

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

**NOTICE OF MOTION NO.1001 OF 2010
IN
SUIT NO.904 OF 2010**

Dilip B. Patel & Ors.Applicants/Org. Plaintiffs

IN THE MATTER BETWEEN :

Dilip B. Patel & Ors.Plaintiffs

V/s.

Edwin Civil Engineering & Ors.Defendants

**WITH
CHAMBER SUMMONS NO.398 OF 2016
IN
SUIT NO.904 OF 2010**

Rajesh Ramji Nandu & Anr.Applicants/Org. Plaintiff Nos.2&3

IN THE MATTER BETWEEN :

Dilip B. Patel & Ors.Plaintiffs

V/s.

Edwin Civil Engineering & Ors.Defendants

Mr. Zubin Behramkamdin i/b. Vimla & Co. for the plaintiff nos.2 & 3.
None for the defendants.

**CORAM : K.R.SHRIRAM,J
DATE : 11th AUGUST, 2016**

P.C.:-

NOTICE OF MOTION NO.1001 OF 2010

1 When this notice of motion was moved for ad-interim relief on 7th July, 2010, statement was made by defendant no.1 that defendant no.1 shall not act upon agreement dated 16th October, 2009 between defendant no.1 and defendant no.2, agreement dated

12th January, 2010 between defendant no.1 and defendant no.3 and defendant no.1 shall not part with possession in regard to each of the flat agreed to be sold to defendant nos.4 to 8. Statement was also made on behalf of defendant no.1 that he shall not, till further orders, enter into any transaction in regard to TDR and the undisposed of free sale flats which have remained undisposed. The statement was accepted. It will be useful to quote the entire order and the same is as under :-

“Heard learned counsels on both sides. Learned counsel appearing on behalf of defendant no.1, upon instructions, states that defendant no.1 has instituted a suit so as to challenge and avoid purported agreement dated 5th May, 2008 said to have been entered into between the plaintiffs and defendant no.1. He submits that the said suit be tagged alongwith this suit and the case of both the parties be considered as defendant no.1 herein who is the plaintiff in the said suit wants to content that the main agreement dated 5th May, 2008 was brought about by coercion and fraud. The statement is fair and accepted.

2. Learned counsel for defendant no.1, upon instructions, states that till the ad-interim stage of the suit filed by defendant no.1 as mentioned above is over, defendant no.1 shall not act upon agreement dated 16th October, 2009 between defendant no.1 and defendant no.2, agreement dated 12th January, 2010 between defendant no.1 and defendant no.3. He further, upon instructions, states that defendant no.1 shall not part with possession in regard to each of the flat agreed to be sold to defendant nos.4 to 8. He also makes a statement that till further order, he shall not enter into any transaction in regard to TDR and the undisposed of free sale flats which have remained undisposed of as of today. The statement made by the learned counsel for defendant no.1 as a whole, is accepted.

3. This matter is adjourned to 19th July, 2010 at 3.00 p.m. by which time defendant no.1 will apply for having suit placed for ad-interim relief.”

2 This statement was made in 2010. Today, nobody is present for the defendants and I am told that defendant nos.2 to 8 have not even filed their affidavit in reply to this notice of motion.

3 It will be only in the fitness of the things, if the statement made by defendant no.1, as recorded above, be continued as order in the notice of motion.

4 Therefore, the statement made by defendant no.1 in the order dated 7th July, 2010 is confirmed as order in the notice of motion and the notice of motion accordingly stands disposed.

CHAMBER SUMMONS NO.398 OF 2016

1 This chamber summons is taken out for transposing the plaintiff no.1 as 9th defendant and consequently amending the plaint as per the schedule annexed to the chamber summons.

2 The counsel for the applicant/plaintiff nos.2 and 3 on instructions, states that plaintiff no.1 has been served a copy of this chamber summons on 8th February, 2016 and undertakes to file affidavit of service within one week from today. The counsel for the

applicant/plaintiff nos.2 and 3 states that no reply has been filed by the plaintiff no.1.

3 In view thereof and in view of the fact that the averments contained in the affidavit in support have not been controverted by the plaintiff no.1, the chamber summons is allowed and accordingly disposed of in terms of prayer clauses – (a), (b) and (c).

4 The amendments to be carried out and the amended plaint to be served upon all the parties within three weeks from today.

5 The suit be listed for directions on 2nd September, 2016.

(K.R.SHRIRAM,J)