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

NOTICE OF MOTION NO.1272 OF 2013
IN
SUIT NO.2019 OF 2011

M/s. Abhishek Enterprises ….Applicant
(Org. Def. No.16)

IN THE MATTER BETWEEN :

Jeel Enterprises ….Plaintiff

V/s.

Mathurdas Gordhandas Trust & Ors. ….Defendants

Mr. Vishal Thaker a/w. Ms. Anjali Trivedi for the plaintiff.
Mr. Ashish Ghadge for the defendant nos.1,9,10,11 to 13.
Ms. Jinal Gogri i/b. Negandhi, Shah and Himaytullah for the defendant nos.17 to 24, 25 (a), 25(b), 25 (c) and 26.
Dr. Birendra Saraf a/w. Ms. Pooja Kshirsagar, Mr. Anand Patel, Ms. Sheetal Mehta and Mr. Yash Patil i/b. Yogesh Adhia and S.R. Mishra for the applicant/defendant no.16.

CORAM : K.R.SHRIRAM,J
DATE : 29th SEPTEMBER, 2016

P.C.:-

1 This notice of motion is taken out for framing a preliminary issue under Order 14 Rule 2 of the Code of Civil Procedure.

2 Dr. Saraf, counsel appearing for the applicant points out that in another suit bearing suit no.1526 of 2002 this court while disposing of notice of motion no.1324 of 2002 in that suit, in its order dated 3rd May, 2002 has recorded that the plaintiff in this suit, who

was defendant no.13 in that suit made a statement through the counsel that the plaintiff is not interested in enforcing the agreement executed by him with the other defendants in that suit in respect of the suit property. Dr. Saraf further states that if such a statement has been made to the court, then the plaintiff cannot maintain the present suit for specific performance of the same agreement which the plaintiff had informed the court he was not interested in enforcement. Dr. Saraf states that, therefore, a preliminary issue be framed so that if the court comes to a conclusion that the suit is not maintainable, the entire suit can be dismissed at the threshold.

3 The counsel appearing for the plaintiff states that this issue can be framed as a preliminary issue and decided by keeping open the rights and contentions of the plaintiff to be raised at the time of final hearing on this preliminary issue.

4 Therefore, keeping open the rights and contentions of the plaintiff, the following issue is framed as preliminary issue :

> "(1) Whether this suit is maintainable in view of the statement of the plaintiff recorded in paragraph 6 of the order dated 3rd May, 2002 in notice of motion no.1324 of 2002 in suit no.1526 of 2002 pending in this court?"

5 Since this is purely an issue of law, no evidence is required to be led.

6 The notice of motion accordingly stands disposed.

7 The matter be listed for arguments on this preliminary issue on 21st October, 2016.

(K.R.SHRIRAM,J)