

ORDER BELOW EXH. 23 IN Spl.C.S. No. 107/2013

1. This application is filed by plaintiff under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure.

2. Plaintiff contended that, defendant no.1 to 5 had received a plot under the scheme of 12.5%. These defendant no.1 to 5 have executed an Agreement in favour of plaintiff on 01-12-2011. Plaintiff has filed present suit for specific performance of Agreement dated 01-12-2011. Previously when the suit was filed, the proposed defendants were party to the suit as defendant no.6/1 to 6/3. But as there was talk about amicable settlement between the parties, hence the parties had taken the matter before Mahalokadalat on 21-04-2013. Therefore, this plaintiff had filed application for deleting the name of CIDCO i.e. defendant no.6/1 to 6/3. Accordingly, the names of CIDCO were deleted. But unfortunately, the matter could not be amicably settled between the parties, hence, the matter proceeded further. Thus, they prayed that, the CIDCO be re-added as defendants to the suit being necessary party.

3. Though notice was duly served on proposed defendants, they failed to appear, hence application proceeded without say of proposed defendants.

4. Heard learned Advocate Shri. Bhujbal for the plaintiff at length. Perused the record. Before proceeding to discuss on issue I would like to state the facts of the present suit.

- 1 The present suit is filed for specific performance of Agreement dated 01-12-2011 and alternatively for compensation on **26-02-2013**.
- 2 On **20-04-2013**, plaintiff filed application (**Exh.13**) for deleting name of defendant no.6/1 to 6/3.
- 3 On **20-04-2013** Application **Exh.13** was allowed.
- 4 Accordingly, plaintiff deleted the names of defendant no.6/1

to 6/3 on the **same day** from the plaintiff.

- 5 On **21-04-2013** the matter was posted for Lokadalat, but the matter could not be amicably settled.
- 6 The suit proceeded further.
- 7 Issues were framed below Exh.17 on **08-03-2018**.
- 8 **Till date**, plaintiff has not led any evidence.
- 9 On **09-08-2019** plaintiff has filed this application **Exh.23** for adding defendant no.6/1 to 6/3 as party to the suit.

5. I have perused the record. Plaintiff vide this application is intending to re-add defendant no.6/1 to 6/3 to whom it had deleted on 20-04-2013 as per order below **Exh.13**. It is pertinent to note that, defendant no.6/1 to 6/3 are statutory authorities. Therefore, as per Section 159-A of the MRTP Act, notice is mandatory before filing of suit against the authority. In the present suit, while filing of the suit plaintiff had issued notice to the then defendant no.6/1 to 6/3 on 06-09-2012. Here it is pertinent to note that, while filing present application, plaintiff has not issued any notice to proposed defendant no.6/1 to 6/3 under Section 159-A of the MRTP Act.

6. Advocate for plaintiff argued that, notice is not required as previously they had issued notice to CIDCO on 06-09-2012. I do not agree with the arguments advanced by learned Advocate for plaintiff. The notice dated 06-09-2012 was issued for filing of suit against them and accordingly the suit was filed, but plaintiff itself had deleted their names for the reasons best known to them. Now, when plaintiff intends to add proposed defendant no.6/1 to 6/3, then notice is mandatory as per Section 159-A of the MRTP Act. Moreover, the notice was issued on 06-09-2012. As per the **clause 9 of Schedule I of the MRTP Act, 1966**, after issuance of notice, the suit has to be filed within six months.

Therefore, when plaintiff is intending to add proposed defendants, then notice has to be issued within six months from adding them as a party.

7. It is also pertinent to note that, when plaintiff itself has come to the conclusion for deleting names of defendant no.6/1 to 6/3, then how can they again be added as defendants. Though plaintiff is Dominus Litus but he cannot delate parties and again add party to the suit at his own wish and whims. Moreover, plaintiff has not shown any cause of action for adding defendant no.6/1 to 6/3 as party to the suit. Thus, in view of my above discussion, I am of the opinion that, the application of plaintiff being devoid of merits, needs to be rejected. Accordingly I pass following order.

:: ORDER ::

1. Application is rejected.

Panvel,
Date : 01-02-2023.

(Nayomi P. Pawar)
Civil Judge, Senior Division Panvel.