

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1730 OF 2015

IN

SUIT NO. 3419 OF 2008

Darshan Group & anr. ...Applicants

In the matter between

Darshan Group & anr. ...Plaintiffs

Versus

Yusuf D. Braketwala & ors. ...Defendants

Ms. Prerna Lalchandani, i/b Hassan Khan, for the
Applicants/Plaintiffs.

CORAM: N. J. JAMADAR, J.

DATED : 4th NOVEMBER, 2019

PC:-

1. Heard Ms. Lalchandani, the learned Counsel for the applicants – original plaintiffs.

2. The applicants have taken out this Notice of Motion to restore Notice of Motion No.4366 of 2008, by setting aside the order dated 30th July, 2015, whereby the said Notice of Motion was dismissed for want of prosecution. This Court in the said order had noted that Notice of Motion No.4366 of 2008 was an initial Notice of Motion in the suit for appointment of Court Receiver and grant of injunction; the suit having been instituted in the year 2008. The Court was thus of the view that non-prosecution of Notice of Motion, despite the order by the Appeal Court on 5th February, 2010, directing expedite hearing of the said Notice of

Motion betrayed the reluctance to prosecute the Notice of Motion, and it was thus dismissed for want of prosecution. The Court had further noted that the pleadings in the suit were complete and the suit was adjourned to 3rd September, 2015, for framing issues.

3. Having regard to the time-lag, no fruitful purpose would be served by restoring Notice of Motion No.4366 of 2008, which was in the nature of initial Notice of Motion for appointment of Court Receiver and grant of injunction, especially for the reason that the pleadings in the suit are complete and the suit has been directed to be listed for framing of issues.

4. Faced with the aforesaid situation, the learned Counsel for the applicants submits that the hearing of the suit be expedited. The suit has been instituted in the year 2008 and, thus, Court may consider the prayer for an early hearing of the suit. However, there is no justifiable reason for setting aside the dismissal order dated 30th July, 2015 and for restoring the said Notice of Motion to file.

5. Hence, the Notice of Motion stands rejected.

6. Suit No. 3419 of 2008 be listed for framing of issues on 26th November, 2019.

7. In the meanwhile, the parties may tender draft issues.

[N. J. JAMADAR, J.]