

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2462 OF 2018
IN
SUIT NO. 3197 OF 1988**

The New Bandra Hill Co-op Hsg Soc Ltd ...Plaintiff
Versus
Ambit Corporation & Ors ***...Defendants***

**Mr Lalan Gupta, with Juhi Dave, i/b Dhruve Liladhar & Co, for
the Plaintiff.**
**Mr Mahesh Menon, with Nilesch Tated & Rushabh Parekh, i/b DSK
Legal, for Defendants Nos. 1 and 4.**
Mr DS Shingade, for the Defendant-BMC.

CORAM: G.S. PATEL, J
DATED: 9th January 2019

PC:-

1. Mr Menon for Defendants Nos. 1 to 4 in fairness points out two orders of KR Shriram J of 5th October 2018 and 1st November 2018 that held against his clients. The Court found that Defendant Nos. 1 and 4 had not complied with the previous directions. The order of 5th October 2018 says that inspection had not been granted since 15th December 2014 despite directions and restricted Defendants Nos. 1 and 4 to the documents annexed to the Written Statements or mentioned in the list annexed to it. The order of 1st

November 2018 closed the case for Defendants Nos. 1 and 4 altogether.

2. The application today by Mr Menon, on his own showing, is not in invocation of any right but clearly only as an plea for mercy and for an extraordinary indulgence. He points out that the suit is of 1988 and that the first directions for inspection came to be made several decades thereafter in 2014. The property in question has several structures and by that time Defendants Nos. 1 and 4 were unable to find a complete or accurate set of the documents they required. After the orders of 5th October 2018 and 1st November 2018 Defendants Nos. 1 to 4 have obtained the necessary documents including in response to RTI queries. He, therefore, requests an indulgence saying that the suit has been contested and Defendants Nos. 1 and 4 did enter their Written Statements. He states that he has instructions that his clients are willing to be put to terms.

3. I am aware that this kind of relief should seldom be granted, if ever. I do not believe there is a reason to grant the request for recall automatically and I would not have countenanced it had Mr Menon sought further time after today to prepare those documents. I am only willing to consider it because he makes a statement that his clients' Evidence Affidavit, Affidavit of Documents and Compilation of Documents are ready and can immediately be filed. His clients have, therefore, taken steps even after the two orders in question that had the effect of shutting them out, to put their material together; and it is this, and only this, that persuades me to grant the request as an indulgence. I will, of necessity and to balance the rights of the parties have to couple this with an order of costs.

Mr Menon agrees that his clients will pay costs quantified at Rs. 50,000/- to the Plaintiff. Those costs are a condition precedent and are to be paid on or before 14th January 2019.

4. The Affidavit of Documents and Compilation of Documents are to be served on the Advocates of the Plaintiff on or before that date. Discovery and Inspection is to be completed or before the next date.

5. List the suit for marking the documents of Defendants Nos. 1 and 4 on the first available date convenient to Court, which is 8th February 2019.

(G. S. PATEL, J)

Note: This order is modified by an order dated 18th January 2019. Corrections are shown in bold and italics.