the learned Counsel for the Plaintiff that challenge is made to the order dated 02.05.2019 but is agreeable for the Suit of 2004 to progress. He states that in the Suit of 2004, the Plaintiff has tendered the affidavit in evidence and compilation of documents and the documents are required to be marked.

3 List the present Suit of 2004 along with the counter-claim which is kept for framing issues on 28.06.2019. On that date appropriate directions will be issued as to marking of documents in the Suit of 2004 as well as framing of issues in the counter-claim. There will be appropriate directions issued for appointment of Commissioner to record

evidence in order that the trial in the Suit of 2004 along with the counter-claim proceed in an expedited manner and in order for the trial to be completed within a period of six months. This will not prejudice the Plaintiff's right to challenge the order dated 02.05.2019 which is kept open. The Registry is directed to permit the Defendants to number the Counter Claim on or before the next date.

(R.I. CHAGLA, J.)