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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 189 OF 2008**

Gold Coin Builders	...Plaintiff
<i>Versus</i>	
DH Dave & Ors	...Defendants

**WITH
COUNTER CLAIM (L) NO. 12 OF 2019
IN
SUIT NO. 189 OF 2008**

Mr Sachin Mandlik, *with P Jain, i/b VS Shriyan, for the Plaintiff.*
Mr Shilpan Gaonkar, *with Bhagwati Trivedi, i/b Bhagwati & Co., for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 26th March 2019

PC:-

1. The Counter Claim is not on board. By consent it is taken on board.

2. The counter claim is to be got finally numbered by Friday, 29th March 2019. Mr Gaonkar states on instructions that all remaining objections will be removed by 28th March 2019 including

replacing the cause title. Leave granted to amend accordingly for that purpose and reverification dispensed with.

3. Heard. Issues are framed separately in the Suit and in the Counter Claim and these are appended to this order.

4. For the present the trial will start in the suit although the parties are agreed that the evidence in the suit may, as necessary, be treated as evidence in the counter claim, since some of the issues certainly overlap. Further, I find that some of the issues in the counter claim are a direct result or consequence of an issue in the suit being answered one way or the other.

5. The Plaintiff shall, on or before 22nd April 2019, file (i) the evidence affidavit of its first witness; and (ii) a compilation of documents (affidavit of documents have already been filed) duly indexed and paginated. Copies of each of these will be served on the advocates for the Defendants on or before that date.

6. Parties should complete discovery and inspection and statements of admission and denial are to be exchanged in the meantime.

7. There will be no extension of time. In default of compliance, the suit will stand dismissed without further reference to the Court.

8. On the Plaintiff complying with these directions, the matter will be taken up for marking of the Plaintiffs' documents and further

directions on 30th April 2019, irrespective of the caption under which the matter appears.

9. The office is not to raise any further objections regarding counter claim except for a correction of the cause title.

(G. S. PATEL, J)

ISSUES FRAMED ON 26TH MARCH 2019

SUIT NO. 189 OF 2008

1. Whether the Plaintiff proves that the termination of the Memorandum of Understanding at Exhibit 'D' to the Plaint vide letter dated 15th October 2007 is illegal and null and void?
2. Whether the Plaintiff proves that it has complied with its obligations under the Memorandum of Understanding at Exhibit 'D' to the Plaint?
3. Whether the Plaintiff is entitled to specific performance of the Memorandum of Understanding at Exhibit 'D' to the Plaint as claimed?
4. Whether the Defendants prove that the Plaintiffs have committed material breaches of the said Agreement in the form of Memorandum of Understanding dated 29th December 2004 and if so, without reasonable cause?
5. Whether the Defendants prove that they are entitled to set-off in the sum of Rs.11,52,98,881/- as claimed, or otherwise at all?
6. Whether the Plaintiff proves that it is entitled to monthly compensation from 1st August 2014 till for actual and physical delivery of possession of the 4th and 5th Floor flats, on account of the alleged wrongful withholding of possession and depriving the Plaintiff use, enjoyment and occupation thereof? If yes, at what rate?
7. Whether the Plaintiff is entitled to any interest on the amounts claimed?
8. Whether the Defendants prove that they are

entitled to an amount of Rs.11,52,98,881/-
(Rupees Eleven crores, fifty two lakhs ninety
eight thousand eight hundred eighty one only)
alongwith interest as claimed, from the
Plaintiff as and by way of set off (legal
and/or equitable) and/or counter claim?

9. What order?

10. What costs?

(G. S. PATEL, J.)

ISSUES FRAMED ON 26TH MARCH 2019

COUNTER CLAIM (L) NO. 12 OF 2019

IN

SUIT NO. 189 OF 2008

1. Whether the Plaintiffs to the Counter Claim prove that the Counter Claim is maintainable in view of the provisions of Order VIII Rule 6A and Order VIII Rule 6B, or otherwise?
2. Whether the Plaintiffs to the Counter Claim prove that the Counter Claim is within limitation?
3. Whether the Plaintiffs prove that the Defendant failed to obtain the requisite permissions and complete construction work and obtain Occupation Certificate for reasons not attributable to the Plaintiffs?
4. Whether the Defendant proves that it was on account of the obstructions created by the Plaintiffs that the Defendant could not complete the work?
5. Whether the Plaintiffs prove that the works carried out by the Defendant are sub-standard?
6. Whether the Defendant proves that it has performed its obligations and delivered a good quality work product till the time that the Plaintiffs disrupted the works?
7. Whether the Plaintiffs prove that substantial repairs to the subject building would be required year on year, for reasons attributable to the Defendant?
8. Whether the Plaintiffs prove that repair work to the building would cost Rs.2,00,000/- per

annum on an average, or any other sum at all, with an escalation of 10% or at any other rate at all?

9. Whether the Plaintiffs prove that they are entitled to a Counter Claim in the sum of Rs.11,52,98,881/-, or any other sum at all?
10. Whether the Plaintiffs prove that they are entitled to the claims or any of the claims set out in particulars of claim, being Exhibit 'I' to the Counter Claim?
11. What order as to costs?

(G. S. PATEL, J.)