

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION**

**NOTICE OF MOTION NO. 53 OF 2016  
IN  
COMM SUMMARY SUIT NO. 190 OF 2016**

M/s. Vighnaharta Builders and Projects  
Pvt. Ltd.

...Applicant

**In the matter between**

M/s. Vighnaharta Builders and Projects  
Pvt. Ltd.

...Plaintiff

**Versus**

Municipal Corporation of Greater Mumbai  
& anr.

...Defendants

SANTOSH  
SUBHASH  
KULKARNI

Digitally signed by  
SANTOSH SUBHASH  
KULKARNI  
Date: 2022.04.13  
11:22:09 +0530

Mr. Avit Bookwala, Senior Counsel, a/w Mahek Bookwala and  
Kajal Singh, i/b Diwakar Singh, for the Plaintiff.

Mr. A. Y. Sakhare, a/w Pooja Yadav, i/b Sunil Sonawane, for  
the MCGM.

Mr. Mankar, Asst. Engineer (Estate), present.

Ms. Pooja Kshirsagar – Kane, a/w Riya Makwana, for  
Defendant nos.3, 4 and 5.

Mr. Aseem Naphade, a/w S. B. Pawar and Swati Sawant, i/b  
S. K. Legal Associates LLP, for Defendant no.2.

**CORAM: N. J. JAMADAR, J.**

**DATED : 12<sup>th</sup> APRIL, 2022**

**PC:-**

1. Heard the learned Counsels for the parties.
2. Mr. Doctor, the learned Senior Counsel has tendered a  
draft of the proposed amendment.

3. The plaintiff is permitted to carry out the amendment in terms of the draft, which essentially is incorporation of additional prayers in the plaint and notice of motion.

Amendment be carried out during the course of the day.

4. The learned Counsel for the plaintiff has also tendered a further affidavit on behalf of the plaintiff.

Affidavit is taken on record.

5. The learned Counsel for defendant no.2 has also tendered further affidavit of Mr. Tanaji Bagal, Chairman of defendant no.2.

Further affidavit on behalf of defendant no.2 is taken on record.

6. Mr. Doctor, the learned Senior Counsel for the plaintiff and Mr. Naphade, the learned Counsel for defendant no.2, submit that in view of the averments made in the affidavits filed today, and the resolution passed by defendant no.2 – society in its special general body meeting held on 22<sup>nd</sup> March, 2022, the notice of motion be disposed in accordance with the Minutes of Order.

7. The learned Counsels have tendered the Minutes of Order between the plaintiff and defendant no.2. Mr. Santosh Mane,

Director of the plaintiff and Mr. Pravin Phatak, Secretary and Mr. Tanaji Bagal, Chairman of defendant no.2 – society, are present before the Court. The Minutes of Order are executed by Mr. Pravin Phatak, Secretary and Mr. Tanaji Bagal, Chairman of defendant no.2 – society. The signatories admit the contents of the Minutes of Order. They submit that they have voluntarily entered into the Minutes of Order and there is no coercion or duress. The signatories are identified by the Advocates for the respective parties. The Minutes of Order are thus taken on record and marked “X”.

8. Mr. Sakhare, the learned Senior Counsel for defendant no.1, submits that the Minutes of Order (“X”) should not operate to the prejudice of defendant no.1 and all the rights and contentions of defendant no.1 be kept open for adjudication in the suit or any other proceedings, which may be initiated by defendant no.1, including the issue of penalty for delayed execution of the project. ‘

9. The submission is reasonable and deserves consideration.

10. The termination letter dated 19<sup>th</sup> February, 2015, admittedly had its genesis in the dispute between the plaintiff

and defendant no.2. Now the plaintiff and defendant no.2 have amicably resolved the dispute.

11. Hence, the Notice of Motion No.53 of 2016 stands disposed in accordance with the Minutes of Order ("X").

12. The Minutes of Order ("X") shall, however, be without prejudice to the rights and contentions of defendant no.1. All the rights and contentions of defendant no.1 are kept open for adjudication in the suit or any other proceedings which maybe initiated by defendant no.1.

13. Liberty to all the parties to approach the Court, if need be.

**[N. J. JAMADAR, J.]**