

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

**NOTICE OF MOTION NO.420 OF 2008
IN
SUIT NO.338 OF 2008**

Mahmood Omar Wakani & Anr.Plaintiffs

V/s.

Khalid Omar Wakani & Ors.Defendants

Mr. Cyrus Ardeshir a/w. Mr. Nilesh Modi & Ms. Harshal Manik i/b.
M/s. Rustamji & Ginwala for the plaintiffs.

Mr. Arjun K. Sreenivas i/b. M.K. Ambalal & Co. for the defendant
no.1.

Mr. Siddharth Samantray i/b. H.N. Modi for the defendant no.2.

CORAM : K.R.SHRIRAM,J

DATE : 28th JULY, 2016

P.C.:-

1 By an order dated 5th February, 2008 read with order dated 15th February, 2008 this court had passed an ad-interim order directing the first defendant not to create any third party rights or part with the possession of the property mentioned in Exhibit 'B' to the plaint. The mortgage created in favour of Vijaya Bank by defendant no.1 was also noted.

2 The counsel for the defendant no.1 states that the said mortgage has been discharged after paying Vijaya Bank and there is no further mortgage created in respect of the suit property. The

defendant no.1 has file an affidavit dated 18th May, 2016 to this effect.

3 In view of the said affidavit, the counsel for the plaintiffs states that he has not pressing for any further relief as prayed for in the notice of motion and the order dated 5th February, 2008 read with order date 15th February, 2008 be confirmed as order in the notice of motion.

4 The counsels for the defendants have no objection but the counsel for the defendant no.1 states that against the order passed by this court holding that the suit is filed within limitation, the defendant no.1 has filed an Appeal, which is still pending. The counsel for the defendant no.1 state that subject to the outcome of the Appeal, the suit may proceed to trial. The counsel for the defendant no.1 clarifies that they will agitate the issue of limitation in the Appeal Court.

5 In view of the above, the order dated 5th February, 2008 read with order dated 15th February, 2008 is confirmed as order in the notice of motion subject to the Appeal being decided by the Division Bench of this court.

6 The notice of motion accordingly stands disposed.

7 The written statement has been filed by defendant no.1,
who is the only contesting defendant.

8 Therefore, parties to file their respective affidavit of
documents and also give inspection of documents within three weeks
from today. Within one week thereafter, parties to file and exchange
their statement of admission and denial with reasons for denial.

9 Stand over to 29th August, 2016 for issues.

(K.R.SHRIRAM,J)